

APPELLATE TRIBUNAL INLAND REVENUE LAHORE BENCH LAHORE

ITA No.1146/LB/2011
(Tax Year 2009)

M/s. Brothers Sugar Mills, Limited,
135-Upper Mall, Lahore.

Appellant

Versus

Commissioner Inland Revenue,
LTU, Lahore.

Respondent

Appellant by : Mr. Ayub Aftab, Advocate
Respondent : Mr. Nayyar Mehmood, D.R.

Date of hearing : 17.06.2014

Date of Order : 10.07.2014

ORDER OF APPEAL

CH. SHAHID IQBAL DHILLON (JUDICIAL MEMBER),

This appeal for the tax year 2009 has been filed against an order recorded by CIR(Appeal)-I, Lahore on 17.05.2011.

2. Brief facts of the case are that the taxpayer, a public limited company, filed its return u/s 114 for the tax year 2009 which was accepted under section 120(1) of the Income Tax Ordinance, 2001.

On perusal of the record, the DCIR found that the taxpayer had failed to pay Workers Welfare Fund alongwith the return on the accounting profit. She issued show cause notice u/s 221 of the Ordinance confronting the taxpayer on the issue. The reply submitted by the taxpayer was found unsatisfactory, hence WWF was charged at Rs.1,85,135/- before taxation. The matter was agitated before the learned CIR(A) where the learned AR contended that WWF should have been charged after the adjustment of brought forward losses. In support of his contention, the learned AR relied upon the case law reported as 2002 PTD 14. The submissions made by the learned AR

did not find favour with the learned CIR(A) and he rejected the appeal. This has caused grievance to the taxpayer who has come up in appeal before us.

3. Both the parties have been heard.

4. Before the Tribunal, the learned AR contended that the ACIR was not justified to charge WWF on accounting profit for the year before taxation. It has been further contested that both the authorities below misinterpreted the provision of law while levying / confirming the WWF observing that as a consequence of amendments in sections 2 and 4 of the WWF Ordinance, 2001 through Finance Act, 2008 by virtue of which the WWF is now chargeable on accounting profit or income as per return, whichever is higher. He contested that the ratio decided by the Honourable High Court, Lahore in a reported judgment (2011) 104 Tax 241 is squarely applicable to the instant case. The honorable Single Bench of the Lahore High Court in a reported judgment cited supra held that the impugned amendments introduced in WWF Ordinance through Finance Acts, 2006 and 2008 are declared unconstitutional and struck down. In the said judgment, the honourable High Court held as under:-

"the impugned amendments introduced in WWF Ordinance through Finance Acts, 2006 and 2008 are declared unconstitutional and therefore, struck down. As a consequence, impugned notice dated 14.6.2011 is set aside being unlawful and unconstitutional. The petitioner, however, liable to pay Workers' Welfare Fund under WWF Ordinance as it stood prior to the impugned amendments."

In view of the above referred settled legal position, the orders of both

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the authorities below are declared to be without any lawful authority and of no legal effect. The department has wrongly placed the burden on the taxpayer by charging the WWF at Rs.1,85,135/-. The order of the learned CIR(A) is not in accordance with the ratio settled by the honorable Lahore High Court reported as (2011) 104 Tax 241, being latest in time and such judgment is binding upon the department in view of judgment of the Honourable Sind High Court, Karachi cited as 2005 PTD 2586. Under these circumstances, the orders of both the authorities below being not sustainable in the eye of law are vacated.

5. The appeal filed by the taxpayer stands disposed of as above.


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(Muhammad Akram Tahir)
Accountant Member

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(Ch. Shahid Iqbal Dhillon)
Judicial Member