

**SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**Present:**

Mr. Justice Umar Ata Bandial  
Mr. Justice Syed Mansoor Ali Shah  
Mr. Justice Qazi Muhammad Amin Ahmed

**Civil Petitions No.2597 to 2600 of 2020.**

(Against the judgment dated 16.07.2020 of the Islamabad High Court, Islamabad passed in ITR No.24 to 27 of 2009)

**Commissioner of Income Tax (Legal)** (*in all cases*)

.....Petitioners

Versus

**M/s Askari Bank Limited, Rawalpindi, etc** (*in all cases*)

.....Respondents

For the petitioners: Mr. Manzoor Hussain, ASC.

For the respondents: Mr. Muhammad Idrees, ASC.

Date of hearing: 01.02.2022

**ORDER**

**Syed Mansoor Ali Shah, J.** - The controversy in this case revolves around the meaning and scope of section 23 of the Income Tax Ordinance, 2001 (“**ITO**”). Briefly, the admitted facts between the parties give rise to the question: whether the respondent taxpayer can claim deduction of initial allowance for an eligible depreciable asset (building in this case) being put to use by the taxpayer for the first time in a tax year, irrespective of the fact that the said building had been in use in the past in the hands of other taxpayers.

2. It has been argued before us that the phrase “first time in a tax year” in section 23 means that the building must have been put to use for the first time in its life. And in the present case as the building has already been put to use earlier by its previous owner or proprietor, the use of the building by the respondent taxpayer is not for the first time, hence the respondent taxpayer is not entitled to deduct initial allowance regarding the said asset. Learned counsel for the respondent taxpayer has supported the judgment of the High Court.

3. The relevant portion of section 23 of ITO is reproduced hereunder for convenience:-

**23. Initial allowance.—(1) A person who places an eligible depreciable asset into service in Pakistan for the first time in a tax year** shall be allowed a deduction (hereinafter referred to as an “initial allowance”) computed in accordance with subsection (2), provided the asset is used by the person for the purposes of his business for the first time or the tax year in which commercial production is commenced, whichever is later.

(2) ...

(3) ...

(4) ...

(5) In this section, “eligible depreciable asset” means a depreciable asset other than —

(a) any road transport vehicle unless the vehicle is plying for hire;

(b) any furniture, including fittings;

(c) **any plant or machinery that has been used previously in Pakistan**; or

(d)

The above provision states that “**A person who places an eligible depreciable asset into service** in Pakistan **for the first time** in a tax year.” It means that the term “first time in a tax year” relates to the first time use of the building by the taxpayer and has no concern with the history of usage of the building prior to it falling in the hands of the taxpayer. The act of placing the eligible depreciable asset into service or use, for the first time in a tax year, is of the taxpayer and it is inconsequential if the same asset/building was earlier put into service or use while it was in the hands of an earlier owner or proprietor. A taxpayer becomes entitled to deduction of initial allowance if he, through his own act, has placed an eligible depreciable asset into service for the first time in a tax year.

4. This view is fortified from the reading of sub-section (5) of section 23 which defines “eligible depreciable asset” and specifically excludes a plant or machinery which has been used previously in Pakistan from the definition of “eligible depreciable asset”. A previously used building has not been excluded and is therefore an eligible depreciable asset and if put to use by the

taxpayer for the first time in the tax year, irrespective of its previous use, the taxpayer is entitled to deduction of initial allowance.

5. In this case, admittedly, the asset (building) has been put into service/use by the respondent taxpayer for the first time in the tax year and, therefore, the respondent taxpayer is entitled to the deduction of the initial allowance in terms of section 23 of the ITO.

6. We, therefore, see no reason to interfere in the well reasoned judgment of the Islamabad High Court dated 19.5.2020. Leave is, therefore, declined and these petitions are dismissed.

Judge

Judge

Islamabad,  
01<sup>st</sup> February, 2022.  
Approved for reporting.

Judge

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