APPELLATE TRIBUNAL INLAND REVENUE (PAKISTAN) KARACHI BENCH, KARACHI

Present: **Mr. Muhammad Jawed Zakaria, J.M.**
Ms. Farzana Jabeen, A.M.

M.A(Rect) No.35/KB-2013
In ITA No.334/KB-2011
(Tax Year 2004)

M.A(Rect) No.36/KB-2013
In ITA No.335/KB-2011
(Tax Year 2009)
U/s.221

The CIR, Zone-III, LTU, Karachi..... Applicant

Versus

M/s. EFU Life Assurance, Karachi.....Respondent

Applicant by: None.
Respondent by: Mr. Arshad Siraj, Advocate.

Date of hearing: 02-12-2013
Date of order: 02-12-2013

ORDER

MUHAMMAD JAWED ZAKARIA(Judicial Member):-

These miscellaneous applications have been filed for seeking rectification in the earlier order dated 08-03-2012 in ITA No.334/KB-2011 and ITA No.335/KB-2011 for the tax years 2004 and 2009 respectively passed by the Division Bench of this Tribunal whereby the appeals of the appellant were dismissed being devoid of any merit.

2. On the date of hearing i.e. 02-12-2013 the applicant was called thrice to contest his case but he did not appear. Taking a lenient view and in the interest of justice, we waited for the applicant till 11:30 am but in vain. We may point out that vide letter of this Tribunal bearing No.F-06/AT/AD/KB/2013 dated 06-11-2013, dated 22-12-2009 and 17-01-2012 addressed to the Chief Commissioner, LTU, Karachi and also to Chief Commissioner, RTO, Karachi regarding non-appearance and various issues relating to Departmental Representatives, which are reproduced as under: -

"No.F-06/AT/AD/KB/2013
Government of Pakistan
Appellate Tribunal Inland Revenue,
State Life Building No.4,
2nd Floor, Shahrah-e-Liaquat,
Karachi.
Dated: 06-11-2013

From : ***Syed Iqbal Ali***
Deputy Registrar.

To : ***The Chief Commissioner,***
Large Tax Payer Unit,
Inland Revenue,
Karachi.

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Subject: NON APPEARANCE OF DEPARTMENTAL REPRESENTATIVE

Please refer to this office earlier letters dated 22-12-2009 and 17-01-2012 regarding subject cited above, I am directed to inform you that sometimes departmental representatives do not attend the court proceedings to assist the court. Today, no one appeared from the L.T.U until 9:45am as D.R before the bench comprising Mr. Muhammad Jawed Zakaria learned Judicial Member and Mr. Bakht Zaman learned Accountant Member. The non appearance of the D.R. in the cases fixed before the learned Tribunal not only caused great inconvenience to the learned Tribunal and the learned Counsels for the tax payers, it may also result in loss of government revenue as the departmental point of view in the absence of departmental representative remain unheard.

You are, therefore, requested to please look into the matter and ensure that departmental representative invariably attend the proceedings before the learned Tribunal on regular basis.

(SYED IQBAL ALI)
Deputy Registrar

c.c.to:

1. ***Mr. Muhammad Javed Zakaria,*** *Learned Judicial Member A.T.I.R., Karachi.*
2. ***Mr. Bakht Zaman,*** *Learned Accountant Member A.T.I.R., Karachi..*
3. ***The Registrar,*** *A.T.I.R., Headquarters – Islamabad.*
4. *Office copy."*

3. The then Hon'ble Member (Admn) has himself written Letter bearing No.A.M/AT,(IR)/KHI/2009/1230 dated 22nd December, 2009 addressed to the Chief Commissioner, LTU, Karachi and the Chief Commissioner RTO, Karachi which runs as under: -

"OFFICE OF THE
ACCOUNTANT MEMBER/MEMBER ADMN
APPELLATE TRIBUNAL INLAND REVENUE
KARACHI

Ref: No.A.M/AT, (IR)/KHI/2009/1230 Karachi Dec, 22nd 2009

To,

The Chief Commissioner
L.T.U Karachi. *(By Name)*

The Chief Commissioner
RTO Karachi

SUB: ISSUES RELATING TO DEPARTMENTAL REPRESENTATIVES

Please refer to the subject.

I take this opportunity to bring to your knowledge certain issues relating to Department Representatives.

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Instances have come to notice that some time Departmental Representatives do not attend court's proceedings to assist the court and putforth departmental view point. It is more disturbing when this happens in appeals filed by the department. In some cases necessary instructions given by the Tribunal are not conveyed to the concerned quarters in the department. It is suggested that DRs should report back to their boss in writing regarding hearing in cases according to cause-list on daily basis.

It is also observed that DRs do not come prepared and sometimes it appears that they have even not gone through the assessment order of the Taxation Officer or appellate order of learned CIT(A) what to speak of quoting case-laws in support of their contention. It is suggested that DRs should be persuaded to go through the relevant record and also inculcate in themselves the habit to find out relevant case laws to assist the court and explain properly the departmental point of view.

It is almost now common in every case the DRs come without record. The Appellate Tribunal being the last fact finding appellate forum, absence of record creates problems to arrive at a just conclusion. DRs should be made responsible to report to your office in writing a day before the date of hearing that they are carrying the case record to the Tribunal.

It is also most often noticed that one DR is appointed for more than one cases on certain date fixed for hearing before the Tribunal. When cases are called, it is informed that DR is busy in some other Bench and the Honourable Members of the Bench and Learned Counsel for the taxpayer have to wait indefinitely for the availability of the DR. It is suggested that suitable arrangements may be made to resolve the problem.

It is also suggested that author of the assessment order (in major revenue potential (cases) should accompany the DR to assist him in explaining the issues involved in a better way.

The last but not the least, DRs should be an officer not below the rank of Additional Commissioner (B.S-19) and should be properly dressed.

(KHALID SIDDIQUI)
ACCOUNTANT MEMBER /MEMBER ADMN.
APPELLATE TRIBUNAL INLAND REVENUE
KARACHI.

Copy to:

(i) The Honourable Chairman, Appellate Tribunal Inland Revenue, Islamabad.
(ii) The learned Members Appellate Tribunal Inland Revenue Karachi.

(KHALID SIDDIQUI)
Ph.9213714"

4. **Despite writing of the above letters no effective measures have been taken by the department and no serious attention has been given by the high ranking authorities of Chief Commissioners RTO / LTU. This attitude of the concerned Commissioner is**

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not expected by such high level officers. It has been noted by us that the majority of the DRs appearing on behalf of the RTO and LTU [FBR] do so before this Court/ Tribunal without record of the department or relevant appellate record and without any relevant assessment order and case record / papers and without any preparation even without any statutory law books / Bare Act and sometimes without proper dressing. The DRs while appearing and addressing the courts do not maintain the necessary decorum and their conduct does not indicate the due respect for the Court/ Bench. At this moment we may also refer to the Taxpayer's Facilitation Guide wherein the Vision of the FBR has been shown as "to be a modern, progressive, effective, autonomous and organization for optimizing revenue by providing quality service and promoting compliance with tax and related laws". With utmost dissatisfaction, we see that practically no steps have been taken by the Department to achieve this vision as is evident from the practice of the DRs appearing before this Court. This tendency on the part of the Department is highly deplorable. It has been observed by Court time and again that the learned D.Rs should take due care while appearing before the Tribunal. The RTOs / LTUs must ensure that the DRs should be well acquainted with the facts as well as with law. The grounds of appeals filed by the department sometimes are exasperatingly vague and not in accordance with the relevant law and rules and thus are not sustainable due to which the department is deprived of legitimate tax. We may further like to propose that just like Taxpayer's Facilitation Guide circulated by the FBR a booklet / pamphlet be circulated to the DRs for their guidance, and legal training to be conducted and separate DRs legal wing to be created and assistant staff to facilitate them to be deployed under the strict supervision and check of FBR (Member Legal), and region wise to be headed by the experienced and Senior CIR who has served as appellate Commissioner at least for one year as CIR(A). as soon as appeal filed by either party, the DR legal wing should obtain brief and cross objections from the author of the order/ assessment order on factual and legal grounds. At least one month's training camp should be established where the senior Advocates and Senior Officers Chief Commissioner/ Commissioner, CIR(A), Zonal/ administrative Commissioners impart them training before appearing in the Tribunal. Each and every day/time, we see a (new face/D.R) is deputed on day to day basis to appear in the Court in every case having no experience as to how address the Court and defend the Revenue. Even in partly heard cases e.g. today Mr. A (DR) next day of hearing in the same case Mr. Z (DR) appears without any material record and brief. Not below the rank of the senior trained and experienced Additional Commissioner (BPS-19) should be deputed to defend the Revenue/ Department as DR before this Court. The concerned Chief Commissioner and Commissioner must ensure that the D.R. must bring with them all relevant records and case papers of the appeal and fully prepared to argue the case on factual and legal grounds. It is now proposed that at least the Senior Additional Commissioner must be deputed as D.R. for a period of six months so that no precious time of the Court may be wasted on their training. We are hopeful that effective measures may be adopted by the higher revenue authorities for defending the fiscal matters before the tribunal/ Court so that the department may not loose good cases and the legitimate tax on technical, factual / legal grounds. It is also observed by us that the DRs while regularly appearing in the court without having any brief and at the time of hearing they compel to take appeal case papers of the appeal from the concerned bench clerk. This practice may be discontinued/ discouraged and DRs ought to encourage that while at the time of filing of appeal it is mandatory upon the appellant (taxpayer as well as department as the case may be), to send the briefs consisting grounds of appeal, assessment order, appellate order and a copy of Appeal Memo. It may be ensured by the higher authorities that the D.Rs appearing before the Court must be well prepared and with all relevant records so that they may protect the interest of revenue and assist the court in dispensation of justice. These observations

neither are only for the instant case nor for the particular case but it is a general tendency of the majority of D.Rs prevail in the Tribunal these days. We hereby would like to inform the department that the majority of the department representatives are not working seriously and thus it is letting the department down. The majority of the DRs appear in a relaxed manner while arguing the case before this court on behalf of the department. They believe that this duty is of no importance to them. This is justified through various actions because in some cases punctuality is to be concerned while in others major disciplinary and uniform issues appear to be creating a major fuss and furthermore they are appearing without any record and without any preparation and proper homework and without realizing the loss of revenue and aftermaths of their negligence on their part . Most of all it has also been noticed that the majority of the DRs are not prepared much to argue in various issues. They have made this their regular routine or as one can say that they have set themselves on a fixed cruise control which is controlling them and their mind and knowledge is still restricted to their own benefits and pleasure. If they feel that it is their sacred duty they should come out of their comfort zone and try things that they have never done before. They should mend their ways and turn over to a new leaf. We believe that they should honestly fulfill their duty to maintain the honour and dignity of the Department. The Department representatives should understand the importance of the Departments' cases and follow the right path to protect and safeguard the interest of revenue.

5. The Appellate Tribunal Inland Revenue, like any judicial body, has a number of procedural requirements that require to be complied with before an appeal can be heard. Unfortunately, several departmental representatives even some of them most senior ACIR though highly qualified, neglect to comply with the requirements, decency, decorum of the court craft and court culture and also by passing the interest of the revenue with the result that their matters get adjourned and they waste their own time and that of the Department and of the bench also. And owing to this tendency and on behalf of the majority of the DRs, not only incur unnecessary cost of the tax payer and also of the Department and of the Government. The DR/ Department ought to assist the tribunal/court in the cause of justice. The ATIR assures all DRs that if they strictly follow the law, and also follow the ATIR rules and honestly prepare their briefs and properly argue the case of the department before the tribunal, they will have a smooth, pleasant experience before the tribunal. The Appellate Tribunal Inland Revenue is the Final fact finding authority. Officers of the Department and Members of the Bar and Bench are trustees. The onus is on them to preserve its dignity, sanctity and purity. The role of the DRs in the administration of justice is no less than that of the Bar and the Bench. The duty of the DR is a very noble and sacred duty and they are entrusted with a duty to be performed in the court. They are not only an agent of the trustee Department in one sense but also an officer of the Court. They have got three fold duties; one towards Department/ FBR/Government (State) another towards the court and the third towards the opposing counsel. It is desirable for both counsels of the taxpayers and Department (DRs) that the adjournment applications may be filed in advance wherever possible and a copy of the same may be forwarded to the concerned representative of the other party and also before the Court at the time of hearing. At this juncture, it may be appreciated that appearance before the Tribunal even for seeking an adjournment, is representation and only the persons authorized to appear as such can seek an adjournment on behalf of the taxpayer. It may be noted that trainee clerks or staff employed by professionals are not competent to appear in this behalf in the absence of necessary authorization. Tax Bars should take notice of this note.

6. It is desired that the professionals/ Counsels, the DRs and who represent matters before the tribunal are requested to follow this code and make a sincere attempt to preserve the dignity, sanctity and purity of the Tribunal. Sincerity to the court and the FBR and state. Mastery over the facts and the law, an ability to work hard and tirelessly and a never-say-die attitude are necessary attributes for DRs. This equally applicable for the (ARs) taxpayers authorised representatives. DRs require deep commitment to protect and safeguard the interest of revenue. While organising and conducting training for DRs which includes drafting of grounds of appeal, return briefs and participating in oral arguments, development of legal points, pleading. It is an essential learning experience for the DRs. Lawyering skills, court crafts, Courts culture, legal professional ethics and Art of Arguing. This tribunal appears to have felt that the DRs need practical training before entering this tribunal before representing the department cases so that the DRs would equip themselves with the understanding of how Courts function, i.e. to learn court craft and court culture. A studious DRs does not mean that he has vast oratory skills which is used to labour on hair splitting arguments on every letter of law. They have to channelise their knowledge to enhance the dynamic concept of law in order to benefit the department whose brief they hold but, at the same time, such arguments should also benefit the larger sections of the society. Always remember that if DRs master the facts, legal principles can be applied at any stage of the proceedings. In other words, mastery of facts is as important or rather more important than mystery over the law and this dream can only be seen, if proper written brief and complete records are available before hands with DRs. Whether someone is a DR or a lawyer or a judge, he/ she is an eternal student of law. Every day is a new experience, every new thought, new fact or situation, new argument reveals a new angle needing attention of a studious representatives, even holding law degree is not just enough. A degree in law will merely serve the purpose of enrolment as a lawyer but the real journey of profession begins from then on by active practice in the court. We do hope that the Department/ FBR would seriously take into consideration the above observations/ remarks/ suggestions to protect and safe guard the interest of revenue.

7. Copying Section is directed to send a copy of this Order to The Chairman, FBR, FBR's Member (Tax Policy), the FBR Member (Legal), the FBR Member (Admin) and All Chief Commissioner/(s) of LTU and Chief Commissioners RTOs I, II & III of Karachi, for necessary urgent action and guidance. With humbly direction to issue necessary Circular throughout the country and implement compulsory training to Departmental representatives (DRs). Copy of this order also to be forwarded to the Secretary All Pakistan Tax Bar Association and the Secretary Karachi Tax Bar Association.

8. Now reverting back to the instant appeals filed by the department from perusal of the records of the case we have found that despite proper service of notice of hearing none appeared on behalf of the department nor submitted any adjournment application. Therefore, we have no alternate but to dismiss the miscellaneous applications for non-appearance/non-prosecution.

9. Resultantly, the Departmental appeal stands dismissed.

-sd-
(MUHAMMAD JAWED ZAKARIA)
JUDICIAL MEMBER

-sd-
(FARZANA JABEEN)
ACCOUNTANT MEMBER