

APPELLATE TRIBUNAL INLAND REVENUE LAHORE BENCH LAHORE

ITA. No. 87/LB/2013

M/s. Metecno Pakistan (Pvt) Ltd,
Gulberg-III, Lahore.

Appellant

Versus

Commissioner Inland Revenue,
Zone-VII, RTO, Lahore.

Respondent

Appellant by Mr. Naveed Farid, ITP.
Respondent by Mr. Sajjad Tasleem, D.R.

Date of hearing 30-05-2014
Date of Order 13.06.2014

ORDER OF APPEAL

CH. SHAHID IQBAL DHILLON (JUDICIAL MEMBER)

This appeal has been filed by the taxpayer against order of the learned CIR(A)-II, Lahore recorded on 31.10.2012.

2. Brief facts of the case are that the appellant a private limited company derives income from manufacturing of pre-fabricated building and providing services regarding erection of steel structure in the building. The taxpayer filed return for the tax year 2008 declaring taxable income at Rs.93,47,584/- which was deemed to be assessment order in term of section 120 of the Income Tax Ordinance, 2001. On perusal of income tax return, it was revealed that an amount of Rs.1,53,96,304/- was deducted on account of supply / sale of goods. By working back the said deduction @ 3.5% quantum of sales were found to be Rs.43,98,94,400/-. The Additional CIR came to the conclusion that taxpayer had concealed / suppressed the sales to the tune of Rs.19,64,80,997/- for the tax year under consideration. With this note in mind, the said discrepancy was confronted to the taxpayer and inspite of having provided sufficient

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opportunity, the taxpayer failed to appear and substantiate his claim before the assessing officer. This motivated the assessing officer to finalize the assessment u/s 122(5A) of the Income Tax Ordinance, 2001. Being aggrieved with the treatment, the taxpayer filed appeal before the learned CIR(A)-III, who vide order dated 04.3.2011 set aside the amended assessment with the following observations:-

"Under these circumstances, I deem it appropriate to set aside the impugned order for the tax year 2008 and remanded the case in view of judgment passed by the learned IRAT bearing No.420 to 421/2009 dated 01.12.2009 back to the taxation officer for fresh decision on merit in accordance with law after giving the appellant proper opportunity of hearing and allowing to bring up any fresh evidence that he may wish to adduce".

3. In consequence of the above directions of the learned CIR(A), the assessing officer re-initiated the proceedings by issuing various necessary notices requesting the appellant to attend the proceedings. The assessing officer was not again convincing with the reply of the taxpayer, therefore, he proceeded to finalize the assessment u/s 124 / 122(5A) of the Income Tax Ordinance by making an addition of Rs.19,64,80,997/- on account of suppressed sales for the tax year under consideration vide order dated 29.05.2012. The taxpayer being aggrieved filed an appeal before the learned CIR(A). Before the first appellate authority, the taxpayer had contested the order on legal as well as factual grounds. The validity of notice u/s 122(5A) was also questioned. The learned CIR(A) after considering the arguments of the learned AR upheld the order of the assessing officer. This action of the learned CIR(A) has caused grievance to the taxpayer who has come up in appeal before this Tribunal.

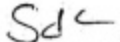
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4. Before the Tribunal, the learned AR contended that the learned CIR(A) in law erred to hold that the assumption of jurisdiction u/s 122(5A) without issuing notice u/s 122(1) was not mandatory. He further contended that the initiation of proceedings u/s 122(5A) by the Additional CIR in terms of section 122(5A) was defective and without lawful authority. According to the learned AR, for attracting provisions u/s 122(5A), it was the learned CIR who hold to consider that the assessment was erroneous and prejudicial. After doing so, the learned CIR may delegate such powers u/s 210(1) to the Additional Commissioner but such delegation of powers is missing on record. Non fulfillment of mandatory requirements rendered the entire proceedings to be coram non judice. It was also pleaded before the Tribunal that simultaneous issue of notices one after the other was against law. The learned AR further argued that as per notice u/s 122(9) dated 26.9.2010 suppressed sales were confronted at Rs.14,42,30,312/- but vide another notice u/s 122(9) dated 29.5.2012 the same were confronted at Rs.19,64,80,997/- which revealed the absence of proper application of mind and change of opinion and is not permissible under the law. It has also been submitted before the Tribunal that the learned CIR(A) erred in law to hold that addition of Rs.19,64,80,977/- was in accordance with law. No such legal provisions was existing on the statue as on 30.6.2008, therefore, he has prayed for deletion of the addition. Lastly, the learned AR contests that no proper opportunity of being heard was provided to the taxpayer by the assessing officer.

5. The learned D.R., on the other hand, supported the orders of the authorities below for the reasons stated therein.

6. The arguments of both the parties have been heard in the light of orders of both the authorities below. Perusal of the orders of both the authorities below shows that the taxpayer has failed to appear before the assessing officer and to substantiate his claim with documentary evidence. It is, therefore, deemed fit to set aside the assessment with the direction to the assessing officer to provide proper opportunity to the taxpayer to substantiate his claim with documentary evidence. Law favours adjudication of cases on merits rather than on back of any party. This being so, I vacate both the orders of the authorities below and remand the case to the assessing officer with the directions to pass a judicious and speaking order in accordance with law after giving proper opportunity of being heard to the taxpayer so that law could take its natural course. He will also give his findings on each issue raised by the learned AR for taxpayer. The taxpayer / respondent is strictly directed to submit all the relevant documents and substantiate his claim with documentary evidence within 15 days from receipt of this order before the assessing officer to arrive at correct conclusion. without fail.


(Sikandar Aslam)
Accountant Member


(Ch. Shahid Iqbal Dhillon)
Judicial Member