ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

S.T.R. No.30 of 2018
Oil and Gas Development Company Limited
Versus
Commissioner Inland Revenue

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	19.01.2023	**Mr. Khurram M. Hashmi, Advocate for the applicant.** **Mr. Babar Bilal, Advocate for the respondent.** **The questions of law framed by this Court vide order dated 14.01.2019 are as follows:-** ***"i. Whether the learned ATIR failed to appreciate that the assets which were written off did not constitute 'taxable supplies' within the scheme contained in the Act of 1990?*** ***ii. Whether the learned ATIR could have ordered recovery in respect of said assets worth PKR 94,528,927/- which were written off and, thus, not taxable supplies?*** ***iii. Whether the learned ATIR could have ordered recovery of sales tax in respect of alleged sale proceeds which were the result of an accounting error having no actual impact on the overall tax liability of the Applicant?*** ***iv. Whether the learned ATIR could have concluded, in the absence of any cogent evidence, that the Applicant claimed input tax adjustments in respect of the assets it had written off?*** **2. The applicant was issued show cause notice dated 30.04.2010 by the Deputy Commissioner Inland Revenue, Islamabad calling upon the applicant to show cause as to why sales tax amounting to Rs.32,180,250/- and Rs.24,891,900/- should not be recovered from the applicant along with default surcharge and penalty. In the said show cause notice, it was mentioned that the applicant's financial statements for the years 2008 and 2009 show sale of plant and machinery worth Rs.214,535,000/- and Rs.165,946,000/-, respectively in the cash**

UNCERTIFIED COPY

flow statement (investing category). The proceedings pursuant to the said show cause notice culminated in the order dated 28.09.2010 creating a demand of Rs.167,746,213/- and Rs.22,303,664/- for years ending 30.06.2008 and 30.06.2009. The matter went up to the Income Tax Appellate Tribunal, which remanded the matter to the original forum vide order dated 25.02.2014. The post-remand proceedings culminated in the order dated 17.10.2017, whereby an amount of Rs.14,179,077/- minus 15% of Rs.94,527,181/- was held to be recoverable against the applicant along with default surcharge and penalty. The applicant's appeal against the said order was dismissed by the Commissioner Inland Revenue (Appeals-I) vide order dated 11.12.2017. The applicant's appeal to the Income Tax Appellate Tribunal was also dismissed vide order dated 24.10.2018.

3. The basis on which the demand for the payment of sales tax was made by the respondents / Department was the applicant's own financial statement annexed at page-14 of this reference. The cash flow statement for the year ending on 30.06.2009 shows that the applicant received Rs.214,535,000/- during 2008 and Rs.165,946,000/- in 2009 as *"proceeds from disposal of property, plant and equipment."* The sole ground on which the learned counsel for the applicant challenged the order for recovery made concurrently against the applicant by three *fora* was that the equipment with respect to which the demand had been made had already been written off and therefore could not constitute 'taxable supplies.' He asserted that the assets had been written off after 100% physical verification carried

UNCERTIFIED COPY

out through experts. Even if it is assumed that the assets had been written off, they were nonetheless disposed of by the applicant and the proceeds from such disposal are clearly mentioned in the applicant's own cash flow statements for years 2008 and 2009 to be Rs. Rs.214,535,000/- and Rs.165,946,000/-, respectively. The disposal of such written off property, plant and equipment for consideration does come within the ambit of a taxable activity or taxable supply as defined in Section 2(41) of the Sales Tax Act, 1990. The said Act does not exempt the disposal or sale of written off or condemned assets to be exempt from the payment of sales tax.

4. In view of the above, the reference is answered in the negative.

(BABAR SATTAR)
JUDGE

(MIANGUL HASSAN AURANGZEB)
JUDGE

*Ahtesham**

UNCERTIFIED COPY