

IN THE APPELLATE TRIBUNAL INLAND REVENUE,
LAHORE BENCH, LAHORE

ITA No.463/LB/2014
(Tax year 2007)

M/s. Toyota Walton Motors, Mian Walton Appellant
Road, Lahore Cantt., Lahore.
N.T.N 1333067-5

Versus

CIR Zone-IV, R.T.O, Lahore. Respondent

Appellant by : Mr. Abdul Hafeez, I.T.P
Respondent by : None

Date of hearing : 07.05.2014
Date of order : 07.05.2014

ORDER

This appeal has been filed at the instance of the taxpayer against the impugned order dated 06.01.2014 recorded by the learned CIR(Appeals-III), Lahore, whereby he upheld the assessment u/s 122(5A) of the Income Tax Ordinance, 2001.

2. Brief facts of the case are that the taxpayer filed his return for the year under consideration declaring income at Rs.693,308/- which was deemed to be an assessment in terms of section 120 of the Income Tax Ordinance, 2001. Subsequently, the taxation officer examined the record and found that the deemed assessment was erroneous as well as prejudicial to the interest of revenue. The taxation officer issued notice u/s 122(9) of the Income Tax Ordinance, 2001 confronting the taxpayer with proposed amendment. The taxpayer submitted reply along with revised return of income, on which the taxation

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officer issued another notice on the issue of revised return. Second reply was found to be unsatisfactory and the taxation officer amended the assessment at net income of Rs.4,701,725/- with tax payable at Rs.723,909/-. In appeal, the learned CIR(Appeals) upheld the treatment meted out by the taxation officer for the reasons and factors embodied in the impugned order. Hence this appeal.

3. The learned AR has argued that the learned CIR(Appeals) erred in confirming the order passed by the taxation officer which is against the law. He further submitted that the learned CIR(Appeals) erred in confirming the proration of expenses including cost of sales, made by the taxation officer. He also stated that the learned CIR(Appeals) was wrong in confirming the allocation of entire cost of sales to Final Tax Income despite the fact that the cost of sales with including expenses relating to normal tax and final regime, without even confronting the taxpayer by the taxation officer. He therefore, prays for vacation of the orders of the authorities below and acceptance the appeal of the taxpayer.

4. None Present on behalf of the revenue, while the AR present on behalf of the taxpayer. We, therefore, decided to dispose of appeal exparte by resorting to Rule 22(1) of the A.T.I.R Rules, 2010.

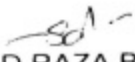
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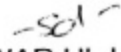
5. We have given due consideration to the arguments raised by the learned AR and also gone through the relevant record available on file and are of the considered view that the revised return filed by the taxpayer for the assessment of his income under normal law suffered from no legal infirmity. It was a legal and valid assessment in terms of section 120 of the Income Tax Ordinance, 2001. Besides, the return filed by the taxpayer was in strict conformity with the law in force on the said date. Amendment of this assessment u/s 122(5A) of the Income Tax Ordinance, 2001 by the Additional Commissioner denying the taxpayer benefit of normal law assessment is thus without lawful authority. As regards the apportionment of expenses u/s 67 of the Income Tax Ordinance, 2001, it reveals from the section 67 that the expenditure has to be apportioned on a reasonable basis after taking into consideration nature and the size of the activities to which the amount relates. We find force in the contention of the learned AR that both the authorities below have failed to point out a single expense which relates to either services receipts or the exempt capital gain declared by the taxpayer. It appears that both the authorities below have apportioned the expenditure only on the assumptions which means that the authorities below could not bring on record any evidence to justify the above action. The alleged apportionment is found to

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have been made on imagination only. We also agree with the contention of the learned AR that the authorities below failed to prove allocation of expenses keeping in view relative nature and size of the activities to which the section 67 of the Income Tax Ordinance, 2001 refers to. We, therefore, vacate the orders of both the authorities below by accepting the appeal of the taxpayer.

6. The taxpayer's appeal succeeds.


(MUHAMMAD RAZA BAQAR)
Accountant Member


(CH. ANWAR UL HAQ)
Judicial Member