

**APPELLATE TRIBUNAL INLAND REVENUE, DIVISIONAL BENCH
LAHORE**

STA No.683/LB/2019

&

STA No.553/LB/2020

M/s Atlas Power Limited;
23-C, Aziz Avenue, Canal
Park, Gulberg-V, Lahore.

Appellant

VS

Commissioner Inland
Revenue, Zone-II, LTU,
Lahore.

Respondent

Appellant by

Mr. Asim Zulfiqar, FCA

Respondent by

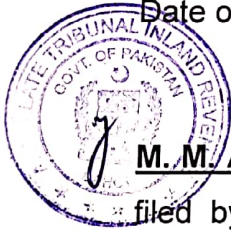
Mr. Shahzad Mehmood, DR

Date of hearing

23.12.2020.

Date of order

23.12.2020.



ORDER

M. M. AKRAM (Judicial Member): These titled appeals have been filed by the appellant/registered person. The appeal bearing STA No.683/LB/2019 has been filed directly before this Tribunal as the first appeal under section 46(1)(b) of the Sales Tax Act, 1990 ("the Act") without first availing a statutory remedy available to them under section 45B of the Act against an Order No.08/2019 dated 04.02.2019 passed by the learned Commissioner Inland Revenue, Zone-II, LTU, Lahore on the grounds as set forth in the memo of appeal. The second one bearing STA No.553/LB/2020 has been filed against the Order No.02 dated 07.05.2020 passed by the learned Commissioner Inland Revenue, Appeals Zone-I, Lahore. However, in both the appeals, the order-in-original passed by the assessing officer is the same. Therefore, these appeals are being decided through this order.

2. Brief facts necessary for disposal of the instant appeals are that the appellant originally filed the appeal against order-in-original No.08/2019 dated 15.04.2019 passed by the Commissioner Inland Revenue, Zone-II, LTU, Lahore directly before this Tribunal on 09.05.2019 under section 46(1)(b) of the Act. However, pending the appeal, the question came before this Tribunal in another case that whether the appeal, at the first instance, can be filed under section

45B of the Act against an order passed under section 11 of the Act by the Commissioner Inland Revenue? This question was earlier dilated upon by the Division Bench of this Tribunal in STA No.501/IB/2018 vide order dated 23.07.2019 whereby it was held that the order passed by the Commissioner Inland Revenue under section 11 of the Act is appealable under section 45B of the Act. In consequence of the said judgment and in spite of pending the appeal before this Tribunal, the appellant immediately rushed to the learned CIR(A) and again filed the appeal on 26.08.2019 against order-in-original No.08/2019 dated 15.04.2019 passed by the Commissioner Inland Revenue, Zone-II, LTU, Lahore before him who vide order dated 07.05.2020 did not consider and follow the judgments of this Tribunal and rejected the appeal on the sole ground that the appeal does not lie before him. Felt aggrieved, the appellant preferred the appeal before this Tribunal.



3. This case came up for hearing on 23.12.2020. The learned AR for the appellant contended that the learned CIR(A) has erred in law of not considering and following the judgments of this Tribunal and dismissed the appeal on the ground that the same is not maintainable under section 45B ibid. He apprised that the issue involved in the instant case has very elaborately discussed and decided by the Division Bench of this Tribunal in STA No.501/IB/2018 vide order dated 23.07.2019 and subsequently, the Full Bench in STA No.144/LB/2019 dated 04.02.2020 also held that a person aggrieved by an order passed under section 11 of the Act by the Commissioner Inland Revenue may file an appeal before the CIR(A) having concurrent jurisdiction under section 45B. He strenuously argued that the action of the learned CIR(A) in not considering and following the decisions of this Tribunal was illegal and improper. He was bound to follow the law declared by this Tribunal. He argues that it is not open to subordinate Authorities to ignore or keep aside a decision of this Tribunal and to decide the matter as per his sweet-will. The impugned order thus suffers from legal infirmity and requires to be interfered with. He therefore, pleaded that the impugned order be set aside and

to direct the CIR(A) to decide the appeal of the appellant on its own merits.

4. The submissions made by the learned AR for the appellant have substance. The perusal of the impugned order shows that the learned CIR(A) has given its own findings on the issue without considering and following the judgments of this Tribunal particularly when both the judgments are still in field and binding upon him. This kind of attitude on the part of the lower authorities is not appreciable and the higher Courts have deprecated such action in numerous cases. It is not disputed even by the Revenue that the point is concluded by a pronouncement of this Tribunal in STA No.501/IB/2018 vide order dated 23.07.2019 and by the Full Bench in STA No.144/LB/2019 dated 04.02.2020 whereby the Full Bench also held that CIR(A) has the concurrent jurisdiction if the order is passed under sections 10, 11, 25, 36, or 66 of the Act. It is settled law that where two forums have concurrent jurisdiction, the aggrieved person, in the first instance, must preferably approach to the lower forum. In view of the foregoing legal position, the appeal requires to be allowed and the order passed by the CIR(A) which is clearly contrary to law and the judgments of this Tribunal, requires to be quashed and set aside.

5. We may, however, add that it was not open to the CIR(A) to ignore the law laid down by this Tribunal when it was lower authority subject to the appellate jurisdiction of this Tribunal. It was not proper on his part not to follow binding decisions of this Tribunal. It cannot be disputed and is not disputed that the CIR(A) is an "Authority" subject to the appellate jurisdiction of this Tribunal under section 131 and 132 of the Income Tax Ordinance, 2001 read with section 46 of the Sales Tax Act, 1990. Hence, he is bound to obey the law declared by this Tribunal.

6. The apex Court of the country in no uncertain terms held that the law declared by a High Court is binding on all subordinate Courts and Tribunals within the territory to which it exercises the jurisdiction. In *Bhopal Sugar Industries Ltd. v. ITO* (1960) 40 ITR 618 (SC), the



Income-tax Officer (subordinate authority) refused to carry out clear and unambiguous directions of the Income-tax Appellate Tribunal (superior authority). Deprecating it, their Lordships of the Supreme Court observed (page 622):

"Such refusal is in effect a denial of justice, and is furthermore destructive of one of the basic principles in the administration of justice based as it is in this country on a hierarchy of Courts. If a subordinate Tribunal refuses to carry out directions given to it by a superior Tribunal in the exercise of its appellate powers, the result will be chaos in the administration of justice....."

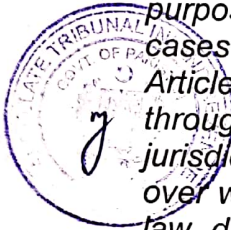


A direct question arose before the Supreme Court in **East India Commercial Co. Ltd. v. Collector of Customs**, AIR 1962 SC 1893.

In that case, proceedings were initiated by the Collector of Customs against the petitioner-company on allegations that it had violated conditions of licence and illegally disposed of goods and thereby committed an offence punishable under the Customs Act. The High Court confirmed the order of acquittal passed by the trial Court holding that it cannot be said that a condition of the licence amounted to an order under the Act and, therefore, no offence was committed by the company. The High Court also passed an order directing the seized/goods to be sold and the sale proceeds to be deposited in the Court. After those proceedings, notice was issued by the Collector on the company to show cause why the amount should not be confiscated and penalty should not be imposed. It was contended on behalf of the company that once the High Court decided that the breach of condition of licence could not be said to be a breach of order, the Collector had no jurisdiction to issue show-cause notice. It was submitted that the decision of High Court on a point was binding on all subordinate Courts and inferior Tribunals within its territorial jurisdiction. The notice was, therefore, liable to be quashed. The precise question before the Supreme Court was as to whether or not the decision rendered by High Court would bind all subordinate Courts and inferior Tribunal within its territorial jurisdiction. It was argued that there was no provision similar to Article 141 of the Constitution making the law declared by a High Court binding on all

Courts and Tribunals within its territorial jurisdiction. Considering relevant provisions of the Constitution and the power of High Court, SubbaRao, J. (as he then was), observed (page 1905);

"This raises the question whether an administrative Tribunal can ignore the law declared by the highest Court in the State and initiate proceedings in direct violation of the law so declared. Under Article 215, every High Court shall be a Court of record and shall have all the powers of such a Court including the power to punish for contempt of itself. Under Article 226, it has a plenary power to issue orders or writs for the enforcement of the fundamental rights and for any other purpose to any person or authority, including in appropriate cases any Government within its territorial jurisdiction. Under Article 227 it has jurisdiction over all Courts and Tribunals throughout the territories in relation to which it exercises jurisdiction. It would be anomalous to suggest that a Tribunal over which the High Court has superintendence can ignore the law declared by that Court and start proceedings in direct violation of it. If a Tribunal can do so, all the subordinate Courts can equally do so, for there is no specific provision, just like in the case -of the Supreme Court, making the law declared by the High Court binding on subordinate Court. It is implicit in the power of supervision conferred on a superior Tribunal that all the Tribunals subject to its supervision should conform to the law laid down by it. Such obedience would also be conducive to their smooth working; otherwise, there would be confusion in the administration of law and respect for law would irretrievably suffer. We, therefore, hold that the law declared by the highest Court in the State is binding on authorities or Tribunals under its superintendence, and that they cannot ignore it either in initiating a proceeding or deciding on the rights involved in such a proceeding."



The above view has been reiterated by the Supreme Court in a number of subsequent decisions such as M. PadmanabhaSetty v. K.P. PapiahSetty, AIR 1966 SC 1824; Kausalya Devi Bogra v. Land Acquisition Officer, AIR 1984 SC 892 and Bishna-Ram Borah v. ParaqSaikia, AIR 1984 SC 898.

7. In our opinion, the submission of learned counsel for the appellant, is well-founded and deserves to be upheld. It is not even the case of the Department that the decisions of this Tribunal have been stayed by the High Court. Hence, so far as this Tribunal is concerned, the point is concluded. It is settled law that until and unless the decision is reversed by a superior Court, it holds the field. It also cannot be gainsaid that the CIR(A) is a lower authority subject

to appellate jurisdiction of this Tribunal and this Tribunal can exercise jurisdiction over him by invoking the provisions of sections 131 and 132 of the Income Tax Ordinance, 2001 read with section 46 of the Sales Tax Act, 1990. In our considered view, therefore, it was not open to the CIR(A) to ignore the decision of this Tribunal or to refuse to follow it on a specious plea of verdict being not accepted by the Department.

8. In **Baradakanta Mishra v. Bhimsen Dixit**, AIR 1972 SC 2466, when a member of the superior judicial service functioning as the Commissioner of Hindu Religious Endowments, Orissa, refused to follow the decision of the High Court, contempt proceeding had been initiated against him and he was punished by the High Court. When the matter was carried out by the appellant to the Supreme Court, dismissing the appeal and extending further the principle laid down in the decision of **East India Commercial Co. Ltd's** case, AIR 1962 SC 1893, the Court held (page 2469):

"The conduct of the appellant in not following the previous decision of the High Court is calculated to create confusion in the administration of law. It will undermine respect for law laid down by the High Court and impair the constitutional authority of the High Court."

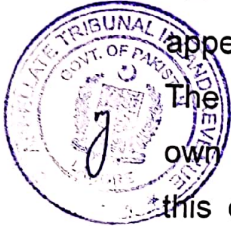
In this connection, we may emphasize that it would indeed be appropriate to keep in mind the following observations of Lord Diplock in **Cassell & Co. Ltd. v. Broome** (1972) 1 All ER 901, 874 (HL):

"It is inevitable in a hierarchical system of courts that there are decisions of the supreme appellate tribunal which do not attract the unanimous approval of all members of the judiciary. When I sat in the Court of Appeal I sometimes thought the House of Lords was wrong in over-ruling me. Even since that time there have been occasions, of which the instant appeal itself is one, when, alone or in company, I have dissented from a decision of the majority of this House. But the judicial system only works if someone is allowed to have the last word and if that last word, once spoken, is loyally accepted."

9. We are very clear and we have no doubt in our minds that when a point is concluded by a decision of this Tribunal, all subordinate authorities within the territorial jurisdiction of this Tribunal and subject to the appellate jurisdiction of this Tribunal are bound by



it and must scrupulously follow the said decision in letter and spirit. Since the CIR(A) has not decided the matter in accordance with law laid down by this Tribunal in the case bearing STA No.501/IB/2018 vide order dated 23.07.2019 and the judgment of the Full Bench in STA No.144/LB/2019 dated 04.02.2020, the order passed by him requires to be quashed and set aside.



10. In the result, the appeals of the appellant are allowed. The appeal of the appellant shall be deemed pending before the CIR(A). The CIR(A) is directed to decide the appeal of the appellant on its own merits preferably within the period of 60 days from the receipt of this order after providing proper opportunity of being heard to the appellant and pass a speaking order in accordance with law. Meanwhile, the department is also directed not to take any coercive measures against the disputed tax liability till the decision on appeal by the CIR(A).

11. The appeals are disposed of in the above terms. The AR(Roster) is directed to send a copy of this order to the concerned CIR(A) as well who shall pass the order according to the foregoing observations.

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(MUHAMMAD AZAM)
ACCOUNTANT MEMBER

sd

(M. M. AKRAM)
JUDICIAL MEMBER

Copy of the bench order forwarded to
✓ 1. The Appellant *M/S Atlas Power Ltd. UTR*
✓ 2. THE CIR, *11/11/20*
By order
15/3/20
Appellate Tribunal Income Tax Revenue
Lahore.