

assessee and after hearing the same enhanced the income from Rs.1,34,801/- to Rs.10,05,060/- and assessee was declared as assessee in default. It is averred that assessee filed an appeal before CIT(A), who after hearing vide order dated 04.01.2006 declared that the action of the learned Taxation Officer to treat the appellant as assessee in default under the repealed provisions of the repealed ordinance cannot be sustained and the tax levied under sections 52/86 of the repealed ordinance by the learned taxation officer is, therefore, deleted as the impugned provisions, i.e. sections 52 and 86 of the repealed ordinance by the learned taxation officer is, therefore, deleted as the impugned provisions, i.e. sections 52 and 86 of the repealed ordinance have not been saved by the Income Tax Ordinance, 2001. Feeling aggrieved by the decision of CIT(Appeals), the petitioner herein filed an appeal before Income Tax Appellate Tribunal, Azad Jammu & Kashmir, Muzaffarabad. The learned Tribunal after hearing arguments, maintained the order of CIT, vide impugned order dated 31.01.2008, hence, instant reference.

3. The following questions of law have been raised and emphasized by the learned counsel for the petitioner:-

- (i) Whether on the facts and under the circumstances of the case, both the forums below were justified to decrease the addition in sales from Rs.56, 19, 374/- to Rs.10,00,000/- when the rejection of the accounts had been confirmed by the CIT(A) and rejection of accounts was even not annulled by the ITAT?
- (ii) Whether on the facts and circumstances of the case the ITAT and the CIT(A) were justified to delete the penalty and additional tax u/s 52 and 86 of old

Ordinance on the ground that the provisions had not been saved by the new ordinance.

- (iii) Whether on the facts and under the circumstances of the case, it is possible to assess the income of an assessee under the old Ordinance and declare the assessee in default under the new Income Tax Ordinance 2001.

Mirza Zaidullah, the learned counsel for the petitioner submitted written arguments wherein it is contended that the instant lis is about to year 2002, whereas the whole proceedings of tax were proceeded according to repealed ordinance, i.e. Ordinance 2001. He vehemently contended that the tax levied on the respondent according to repealed ordinance whereas default tax and additional tax have been levied according to new ordinance, hence, the order of lower fora is against the law and facts and liable to be set-aside.

In reply, Haji Muhammad Afzal Khan, the learned counsel for respondent submitted written arguments, wherein the learned counsel contended that the order of ATIR for the tax year 2002-2003 passed in favour of the respondent is correct according to law and liable to be sustained. The learned counsel defended the impugned order on all counts and prayed for dismissal of the writ petition.

We have considered the written arguments as well as perused the record of the case with utmost care.

Be that as it may, the respondent assessee could not be treated as assessee in default in guise of the repealed provisions of the repealed ordinance, i.e. Ordinance 1979. Levy of tax under section 52/86 of the repealed law by the Taxation Officer runs

counter to the scheme of law as no saving clause in the fresh ordinance is providing shield or any room to the said provisions of old repealed law.

Question raised are repelled and answered in favour of the respondent against the petitioner herein.

Resultantly the reference in hand fails, thus, the reference application stands dismissed.

Muzaffarabad,
14.11.2022.

-Sd-
JUDGE
(A)

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JUDGE
(S)

Note:-

Judgment is written and duly signed. Office is directed to send this file to Circuit Mirpur, forthwith; and Deputy Registrar Circuit Mirpur is directed to intimate the parties or their counsel, after due notices.

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JUDGE
(A)

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JUDGE
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