KTBA Karachi Tax Bar Association

16th OF 2024 KTBA ONE PAGER
CASE LAW UPDATE
(SEPTEMBER 13, 2024)

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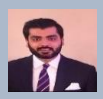

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Dear Members,

A brief update on a judgment by the Appellate Tribunal Inland Revenue, Karachi on **"Input Tax on Hotel Bills Allowed; Input Tax on Purchase of Vehicle Allowed"** is being shared with you for your knowledge. The order has been attached herewith the update.

This update is in line with the efforts undertaken by our **"CASE LAW UPDATE COMMITTEE"** to apprise our Bar members with important court decisions.

You are equally encouraged to share any important case law, which you feel that should be disseminated for the good of all members.

You may contact the Committee Convener Mr. Shams M. Ansari or at the Bar's numbers 021-99212222, 99211792 or email at info@karachitaxbar.com & ktba01@gmail.com

(Syed Zafar Ahmed)
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(Asim Rizwani Sheikh)
Hon. General Secretary

16th OF 2024 KTBA ONE PAGER
CASE LAW UPDATE
(September 13, 2024)

INPUT TAX ON HOTEL BILLS ALLOWED
INPUT TAX ON PURCHASE OF VEHICLE ALLOWED

Appellate Authority: ATIR-KB
Appellant: Abu Dawood Trading Company (Private) Limited
Section: 8(1) of the Sales Tax Act, 1990 (the Act)

Detailed judgement on Miscellaneous Application (MA, Rectification) was passed on July 03, 2024.

Background: The applicant submitted a request for rectification of a mistake in the Tribunal Order. The bench accepted the application and revisited the previous judgment. It was found that certain facts presented during the original hearing were overlooked and some specific issues were not addressed in the original judgment, leading to an error therein. The bench, therefore, rectified its earlier order and allowed the input sales tax as contested by the applicant.

Decision of the Court:
First Ruling of the ATIR:
INPUT TAX PAID ON HOTEL BILLS ALLOWED

The Tribunal ruled that as the applicant is engaged in the distribution of fast-moving consumer goods (FMCGs) across the country, it was asked to submit the evidence on these lines, which demonstrate that hotel expenses were incurred to accommodate their sales team at various locations. These hoteling expenses are an integral part of its business and essential for its growth and have a direct connection to the taxable activity carried out by the applicant. Therefore, these have now been held to be admissible inputs under Section 8(1) of the Act.

Second Ruling of the ATIR:
INPUT TAX PAID ON BUYING OF DISTRIBUTION VEHICLE ALLOWED

The Tribunal observed that the department had allowed input tax credit on fuel used for the distribution of goods, recognizing it as to have been used in the core business activity. However, it disallowed the input tax claimed on the purchase of auto parts and vehicle maintenance without providing any explanation. Considering the nature of distribution business, the Tribunal observed that vehicles in question are essential for generating business, which the Applicant had purchased with its claim of input. The Applicant had also submitted sales tax invoices for these vehicles during the Rectification proceedings. Nevertheless, due to an oversight, no findings were recorded on this matter in the order earlier passed by the Tribunal, which constitutes a mistake apparent from record. In light of these circumstances, the Tribunal has directed that the Applicant's claim for input tax adjustment on purchase of vehicles in question be allowed.

COMMENTS
Renewed Litigations by all Distributors in the Country:
The ruling by the Tribunal in the Misc. (Rect.) Application is though welcoming for whole of the Distributors Industry in the Country; it has opened the Floodgate for a fresh spate of renewed litigation by them to claim back their input tax on purchase of Vehicles, which has always been denied by the department. The route of Miscellaneous Application (MA), we understand, has inherent legal issue.

Scope of MA:
It merits a mention with apprehension that the scope of rectification in judicial decisions has remained a subject of contention, with multiple judgments from High Courts and the Supreme Court qua its limitations. Based on these decisions, it is now a widely accepted consensus that rectification is confined to correcting errors evident on the face of order, such as clerical or typographical mistakes.

Exception without Explanation:
The case in hand, on the contrary, portrays a completely different and unexpected picture of the Tribunal standing, wherein the Tribunal not only accepted the rectification on legalities but revisited the decision and provided the desired relief on account of input tax adjustment, that is otherwise explicitly prohibited under Section 8(1)(i) of the Act. The disallowance is specific to input tax on motor vehicles and that too without any exception: yet the Tribunal chose to offer not only to listen but to grant relief as well, without clearly reconciling the discrepancy.

Unusual Precedent:
We understand that the current case has set a very unusual precedent, where MA Rectification can now be used as a tool, to revisit the settled legal matters. For MA Rectification to maintain its sustainability as we knew before this decision, had to be grounded on a premise that it does not overstep into areas of substantive law where judgments have already been given based on statutory interpretation.

CONCLUSION:
The Tribunal has stretched the scope of this legal practice, moving beyond the correction of errors, into the realm of revisiting legal conclusions and, therefore, we apprehend that the matter is prone to further contentious litigation in the High Court by the Department.

APPELLATE TRIBUNAL INLAND REVENUE OF PAKISTAN
(SPECIAL DIVISION BENCH) AT KARACHI

Present: MR. TAUQEER ASLAM, CHAIRMAN
MR. AIJAZ AHMED KHAN, MEMBER

M.A (Rect) No.594/KB/2023
In: STA No.739/KB/2023
(2017 – 2018)
U/s 57

Abu Dawood Trading Co Pakistan (Pvt) Ltd,
Karachi.....Applicant

Versus

CIR, Zone-VI, LTO, Karachi.....Respondent

Applicant by: Mr. Ashfaq Tola, FCA
Mr. Muhammad Amayed Ashfaq Tola, Advocate
Respondent by: Mr. Ali Hassan, DR

Date of hearing: 31-05-2024
Date of order: 03-07-2024

ORDER

MR. TAUQEER ASLAM (CHAIRMAN):- Through this order we intend to dispose off the titled miscellaneous application filed by the applicant/taxpayer for rectification of order dated 07-11-2023 passed by the learned Divisional Bench of this Tribunal in STA No.739/KB/2023.

In the titled miscellaneous application of rectification following contentions have been raised by the applicant/taxpayer:-

1. *That in the instant case the learned Appellate Tribunal Inland Revenue passed order dated 07.11.2023 served on the appellant 28.11.2023. (Copy of the same is annexed herewith as annexure "A").*

2. *That there is mistake apparent from the record in para 03 which is reproduced below:-*

> *"03. We have given due consideration to the rival arguments advanced by both the parties and have perused the record available before us. The contention of the learned counsel of the registered person is that the learned CIR(A) was not justified to in confirming the disallowance of input tax amounting to Rs.3,774,757/- on the basis that no evidence was provided whereas complete reconciliation was provided. Perusal of the order of the*

learned CIR(A) revealed that the AR has not provided material evidence in respect of input ax claimed on vehicles, auto parts and other service to clarify nexus with appellant's taxable activity. When confronted this observation to the learned AR, he has failed to furnish any documentary evidence in support of his version which prove his stance. Therefore, we have no hesitation to maintain the order of the CIR(A) on the issue of disallowance of input tax amounting to Rs.3,774,575/-. On the issue of disallowance of input tax claimed on hotel services, the learned counsel of the registered person has argued that the appellant is engaged in the business of distribution service across the country whereby expenditures were incurred for accommodations. The learned DR has supported the orders of authorities below for the reasons recorded therein and has stated that no documentary evidence was provided by the registered person before the lower forum. We are inclined to agree with the findings of the learned CIR(A) with regard to disallowance of input tax claimed on hotel services as no evidence was provided in the shape of hotel receipts or other allied documents before this also, therefore we confirm the order of the learned CIR(A) and reject the stance of registered person being devoid of merit. Resultantly, the appeal filed by the registered person stands rejected".

3. In this respect, it is respectfully submitted that the findings of Honorable Appellate Tribunal Inland Revenue, appear to be misreading of facts of the case. It has been observed by the bench that no evidence was produced before the authority below as well as during the proceedings however, during the course of proceedings the Honorable bench has raised questions from learned DR regarding disallowance of input tax claimed for maintenance of vehicles, auto parts which had direct nexus with the supply chain as per business activity of the registered person. It is evident from the Order-in-Original that the department has allowed input tax on fuel consumed for distribution of goods treating the same as core business activity and disallowed the input tax claimed on purchase and maintenance of such vehicles without giving any observation that the same is available at para-No.9 of the ONO which is reproduced here under for ready reference;-

"9. The AR put his grievance on inadmissibility of input tax paid on purchase of diesel/ fuel for vehicle used in distribution of goods being core business activity of the taxpayer and to suffice his contention, the AR argued that the taxpayer has claimed input tax which has direct nexus with its taxable activity. The AR further submitted the agreement of the transporter to depict the fuel cost bear by the taxpayer along with copy of fuel invoice. The documents and above contention were examined, and contention of the taxpayer is accepted to the extent

of input tax of Rs.14,428,798/- on fuel consumed in delivery vehicles. Therefore, no adverse inference is drawn. The remaining amount of para 2.3 of SCN of Rs.3,774,757/- is recoverable under section 11(2) along with default surcharge and calculated at the time of payment under section 34 and penalty under section 33 of the Sales Tax Act, 1990."

3.1 That no findings has been given by the learned officer while passing the ONO and neither any documentary evidence was asked during the proceedings by the Honorable bench despite the fact that complete record was/ is available with the appellant. Further with regard to observation of disallowance of input tax on hotel service the findings of learned CIR (A) are available at page no. 06 of the Order in Appeal whereby no any evidence of the input tax claimed for the hotel service were asked by the authority below as well as by the Honorable Appellate Tribunal Inland Revenue during the course of proceedings. Further neither any observation has been given by the learned CIR(A) for disallowance of input tax based on non-production of record to the extent of input tax paid with respect to hotel services.

3.2 That the learned Tribunal inadvertently failed to discuss such facts which were argued during the course of proceedings. it is submitted that the Honorable Appellate Tribunal is last fact finding authority, and has not given any finding on ground No. 03 and 06 taken in appeal which are reproduced below for reference:

"3. That the learned Commissioner Inland Revenue Appeals-II, Karachi has failed to appreciate while confirming the disallowance of input tax u/s 8(1) of the Sales Tax Act, 1990 without confronting specific sub-clause in view of the facts of the case."

"6. That the learned Commissioner Inland Revenue, Appeals-II, LTO Karachi has failed to appreciate that the appellant is engaged in the business of distribution services across the country whereby expenditures were incurred for accommodations of sales team on different locations which has direct nexus with taxable activity therefore treating the same as inadmissible u/s 8(1) of the Sales Tax Act, 1990 is not justifiable under the law."

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3.3 Therefore, misreading of facts and non-adjudication of grounds come within the ambit of error which is floating on surface of record and liable to be rectified, it is honorary duty of all judicial forums to heed to and dispose of each argument presented before it. Reliance is placed on the decision of Honorable Lahore High Court in Writ Petition No. No. 1495 of 2008 dated 07 May 2008 relevant para of the same is reproduced as under:

"3. The learned Legal Advisor of the department says that the rectification can only be carried out if the mistake

floats from the surface of the order and has referred the famous judgment of the Honorable Supreme Court reported as 1992 SCMR 687 – 1992 PTD 570 in the case of "Commissioner of Income-Tax, Companies II, Karachi v. National Food Laboratories". One would agree with learned Legal Advisor in principle that the parameters fixed in the above judgment must be adhered to for rectification of a mistake. However, one cannot ignore that on all judicial forums, there is an honories duty to discuss and dispose what has been argued. The pleadings in this case in terms of ground Nos. 1, 2 and 6 with special reference to the ex parte assessment has not been adjudicated by the learned Tribunal.

5. The writ petition is therefore, accepted in the manner that the learned Income Tax Appellate Tribunal is directed to dispose of aforementioned grounds which have erroneously been omitted at the time of original decision."

Further reliance is placed on case law reported as 2000 PTD 2407 (SHC) wherein it was held as under:-

"16. The jurisdiction to rectify mistakes apparent on the face of record is obligatory. Once such mistake is pointed out, the Authority is under a mandatory obligation, to rectify the mistakes brought to its knowledge (see Hirday v. ITO 1978 ITR 26 (SC of India). Also in Sidhramappa Andannappa Manvi v. CIT Bombay (1952) 21 ITR 333 the Bombay High Court has held that once the mistake which is apparent on the face of record is detected by the Authority, the power to correct the mistake is wider and not confined to only such rectifications which are available and floating on the face of record. In other words, once the mistake is corrected all consequential orders can be passed. In Maharana Mills (Pvt.) Ltd. v. ITO (1959) 30 ITR 350 the Indian Supreme Court was pleased to hold that while looking into any mistake apparent on the face of record it was not necessary to look only at the order. The term "record" contemplated proceedings, evidence and record which were relatable to the order of assessment including the applicable law determining the error. In India, section 154 of the Indian Income Tax Act, 1961 is paramateria with our section 156 of the 1979 Ordinance. In one case reported in (1969) 73 ITR 287 at pages 299 and 300 (extract reproduced below) the scope of rectification has been spelt out for the elimination of errors even to the extent of cancellation of the whole order, if necessary:

"The power intended to be given under section 154 is to rectify an error apparent on the face of the record. Amendment of the order is the consequence of the rectification and its purpose is to give effect to the rectification. If the rectification involves an amendment, which will affect the whole of the order, it cannot be

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said that simply because of the use of the word amend, which normally may not mean the cancellation of the whole order, the Income-tax Officer should be powerless to rectify the mistake or error which is apparent on the face of the order. The word amend with reference to legal documents means correct an error and the expression amend the order would mean correct the error in the order. Under section 154 power to rectify the error is to be exercised by correcting the. error in the order and the correction must, therefore, extend to the elimination of the error. What the effect- of the elimination of the error will be on the original order will depend upon each case. It may be that the elimination of the error may affect only a part of the order. It may also be that the error may be such as may go to the root of the order arid its elimination may result in the whole order I falling to the ground. In our opinion the Income-tax Officer will be able to amend or correct the order to the extent to which the correction is necessary for rectification of the error and such correction may extend either to the whole of the order or only to a part of it. In our opinion, therefore, the Tribunal was right in the view that it has taken and the question raised on the reference must consequently be answered against the Department."

Our own Supreme Court has dilated upon the powers to rectify in CIT v. National Food Industries (1992) 62 Taxation 25 (SC of Pak.) where it was held that the power of rectification does not authorize investigation or reassessment of evidence. However, such powers are to be exercised where I any mistake is apparent from the record.

17. In our opinion the orders of the ITAT and other tax authorities suffer from obvious mistakes floating on the surface of the record. In this respect attention is invited to para. 15 above. In consequence the appeal is allowed, question No.3 is answered in the affirmative and the treatment of respondents whereby the transaction in question was treated as an adventure in the nature of trade and the surplus capital gains was taxed is hereby declared to be without lawful authority and is cancelled.

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Further Reliance is placed on the M.A (Rect) No. 196/KB/221 dated 18.12.2023 passed by Divisional Bench of this Tribunal at Karachi wherein it was held that the Tribunal is last fact finding authority if any error of fact which was ignored by the ATIR will remain on record which shall cause prejudice to the due right of the registered person. Relevant portion of the same is reproduce hereunder:-

"18. Considering all relevant facts of the case, we are of the view that the mistakes pointed out in para 7 and 8 of this Tribunal's original orderNo.33/KB/2019 'are manifest and clear which, if permitted to remain on record, would cause

prejudice to the due rights of the RP protected under the law. In consequence, we set aside the case with the directions that the mistakes pointed out in the miscellaneous application should be rectified with strict adherence to the provisions of the zero rated Regime provided in the substantive law and relevant Notifications/SROs/Letters issued by FBR from time to time.

Furthermore, Reference is made to a case adjudicated by the Headquarter bench of ATIR vide M.A(R) No 51/1B of 2017 in ITA No 798/1B of 2016. The relevant portion of the said order is reproduced for reference;

> "2. The learned AR of the taxpayer has contended that this Tribunal is the final fact finding authority but in this case the true facts of the case had not been appreciated. It is submitted that the appellant/applicant in this case has provided all the details of the purchases and BTL Payments before the Taxation Officer, the learned CIR(A) and before this Tribunal which fact has wrongly been mentioned not to be produced. The detail has also been produced by the learned Counsel before the Bench with request to consider the same. The learned AR regarding the Scope of rectification under section 221 of the Ordinance has referred to the judgement of Hon'ble Balochistan High Court, Quetta reported as 2017 PTD 2227 wherein it is 11 held that: -
>
> > "----Rectification was the correction of something that was wrong, or correct by removing of an error; and was a process by which something wrongly entered in or omitted from a record or any document was corrected so as to express the true intention of the recorder or author, which was not expressed in the original version."
> >
> > The taxpayer's counsel argued that rectification is a process by which something wrongly entered in or omitted from a record or any document, is corrected so as to express the true intention of the recorder or author, which was not expressed in the original version as held in the above binding Judgment. The counsel of the Taxpayer further submitted that question before the Tribunal is a question of fact and for that also an affidavit under Rule 13 of the Tribunal's Rule, 2010 has been filed"

In the same order at para 4 it was further observed:

> 4. We have heard the learned representative of the parties, perused the order of this Tribunal dated 25.04.2017, the impugned orders of the officers below, the case law referred by the learned AR and relevant record produced before us. The issue is with reference to the action of assessing officer

regarding payments on account of local purchases which as per Taxation Officer, the taxpayer failed to file details/documents/ evidence before the Assessing Officer as well as learned CIR(A) has also in this order has mentioned that the detail has not been furnished but as per the applicant/appellant complete detail of the local purchases were produced before both the authorities below. The affidavit in this regard with complete detail as mentioned in the above paras has been submitted by the applicant/appellant. As for as issue of rectification is concerned, it has been settled that a mistake of fact as well as law can be rectified to resolve the disputed issue provided the rectification sought is within the period of limitation. Reliance is placed on the decision reported as 1998 PTD (Tribe) 3866, (ii) 1998 PTD 3488, (iii) 1971 PTD 411 (Allahabad H.c.), (iv) 1983 PTD 246, (v) 1988 PTD 3748 (I rib.), and (vi) 1983 PTD 221.

This misreading/nonreading of the fact is mistake apparent form record which is rectifiable under section 57 of the Sales Tax Act, 1990."

2. On the due date, Mr. Ashfaq Tola, FCA and Mr. Muhammad Amayed Ashfaq Tola, Advocate appeared on behalf of applicant/taxpayer while Mr. Ali Hassan, DR attended case proceedings on behalf of respondent/department.

3. During course of case proceedings, learned counsel for the applicant/taxpayer argued the case according to contentions raised in the instant miscellaneous application and prayed for rectification of order dated 07-11-2023 passed by the learned Divisional Bench of this Tribunal in STA No.739/KB/2023. The learned counsel for the applicant in support of his contention placed reliance on the judgment of Lahore High Court on the case reported as 2002 SLD 641 = 2002 {TCL 115 wherein it has been held that "to withhold the amount paid as input tax in this situation, amounts to confiscation which the state cannot resort to except in due process of law. To state it does not behave to eye upon the money paid by a citizen either on the promise of refund or adjustment or even due to any misconception.

4. On the other hand, learned counsel DR stated that the order passed by the learned Divisional Bench of this Tribunal is in accordance with law hence there is no need to rectify the aforementioned order. He

prayed before this bench for dismissal of instant miscellaneous application for rectification of the applicant/taxpayer.

5. We have considered the peculiar facts of the case in the backdrop of the case record and arguments advanced by the learned representatives of both sides and also perused the contentions of the applicant/taxpayer raised in the instant miscellaneous application for rectification of order dated 07-11-2023 passed by the learned Divisional Bench of this Tribunal in STA No.739/KB/2023. The taxpayer is a private limited company and engaged in distribution of 'fast moving goods [FMGs]. From perusal of the record we have found that the applicant/taxpayer has filed the evidences at the time of hearing of main appeal in respect of claim of input tax on 'hotel services'. In this regard the invoices issued by the Hotel One, Ramada Islamabad, Multan, wherein the details of sales tax, dates, room Nos, names and period of stay were duly mentioned. As mentioned above, the taxpayer is engaged in the business of distribution services across the country whereby expenditure were incurred for accomodations of sales team on different locations which is part and parcel of the business and necessary for enhancement of business and as such, has direct nexus with taxable activity and hence admissible u/s. 8(1) of the Sales Tax Act, 1990. Therefore, we rectify our order and direct to allow the claim of input tax claimed on hotel services.

6. Similarly, the record and details in respect input tax on purchase of vehicles and maintenance of vehicle were provided at the time of hearing of main appeal. From perusal of the record It is evident from the Order-in-Original that the department has allowed input tax on fuel consumed for distribution of goods treating the same as core business activity and disallowed the input tax claimed on purchase and maintenance of such vehicles without giving any observation that the same is available at para-No.9 of the ONO. From perusal of the ONO we have found that the department had allowed input tax ofRs.14,428,798/- on fuel consumed in delivery vehicles. The remaining amount of Rs.9,774,757/- was held by the officer to be recoverable u/s. 11(2) along with default surcharge and penalty. Again, in this regard, the taxpayer has provided the details and evidences in support of his claim but

however, due to oversight no findings were recorded by the Tribunal. Considering the nature of business of the taxpayer we observe that vehicles play a vital role in fetching business for which the taxpayer has purchased the vehicles on which he claimed input tax. The taxpayer had produced before this bench invoices issued by M/s. Pak Suzuki Co. Ltd showing make, model ,chasis No. Engine No and dates. However, due to oversight no findings has been given which is a mistake apparent from the record, therefore, in the circumstances supra, we direct to allow the claim of the taxpayer in respect of adjustment of input tax claimed on purchase of vehicles.

7. The titled Miscellaneous Application for rectification stands accepted and the Tribunal's order in STA No. 739/KB/2023 dated 7.11.2023 is rectified to the extent of paras 5 and 6 above.

S-d

(TAUQEER ASLAM)
CHAIRMAN

S-d

(AIJAZ AHMED KHAN)
MEMBER