

**HIGH COURT OF AZAD JAMMU & KASHMIR**

*Reference No.32/2020.*

*Date of institution 16.11.2020.*

*Date of decision 16.05.2024.*

Talib Hussain S/o Noor Ahmed, owner "T" Plaza Mian Muhammad Road Mirpur A.K through Khadim Hussain Attorney.

*....Petitioner*

**VERSUS**

1. Commissioner Inland Revenue Mirpur, A.K.
2. Assistant Commissioner Inland Revenue Circle No.12, Professional, Mirpur.

*.... Respondents*

**REFERENCE U/S 133 OF INCOME TAX ORDINANCE 2001 AGAINST  
THE ORDER DATED 13.05.2020 PASSED BY ATIR.**

***Before:-***                    ***Justice Syed Shahid Bahar, J.***  
   ***Justice Sardar Muhammad Ejaz Khan, J.***  
   ***(DB)***

**PRESENT:**

Zain Ali, Advocate / Junior to Hajid Muhammad Afzal, Advocate for the petitioner.

Mian Sultan Mahmood, Advocate for the respondents.

**Judgment:**

*(Justice Syed Shahid Bahar, J.)* Through the instant reference filed under section 133 of the Income Tax Ordinance, 2001, the petitioner has assailed the impugned order dated 13.05.2020 passed by Appellate Tribunal Inland Revenue (ATIR) Govt. of Azad Jammu and Kashmir Muzaffarabad.

The following question of law i.e. Question No.9 of statement of questions of law, has been raised and emphasized by the learned counsel for the petitioner:-

9. Whether on the facts and under the circumstances of the case, the Tribunal was legally justified to service the decision after more than 90 days from the allege date of decision? If

the answer in in negative, whether decision of the Appellate Tribunal is maintainable in law?

The learned counsel argued that the findings of the learned ATIR are against the law and facts and liable to be set at naught. He contended that the most the grounds/objections submitted in the statement of question of law (Appendix B), have not been decided by the learned ATIR, hence, the order is not sustainable. He vehemently contended that the decision impugned is as per settled law has been passed after four months of hearing, which tantamount to decision without hearing the petitioners.

Be that as it may leaving aside the other factual matrix and legal aspects of the reference the question No.9 raised by the petitioner mentioned above in his reference/statement of question of law is of a pivotal importance and liable to be attended to and decided. The verbatim of the question No.9 is reproduced as under:-

9. Whether on the facts and under the circumstances of the case, the Tribunal was legally justified to service the decision after more than 90 days from the allege date of decision? If the answer in in negative, whether decision of the Appellate Tribunal is maintainable in law?

During the course of arguments the learned counsel appearing on behalf of the petitioner strongly pressed this question of law and submitted that Income Tax Tribunal, learned ATIR decided the lis on 13.05.2020, after lapse of more than 04 months from the date of hearing i.e. 10.01.2020, which amounts to decision without hearing.

The learned counsel appearing on behalf of respondent state forward conceded that learned ATIR passed the decision approximately after 04 months from the hearing of arguments, thus, universally accepted golden doctrine of Audi-alteram Partem has been violated, which requires proper and efficacious hearing to the relevant parties prior to deciding any matter pending adjudication. The Hon'ble Supreme Court of Azad Jammu & Kashmir has laid down and held in numerous precedents that the judgment delivered after three months of arguments is tantamount to decide the case without hearing. In this regard reliance can be placed upon **Civil PLA No.98 of 2020 titled Wapada Vs. Muhammad Razzaq and others decided on 15.06.2022, Mst. Bassi Begum and others Vs. Mst. Kakam Noor and others (PLD 1960 AJ&K 11), and Pathana vs. Mst. Khandal (PLD 1952 BJ 38).** Thus, question of law i.e. No.9 is decided and declared in favour of the petitioner in affirmative manner as below:-

**Answer:-** Yes it was enjoined upon the learned ATIR to adjudicate/decide the lis pending before him at least within 90 days after hearing arguments in the case, thus, the decision made by the learned ATIR offends the doctrine of audi-alteram-partem.

Ordinarily it is not possible to acquire retentive memory of such a class to retain or freeze the facts/ arguments in mind for a long time, particularly in their real prospective and spectrum, hence, exposure of wisdom upon argumentation offered 04 months back offends the norms of justice.

For the foregoing reasons, instant Reference is allowed, impugned judgment dated 13.05.2020 is set-aside and the matter is remanded back to learned ATIR for decision afresh strictly in accordance with law after hearing both the parties, within a period of 01 month, after receiving this order.

Reference application is disposed of accordingly. Office is directed to send a copy of this order under seal of the court to the Appellate Tribunal as per section 133(5) of the Ordinance.

Announced.

*Circuit Mirpur,*  
*16.05.2024.*

**JUDGE**  
(S)

**JUDGE**  
(E)