04th OF 2024 KTBA ONE PAGER CASE LAW UPDATE (July 26, 2024)

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Dear Members,

A brief update on a judgment by the Appellate Tribunal Inland Revenue (KB) on **"Burden of Proof on the Department; Inadmissibility of Input Sales Tax"** 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)
President

(Asim Rizwani Sheikh)
Hon. General Secretary

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CASE LAW UPDATE
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BURDEN OF PROOF ON THE DEPARTMENT: INADMISSIBILITY OF INPUT SALES TAX

Appellate Authority: Appellate Tribunal Inland Revenue (KB)
Appellants: Commissioner Inland Revenue
Section: 8 of the Sales Tax Act, 1990 (the Act)

Detailed judgment was issued on May, 13 2024.

Background: The department disputed the adjustment of input tax and held it admissible under section 8(1)(f) of Act read with SRO 490 of 2004. The taxpayer succeeded in the first appeal before the Commissioner (Appeal). The second appeal was filed by the Department before the Appellate Tribunal, which failed as the input tax adjustment was allowed.

Decision of the Court:
First Ruling of the Court:
INADMISSIBILITY OF INPUT TAX WITHOUT DISPUTING SPECIFICALLY

The impugned order involves a table listing party-wise items purchased and the corresponding sales tax. The table indicates that all items purchased are relevant to the business activities of the appellant company. The officer did not dispute the genuineness of the transactions or the issuing parties but raised objections regarding the inadmissibility of input sales tax under section 8 and related SROs. This treatment was previously applied to Sui Northern Gas Pipeline Limited Lahore and confirmed by CIR(Appeals). However, the learned Tribunal in STA No. 55/LB/2009 overturned that decision on 28-08-2015.

Second Ruling of the Court:
DEFICIENCIES IN ACIR’s EVALUATION HIGHLIGHTED

The ACIR admitted the receipt of invoices but disallowed the input tax without substantial reasoning. The order of CIR(A) highlights two major deficiencies: a lack of detailed scrutiny of records and a hasty decision by the ACIR. The CIR(A) provided specific instances where goods and services were directly used in taxable activities, which the ACIR failed to consider. Legally, the ACIR’s interpretation of section 8 was flawed, as it narrowly defined taxable supplies to include only direct components, overlooking the broader relevance of goods and services aiding taxable activities.

Third Ruling of the Court:
NON EXAMINATION OF EVIDENCE

During the appeal, the learned DR could not refute CIR(A)'s findings that sufficient evidence was provided by the Registered Person but were not properly examined.

The ACIR’s case, based on clause (f) of sub-section (1) of section 8, lacked material evidence to justify his disallowances. The department must present persuasive evidence to prove that the Registered Person’s claims are improbable. The responsibility to establish facts with a balance of probability lies with the department, which it failed to meet in this case.

Fourth Ruling of the Court:
NARROW INTERPRETATION OF SECTION 8 AND BURDEN OF PROOF

The tribunal emphasized the negative phrasing of section 8, indicating a higher burden on the department. The taxpayer needs to establish a prima facie connection to taxable supplies, shifting the burden to the department to prove otherwise. The ACIR's rejection of the input tax claim did not meet this evidentiary standard. The phrase ‘related to’ implies a connection, association, or interconnection with taxable supplies. It is not necessary for goods to be integral components; once the connection is established, the taxpayer is entitled to input tax adjustment.

CONCLUSION:
In conclusion, the tribunal found significant shortcomings in the ACIR’s assessment, both in terms of factual scrutiny and legal interpretation. The ACIR's failure to adequately examine the provided evidence and its narrow understanding of section 8 led to an unjust disallowance of input tax. The tribunal underscored the broader interpretation of 'related to taxable supplies,' emphasizing that the department holds the burden of disproving the taxpayer's claims with substantial evidence. Given the insufficient reasoning and lack of material evidence in the ACIR’s order, the tribunal overturned the decision, affirming the appellant’s right to input tax adjustment.

DISCLAIMER:
This update has been prepared for KTBA members and carries a brief narrative on a detailed Judgment and does not contain an opinion of the Bar, in any manner or sort. It is therefore, suggested that the judgment alone should be relied upon. Any reliance on the summary in any proceedings would not be binding on KTBA.

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APPELLATE TRIBUNAL INLAND REVENUE (PAKISTAN) KARACHI BENCH.

Present: Qazi Anwer Kamal, J.M.
Mr. Aijaz Ahmed Khan A.M

STA No.105/KB-2017
(Tax Period July 2015 & August 2015)
U/s. 11(2) / 45-B

The Commissioner Inland Revenue,
Zone-IV, LTU Karachi...Appellant

Versus

M/s. Century Paper & Board Mills Ltd,
Karachi..Respondent

Appellant by : Mr. Osama Amin, DR
Respondent by : Mr. Arshad Siraj, Advocate

Date of Hearing : 06.05.2024
Date of Order : 13.05.2024

ORDER

QAZI ANWER KAMAL, JUDICIAL MEMBER: This appeal bearing STA No.105/KB-2017, pertaining to the Tax Period July 2015 and August 2015, has been filed by the Appellant/Department, against the order in appeal bearing No. STA/4 to 6/LTU/2016/7-8-09, dated 01.09.2016, passed by the learned Commissioner Inland Revenue (Appeals-I) Karachi (hereinafter referred to as CIR(A). Through this order the learned CIR(A) has deleted the impugned demand which was levied by the Assistant Commissioner Inland Revenue E & C Unit-04, Zone-IV, LTU, Karachi (hereinafter referred to as ACIR).

2. The Appellant / Department being aggrieved with the order of Learned CIR(A), preferred an appeal before this forum on the basis of grounds listed as below:

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1. ***That the order of the learned CIR (Appeals) is bad in law and facts of the case.***

2. ***That the amount of input tax involved in the case is related to such goods and services which have not relevancy with the known taxable activity of the registered person or which may be used for the purpose other than the taxable supplies made or to be made by the registered person. These good includes:***

a)	***Airline Travel ticket***	***Rs. 110,000/-***
b)	***Computer laptop***	***Rs. 37,777/-***
c)	***Stationery***	***Rs. 11,346/-***
d)	***Auto parts or vehicle***	***Rs. 9,874/-***
e)	***Electrical Cable***	***Rs. 3,063,060/-***

The description of above goods clearly indicates that these goods are prohibited for input tax adjustment in term of Section 8(1) of the Sales Tax Act, 1990 with SRO 490(1)/2004.

Grant any other relief deemed just and appropriate in the circumstances of the case.

That the appellant craves, leave to add, alter or amend the grounds of appeal at any time on or before or at the time of hearing of appeal.

3. The brief facts of the case as gathered from available records are that the registered person is a Limited Company engaged in the business of Manufacturing of Paper products and is registered with Sales Tax vide STR No: 03-05-4900-003-91. During examination of Sales Tax Records, the ACIR noted that the Registered Person claimed input tax against supplies, which is not admissible under the provision of Section 8(1)(f) of the Sales Tax Act, 1990. Accordingly, a show cause notice was issued by the ACIR, thereby asking the Registered Person as to why an amount of input tax of Rs.3,229,057/- may not be rejected and same may not be recovered along with default surcharge and penalties.

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The Representatives of the Registered Person attended the proceeding and submitted a reply along with supporting documents but as per ACIR, the reply was unsatisfactory. Hence, the same was rejected by the ACIR and he concluded the proceeding which then culminated into an order under section 11(2) of the Sales Tax Act, 1990 whereby he ordered recovery of sales tax amounting to Rs.3,229,057 /- along with default surcharge u/s. 34 of the Sales Tax Act, 1990 and also imposed penalty of Rs.161,453/- u/s. 33(5) of the Sales Tax Act, 1990.

4. The Registered Person being dissatisfied with the order of ACIR, preferred an appeal before Learned CIR(A) who accepted the appeal and deleted the impugned tax which was levied by the ACIR.

5. The Appellant / Department being aggrieved with the order of Learned CIR(A), assailed the same before us.

6. On the date of hearing, Mr. Osama Amin, the Learned DR, appeared on behalf of the Appellant/Department while Mr. Arshad Siraj, Advocate appeared on behalf of Respondent/Registered Person.

7. The Learned DR vehemently argued his case and contested that the Learned CIR(A) was not justified in deleting the tax which was levied by the ACIR. He contended that the order of the ACIR was in accordance with law. The ACIR has rightly applied Section 8(1) (f) of the Sales Tax Act, 1990. He further contended that the order of ACIR is well within the frame work of law and carries no illegality, infirmity and irregularity in it. Therefore, he prayed that the order of the ACIR be restored.

8. On the other hand, the learned AR strongly supported that order of the learned CIR(A) and contended that the CIR(A) passed

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an order on basis of cogent reasoning, and in accordance with law. The learned AR further submitted that the learned CIR(A) has correctly appreciated the facts and more particularly that exercise of disallowance made u/s 8(1)(f) was on mere presumptions and no evidence was placed to establish such disallowance. He further argued that mentioning of SRO in the grounds is incorrect as action was taken by the ACIR on the provisions of clause (f) of sub-section (1) of Section 8 of the Act. He invited our attention to clause (f) of sub-section (1) of section 8 of the Act and stated that the term "related to" is important and submitted that since the said term is not defined in the Act, meaning of the said term has to be considered as understood in common parlance. He referred to various dictionaries for meaning of the term "related to" and further, in support of his contention, he referred to judgments 1959 PTD 259, PLD 1997 Karachi 663, PTCL 2018 CL 348 and PTCL 2006 CL 673 of the superior courts. He also referred to recent judgment of Honourable Supreme Court of Pakistan reported as 2023 PTD 1492, wherein the Honourable Supreme Court of Pakistan has held that the burden to proof the 'non-related' part is on the department. Additionally he has referred to Article 117 of the Qanoon-e-Shahadat Ordinance, 1984 and placed further reliance on the judgment of the Honourable Supreme Court of Pakistan reported as 2022 SCMR 1054 and another judgment reported as 2002 PTD 700.

During the course of arguments the learned AR submitted written synopsis which is being reproduced as below:

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It Is most respectfully submitted on behalf of the Respondent as under:

1) **Relevant clause (f) of sub-section (1) of Section 8 of the Sales Tax Act, 1990 relevant portion reproduced herein below.**

Section 8

8. *Tax credit not allowed*

(1) Notwithstanding anything contained in this Act, a registered person shall not be entitled to the reclaim or deduct input tax paid on-

(f) goods and services not related to the taxable supplies made by the registered person;

- **Said sub-clause was added by the Finance Act, 2014.**

2) **The important phrase in clause (f) is "related to"**

3) **Words not defined to be understood in common parlance.**

In the case of Commissioner of Income Tax Vs. Nazir Ahmed and Sons Pvt Ltd reported as 2004 PTD 921, Mr. Justice Muhammad Mujeebullah Siddiqui, ofthe Hon'ble High Court of Sindh at page 940 W was pleased to hold as under.

"The Trite Law of Taxation is that words used in tax law until and unless defined in the statute shall be taken in the same sense and meaning as is understood in the common parlance by the business community."

4) **On the above well settled position of law, we have to consider the meaning of the term "related to" as used in the above Clause (f) as under stood in the common parlance.**

5) **Dictionary meaning of the term "related to" as per**

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a) Oxford learners dictionaries website (http://www.oxfordlernersdictionaries.com/definition/english/relate-to)

"relate to phrasal verb

Relate to something/somebody

1 to be connected with something/somebody, to refer to something/somebody

- **We shall discuss the problem as it related to our specific case**
- **The second paragraph relates to the situation in Scotland**
- **Theories relating to education and learning**

b) Cambridge dictionary (http://dictionary.cambridge.org/dictinaory/english/relate?q=relate+to)

"to be connected to, or to be about someone or something:

Chapter 9 relates to the effects of inflation on consumers"

c) Mariam Webster (http://www.merriam-webster.com/dictionary/relate%20to)

"" relateto phrasal verb

related to; relating to; relates to

1. To connect (something) with (something else)

Few of the people who became sick related their symptoms to the food they'd eaten the day before.

2: to understand and like or have sympathy for (someone or something)

I can relate to your feelings.

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I've never been able to relate to him very well.

He writes songs that people can really relate to.

3-used to describe how someone talks to or behaves toward (someone else)

How a child relates to her teacher can affect her education.

4: to be connected with (someone or something): to be about (someone or something)

The readings relate to the class discussions.

-often used as (be) related to

d) Chambers Dictionary of Synonyms and Antonyms @ Page 291

relate *v.* 1. ally, associate, connect, correlate, couple, join, link. 2. Appertain, apply, concern, refer. 3 describe, narrate, recite, recount, report, tell. 4 empathies, feel for, identify with, sympathies, understand.

Related *adj.* accompanying, affiliated, akin, allied, associated, concomitant, connected, correlated, interconnected, joint, kin, kindred, linked.

***Antonyms* different, unconnected, unrelated "**

e) LexisNexis Tax law Dictionary, 2013 @ page 618

"Relate. In 76 *Corpus Juris Secundum*, the term 'relate' is defined as meaning to bring into association and connection with. R. Venkatkrishnan v. CBI, (2009 11 SCC 737, 763 (SC).

The term 'relate' is defined as meaning to bring into association or connection with. Semco Electrical Pvt. Ltd v. CCE, (2010) 18 STR. 177 (Tri-Mum).

Relating to. 'Relating to' has been held to be equivalent to or synonymous with as to concerning with and pertaining to. R. Venkatkrishnan v. CBI (2009 11 SCC 737, 763 (SC).

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"Relating to means establish a relation between.".

"It means standing in some relation. It also means concern or refer.". [Anil Starch Products Ltd. v. CCE, (1985) 21 ELT 306]

"Means to bring into relation.".

Relation to . "The phrase 'relation to' is ordinarily, of wide import but, in context of its use in the said expression, it must be read as meaning a direct and proximate relationship to the rate of duty and to the value of goods for purpose of assessment.". [Navin Chemicals Mfg. & Trading Co. Ltd. v. CC, (1993) 68 ELT 3 (SC): 49 ECR 1: (1993) 4 SCC 320 (SC)]

f) P. Ramanatha Aiyar's Advanced Law Lexicon 3rd Edition Volume 4 @ 4034

"Relates to" ordinarily means "is connected with" or "have reference to".

6).The Phrase "related to" as explained by the Superior Courts.

a) 1959 PTD 259 (Privy Council)

Clifford John Chick and Jack Wesley Chick V/s the Commissioner Stamp duties @ page 263-

"The words" related to the gift" are no doubt an echoof the words "referable to the gift))

b) PLD 1997 Karachi 663 M/s. Noori Trading (Pvt) Ltd and others V/s The Federation of Pakistan @ page 673.

"The use of the words "related to" or "is connected with" in clause (4-A) brings within its ambit any such order which is related either to State property or assessment or collection of public revenue or pertains to any law specified in Part-1"

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7). It is most respectfully submitted that it will be appreciated that in order to disentitle the input tax, the goods or services not related to the taxable supplies have to be established and in our respectful submission onus is on the department to show through material Evidence that such input tax was not related to the taxable supplies on which the appellant has paid output tax. The items disallowed are related and connected to the taxable supplies made by the registered person.

8) It is respectfully submitted that the case of Coca Cola beverages Ltd V/s. Customs, excise and sales tax appellate tribunal and others reported in PTCL 2018 CL-348 the Hon'ble Lahore High Court while examining Section 7 and 8 of the Sales Tax Act 1990 observed in paragraph 34 at page 370 that in order to determine whether input tax is admissible in a particular case it has to be seen whether the goods were used in relation to the taxable supplies. It is not necessary that they should be an integral part thereof. Once a registered person establishes that the goods in respect of which he claims input tax adjustment were used for the purpose of taxable supplies as aforesaid, he would be entitled to the adjustment.

It Is submitted that in another case the Hon'ble High Court of Sindh in case reported in PTCL 2006 CL-673 Gandhara Nissan Diesel vs. Large s Taxpayers Unit, Government of Pakistan, Karachi in paragraph 14 at page 687 held as under.

"If the word purpose is considered in ordinary plain meaning, it would appear that the intention of legislature, apparent from the language is that if any input tax is paid with the intention that the goods on which such input tax is paid shall be used in

the end products or taxable supplies made or to be made, then the registered person shall be entitled to deduct the same from the output tax. It is nowhere provided that deduction of input tax on such goods only shall be allowed which are the direct constituent and integral part of taxable goods produced, manufactured or supplied."

We may respectfully submit that the above judgment of the Hon'ble Sindh has been followed in the case of Coco-Cola Beverages (PTCL 2018 CL 3480 referred above at page 369-371 and we are reproducing the relevant passages from the said judgment also.

> 32. The keyword in Sections 7 and 8(1)(a) is "purpose". Input tax can be deducted only on goods used for the purpose of taxable supplies. The term "purpose" has not been defined in the Act. As such, it has to be taken in its ordinary plain meaning. According to the Oxford Advanced Learner's Dictionary (Eighth Edition), "purpose" means "the intention, aim or function of something, the thing that something is supposed to achieve."
>
> 33. In "The Central Board of Revenue, Islamabad and others v. Sheikh Spinning Mills Limited, Lahore and others" (1999 SCMR 1442), SRO. 1307(1)/97 was challenged before the Hon'ble Supreme Court of Pakistan through which, in exercise of its powers under Section 8(1)(b), the Federal Government directed that input tax would not be adjusted where it was paid on goods which were not an integral part of the production or supply of

taxable goods. The Apex Court ruled that the controversy had to be decided with reference to the substantive provisions of the Act and the SRO in question and in case of any conflict between the two, the substantive provisions of the Act would prevail. In other words, the issue of adjustment of input tax was to be resolved with reference to the actual use of input in making of taxable supplies and the criterion of integral part was not valid. In "Ghandhara Nissan Diesel Ltd., through Sr. General Manager Finance, Karachi v. Collector, Large Tax Payers Unit, Government of Pakistan, Karachi and 2 others (2006 PTD 2066), learned Division Bench of the Karachi High Court observed:

"If the word purpose is considered in ordinary plain meaning, it would appear that the intention of legislature, apparent from the language is that if any input tax is paid with the intention that the goods on which such input tax is paid shall be used in the end products or taxable supplies made or to be made, then the registered person shall be entitled to deduct the same from the output tax. It is nowhere provided that deduction of input tax on such goods only shall be allowed which are the direct constituent and integral part of taxable goods produced, manufactured or supplied."

34. From the above it follows that in order to determine whether input tax is admissible in a particular case it has to be seen whether the goods were used in relation to the taxable supplies. It is not necessary that they should be

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an integral part thereof. Once a registered person establishes that the goods in respect of which he claims input tax adjustment were used for the purpose of taxable supplies as aforesaid, he would be entitled to the adjustment unless the Federal Government has issued a notification under Section 8(1)(b) to disallow the same. In the present cases there is no denying the fact that the registered persons placed the Appliances with the retailers to facilitate the sale of their products being their taxable supplies. Keeping in view the principles discussed above, it is held that the Appliances were used for the purpose of taxable supplies.

As such, it is respectfully submitted that the provisions of Section 8(1)(f) are not attracted in the facts and circumstance of the Respondent's case, as such said action is not sustainable in law and on facts.

9. We examined the orders of both the below authorities and considered the arguments put forth by the rival parties. The findings of learned CIR(A) are reproduced as under, for ready reference:

> " *I have perused the impugned order of the Officer and also written arguments submitted by the learned counsel of the Appellant and my findings are as under.*
>
> *The DCIR had specifically pointed out certain items which in his opinion were not related to or directly utilized in the taxable activity. As such the input tax claimed was held inadmissible to the appellant under SRO.490(1)/2004 dated 12.06.2004 and SRO No.450(1)/2013 whereby have been imposed for claiming of input sales tax pertaining to various items. But this restriction is subject to its utilization directly or indirectly in the taxable activity. The DCIR in my*

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considered opinion could not take any adverse inference which was merely based on presumption or heresy and nothing concrete has been brought on record in support of adverse inference. The officer merely stated that appellant has claimed input tax on purchases have no relevance to business. I have examined the invoice of Pioneer Cables and Photos of the installation of the cable in the appellant's factory. The purpose of the cable was to transmit high tension electrical energy from the generator to the plant. Since without such cable no production was possible, hence it is seen that the item purchased has direct nexus with production of taxable supplies.

The officer in the impugned order has drawn a table wherein party- wise items purchased and sales tax involved has been mentioned. Perusal thereof reveals that almost all items purchased mentioned against the suppliers have direct or indirect relevancy with the business activity of the appellant company. The officer did not dispute the genuineness of transaction or parties issuing invoices, but has only objected with reference to its inadmissibility of input sales tax u/s 8 read with SROS referred above. The similar action/treatment was accorded by the department in case of Sui Northern Gas Pipeline Ltd Lahore which was confirmed by the CIR(Appeals). Whereas the matter was brought before the learned ATIR in STA No.55/LB/2009 the learned Tribunal vide their order dated 28.08.2015 decided the issue as under:

"The said section speaks that a registered person shall not be entitled to reclaim or deduct input tax on the goods used or to be used for any purpose other than for taxable supplies made or to be made by him. However, the said section does not lay down that the input tax paid goods should become part and parcel or integral part of the products being produced. Therefore in such like situation as before us, the input tax on telephone, courier, printing material electricity is allowed as these are used for the purpose of taxable supplies although they do not become part and parcel of the manufactured goods. Under such circumstances, we are satisfied that the input tax paid on the items mentioned supra is available to the registered person and they rightly claimed so. Order of the assessing authority in this

behalf is accordingly cancelled and that of the learned CIR(A) is vacated."

The officer here again has miserably failed to establish that items purchased by the appellant from various parties as mentioned in the said table of the impugned order has no relevancy with the taxable activity, hence remanding back the issue amounts to put the appellant again in cumbersome process. The AR has produced details/documents and explained its utilization of each item purchased in furtherance of business activity of the appellant. In this view of matter the impugned demand is deleted."

10. In view of the foregoing observations of the CIR(A), we also examined the order of the ACIR and observed that the observations of the CIR(A) with respect thereto are correct. We observed that at page 22 of the order that the ACIR has himself admitted that Registered Person filed reply along with Two Boxes of Files containing copies of invoices. After examining the filed details, the ACIR rejected the reply of the Registered Person with following generic observation:

"The input tax amounting to Rs.3,229,057 has been claimed on purchases which have no operational use for conducting business activities of the taxpayer."

The ACIR used the above phrase and disallowed input tax amounting to Rs.3,229,057/- just based on his whims and fancies without any cogent reasoning and material in support of his finding. As is also stated in the order of the CIR(A), we feel that there are primarily two deficiencies in the order of the ACIR, one touching upon the factual aspect and the other on the legal. Insofar as the factual aspect is considered, we believe that the ACIR has failed to carry out a detailed scrutiny of the record presented before him and has acted in a hurried manner. The

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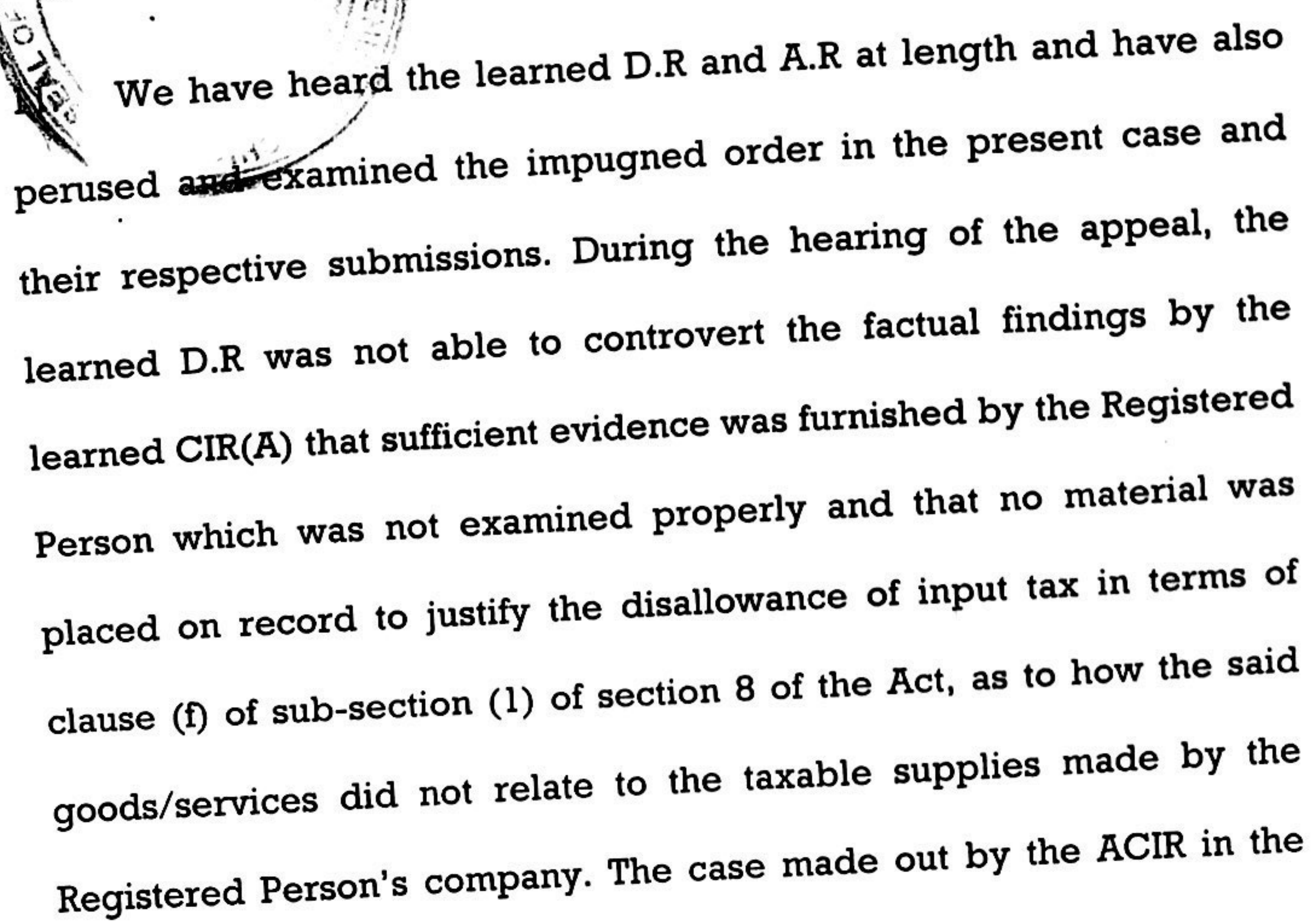
CIR(A) has cited instances, where the goods/services under consideration have been specifically examined and on basis of concrete evidence have been found to be used directly in the taxable activity of the Taxpayer which was not taken into consideration by the ACIR. On the legal aspect, we believe that the ACIR's understanding of Section 8 is that the supplies under consideration must form an 'integral read direct part' of the taxable supplies which is not correct. Relation to taxable supplies, is wide enough to encompass those goods and services that are aiding and contributing to the process of making taxable supplies, and is not so narrow so as to include only those supplies which become a direct component of the taxable supply. The inquiry necessary to establish whether a nexus exists should not only focus on the direct component, but also those goods and services without which the taxable activity is either not possible, or which directly aid and contribute to the process. If such attributes are found present, it cannot be held that they are not related to the taxable activity for the purposes of Section 8. We shall further supplement the true essence and spirit of Section 8 in the later part of this order.



We have heard the learned D.R and A.R at length and have also perused and examined the impugned order in the present case and their respective submissions. During the hearing of the appeal, the learned D.R was not able to controvert the factual findings by the learned CIR(A) that sufficient evidence was furnished by the Registered Person which was not examined properly and that no material was placed on record to justify the disallowance of input tax in terms of clause (f) of sub-section (1) of section 8 of the Act, as to how the said goods/services did not relate to the taxable supplies made by the Registered Person's company. The case made out by the ACIR in the

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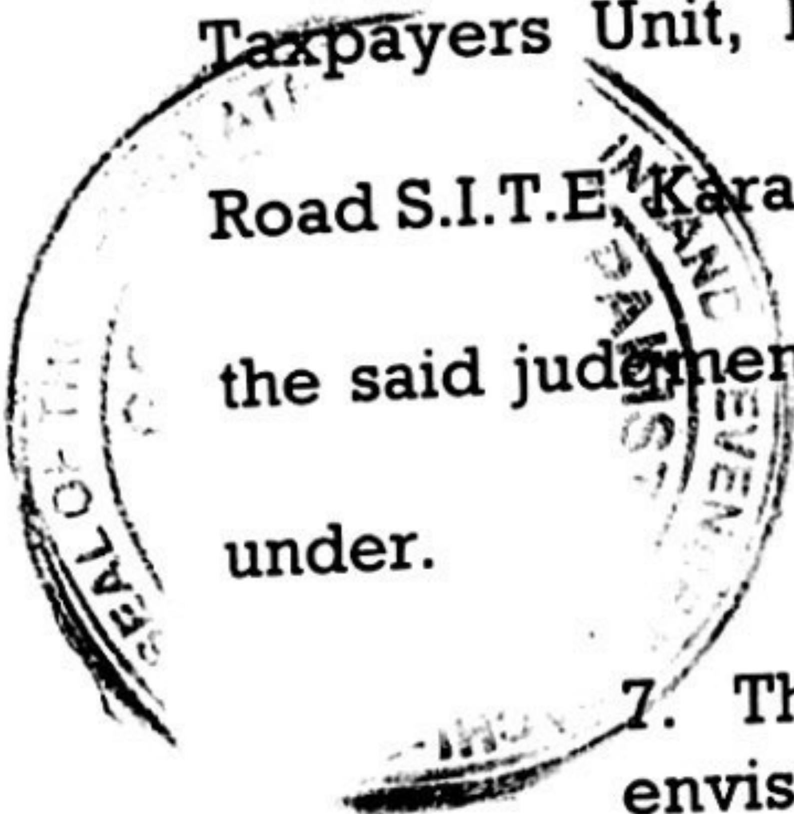
present case was with reference to clause (f) of sub-section (1) of Section 8 of the Act, and we did not find any reference of any SRO in the order passed under section 11(2) of the Act.

It has been rightly pointed out by the learned A.R that when the department alleges that a registered person is liable to make the payment of tax and the same has not been levied or charged, the former is burdened with statutory duty to establish before the adjudicating forum, through persuasive and proper evidence, that the allegations are highly probable to be true rather than doubtful and merely based on unfounded presumptions. The duty to establish facts on the standard of balance of probabilities is on the department under the Act. Such proposition is supported by the judgment of Honourable Supreme Court of Pakistan in the case of Commissioner Inland Revenue, Zone-IV, Large Taxpayers Unit, Karachi V/s M/s. Al-Abid Silk Mills Ltd. Manghopir Road S.I.T.E, Karachi, reported as 2023 PTD , 1492 and in paragraph-7 of the said judgment the above principle of law have been laid down as under.



> 7. The scheme of the Act of 1990 clearly envisages that the obligation to establish that a person was liable to pay any tax or charge and the same has not been levied or paid or has been short-levied is essentially that of the sales tax authorities. The burden to prove that the tax has not been paid is on the sales tax authorities. In order to discharge this obligation they have been vested with wide powers under the Act of 1990. It is well settled that whoever asserts a fact is also burdened with the duty to establish that it is highly probable to be true. In some exceptional cases, the legislature, in its wisdom, has provided for what is known as reverse onus, by placing the burden on the person against whom an allegation has been made. Section 187 of the Customs Act, 1969 and section 14 of the National Accountability Ordinance, 1999 are such illustrations. The concept of reverse onus i.e. placing the burden on the person against whom an allegation has been made runs contrary to the established principle of

presumption of innocence. It is therefore, for this reason that Courts leans in favour of interpreting or reading down such provision in an effort to safeguard the fundamental principles of fair trial. There is no provision pari materia with section 187 of the Customs Act 1969 or section 14 of the National Accountability Ordinance, 1999, in the Act of 1990. The legislature, therefore, did not intend to reverse the onus of proof in matters relating to the levy, charge and payment of the tax under the Act of 1990. The proceedings before the adjudicating authority or the statutory appellate forum under the Act of 1990 are quasi judicial in nature. When the department alleges that a registered person is liable to make the payment of tax and the same has not been levied or charged, the former is burdened with a statutory duty to establish before the adjudicating forum, through persuasive and proper evidence, that the allegations are highly probable to be true, rather than being unreliable, false or doubtful. The duty to establish facts on the standard of balance of probabilities is on the department under the Act of 1990.

We also agree to the submissions of learned A.R with regard to the legal principle that whoever asserts a fact is also burdened with the duty to establish that it is highly probable to be true in accordance with Article 117 of the Qanun-e-Shahadat Order 1984 and as held by in the case of Nasir Ali V/s Mohammad Asghar reported as 2022 SCMR 1054 relevant portion of which is as under.

> "According to the Article 117 of the Qanun-e-Shahadat Order, 1984, if any person desires a court to give judgment as to any legal right or liability, depending on the existence of facts which he asserts, he must prove that those facts exist and burden of proof lies on him. The terminology and turn of phrase 'burden of proof' entails the burden of substantiating a case. The meaning of 'onus probandi' is that if no evidence is produced by the party on whom the burden is cast, then such issue must be found against him. The burden of proof for the deceitful transaction rests normally on the person who impeaches it."

It has been consistently held that onus is on the department to show that the assessment made by it was based on substance and to

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produce material satisfying the judicial conscience. Reference can be made in the judgment of Honourable High Court of Sindh in the case of Syed Azhar Ali V/s DG Central Excise reported as 2002 PTD 700 where at page 709 the above principle was laid down, which reads as under.

> "In fiscal matters and particularly the levy of any tax on any citizen/assessee, it is for assessing authority to establish that declared version of the assessee is not correct and to further show that the assessment made by the revenue was based on substance and material satisfying the judicial conscience".

Keeping in view the above discussion, we find that, on factual plain, no material has been placed to show how the input tax claimed on goods and purchases were not related to the taxable supplies made by the registered person/Respondent.

Coming to the provision of law of clause (f) of subsection (1) of section 8, it reads as under.

> **8. Tax credit not allowed.**
> (1) Notwithstanding anything contained in this Act, a registered person shall not be entitled to the reclaim or deduct input tax paid on –
>
> (f) goods and services not related to the taxable supplies made by the registered person;

The ~~first~~ point that must be appreciated and is significant to reaching the true import of this provision, is that it is couched in negative terms which points towards a higher onus on the department. Our modest understanding, from a bare reading, dictates that the taxpayer's duty is to establish *prima facie* a connection, association or relation to taxable supplies of goods and services against which it seeks to claim input tax. As soon as the same is done, the burden shifts to the department to now proof that such goods and services are 'not related', contrary to the submission of the taxpayer. Thus, controverting a fact that is presumed to be correct unless refuted substantively, envisage a

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higher evidentiary standard on the department. The moot question that arises here, is whether the ACIR is rejecting the input tax claim of the taxpayer is able to satisfy such evidentiary standard or not. We have no qualms in answering this in negative, because no reasoning except for a bare statement of such goods/services being not related, is found on the body of the ACIR's order.

In terms of the general understanding of the above provision, the legislature has stipulated that a registered person shall not be entitled to reclaim or deduct input tax paid on goods and services not related to the taxable supplies made by the registered person. The phrase "related to" has to be examined as understood in common parlance as same has not been defined in the Act. The dictionary meaning of terms "relate to" extracted from the various dictionaries means "to be connected with something somebody, associated, inter connected, associated etc." The judgments relied by the learned A.R also let out the same understanding. Our attention was also drawn to the case of Ghandara Nisssan Diesel v/s Large Taxpayers Unit Karachi reported as PTCL 2006, CL 673 - Honourable High Court of Sindh, and to the judgment in the case of Coco-Cola Beverages Pakistan Limited V/s Custom Excise and Sales Tax Tribunal and others reported as PTCL 2018 CL 348 - Honourable Lahore High Court. In both these judgments, section 7 and 8 (1)(a) of the Act were examined and in the later case it was held that in order to determine whether input tax is admissible in a particular case it has to be seen whether the goods were used in relation to the taxable supplies. It was further held it is not necessary that the goods should be an integral part thereof and once a registered person establishes that the goods in respect of which he claims input tax

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adjustment were used for the purpose of taxable supplies he would be entitled to the adjustment.

In view of above any goods and services which are connected, associate, referable, or inter-connected will be admissible under clause (f) of sub-section (1) of section 8 of the Act and burden of proof will be on the department to establish through persuasive and proper evidence that goods and services are not related to the taxable supplies made by the registered person, and as we have stated above, this burden was not satisfied.

12. In view of the foregoing, we agree with the finding of Learned CIR (A) as reproduced above. The order passed by the learned CIR (A) is exceptional and passed in accordance with law and the learned CIR(A) has rightly and properly deleted the impugned demand. In view of legal and factual position, as it stands, the order of the Learned CIR(A) is well reasoned and liable to be sustained. Hence, we hold that the learned CIR(A) has rightfully deleted impugned demand which was levied by the ACIR.

13. On the basis of deliberation made supra, our considered view is that the Learned CIR(A) has lawfully passed the order which calls for no interference. The order of Learned CIR(A) is hereby confirmed. The Appeal being devoid of any merit is hereby dismissed.

14. The appeal is disposed of as indicated above.

Sd/-
(QAZI ANWER KAMAL)
JUDICIAL MEMBER

Sd/-
(AIJAZ AHMED KHAN)
ACCOUNTANT MEMBER

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