[IN THE APPELLATE TRIBUNAL INLAND REVENUE, LAHORE BENCH, LAHORE]

Present: Ch. Anwaar Ul Haq, Judicial Member and Muhammad Anwar Goraya, Accountant Member.

I.T.A. No. 794/LB/2012, (Tax Year 2006),
decided on 10-10-2013

Taxpayer *Versus* *Department*

Muhammad Akram Raza, ITP., for the Appellant.
Muhammad Asif, DR, Respondent.
Date of hearing: 09-10-2013.

O R D E R

[The Order was passed by Ch. Anwaar Ul Haq, Judicial Member.] - The captioned appeal pertaining to tax year 2006, has been directed against the Order dated 29-11-2011, passed by the learned Commissioner Inland Revenue, Appeals, Gujranwala.

2. The facts leading to the filing of present appeal are that the taxpayer, an individual, derives income from letting out property, had filed return of income for tax year 2006, declaring income at Rs.300,851/- which was deemed to be an assessment order in terms of section 120(1) of the Income Tax Ordinance, 2001. Subsequently, the case of the taxpayer was selected for audit in terms of section 177 read with section 120(1A) of the Income Tax Ordinance, 2001. Statutory notices were issued by the department which were complied with by the taxpayer by filing certain requisite documents. The taxpayer made investment to purchase property having registered value of Rs.104,800,000/- which was

required by the department to be probed regarding sources of investment. Before the assessing authority, it was the taxpayer's stance that the main source of investment was encashment of foreign remittance received during the tax year 2006 to the extent of Rs.41,493,600/- and profit earned from sale of property amounting to Rs.126,610,000/-. In the supporting documentation submitted, the assessing officer noted certain discrepancies which were confronted to the taxpayer through series of notices which were, allegedly, un-complied with. Consequently, the assessing authority reached to the conclusion that the taxpayer has nothing to offer in his defence and the taxpayer has made investment to the tune of Rs.148,985,200/- out of unexplained sources in terms of section 111(1)(b) read with section 111(4) of the Ordinance. Under the circumstances, deemed assessment for the year was amended u/s 122 (1) and an amount of Rs.148,985,200/- was added towards his income for the tax year 2006.

3. Being aggrieved, the taxpayer preferred appeal before the learned CIR(A) and challenged the treatment meted out at assessment stage. Before the CIR(A), the taxpayer assailed the order of the assessing authority on number of legal as well as factual grounds. The learned CIR(A) after considering the submissions made by the AR, has remanded the case back to the assessing officer for de novo proceedings in view of ITAT's judgment rendered in ITAs bearing No.420 & 421/LB/2009, dated 01-12-2009.

4. The learned AR of the appellant submitted before us that the CIR(A) was not justified to remand the case to the assessing officer for de novo assessment as in this way the department was allowed to fill in the legal lacunas in the order which was otherwise not maintainable in the eyes of law. It is contended by the learned AR that the learned CIR(A) did not act judicially while setting aside the assessment and merely relied on an unreported judgment of this Tribunal and ignored the binding amendment made through Finance Act, 2010, as well as Circular No.10 of 2010, which clearly depicts that power of Commissioner (Appeals) to set aside the order for denovo proceedings has been withdrawn. It is also asserted by the AR that learned CIR(A) did not pass legal as well as speaking order as he himself admitted in his order on page-14 that *"the impugned amended assessment order u/s 122(1)*

of the Income Tax Ordinance, 2001 suffer from legal and factual infirmities, which are not curable and the appellant had sufficient sources available for making investment of Rs.14,89,85,200/- and the contention of the AR is acceptable and seems to be justified"..
It is contended by the AR that in view of these categorical observations, there was no justification to set aside the assessment for denovo proceedings instead of annulling the same.

5. On merit, it is submitted by the learned AR that the taxpayer has sufficient sources to make investment in purchase of seven properties for a total consideration of Rs.128,985,200/- and in this behalf the taxpayer had duly explained to the assessing officer the sources of investment through reconciliation statement filed for the period ended on 30-06-2006 as under:-

Wealth as on 30-06-2006	Rs.168,230,705	
Wealth fall under explanation period		**Rs.167,190,705**
Sources of Wealth		
Foreign remittance US$691,560		
(encashed @60 x691590)	Rs. 41,493,600	
Sale of Property	Rs.126,610,000	
Bank Profit	Rs. 112,066	
Total wealth	Rs.168,212,666	
Less: household and taxes etc.	Rs. 1,024,961	
Balance net wealth		**Rs.167,190,705**

It is submitted by the learned AR that from the perusal of above reconciliation, it is clearly evident that the taxpayer has sufficient sources to make investment in the purchase of properties under consideration. At this juncture, it is submitted by the learned DR that the alleged sale value of properties was overstated by the taxpayer and accordingly show cause notice was issued by the assessing officer whereby he was required to explain the queries raised for the sale of properties, but the taxpayer has failed to satisfy the assessing officer with the help of any concrete evidence that the properties were sold for total consideration of Rs.126,610,000/-. In this behalf, it is explained by the learned AR that the sale consideration received by the appellant has been accepted by the department while making assessment in the hands of the buyer vide order dated 31-05-2007 relevant to the tax year 2006 at NTN: CVT-176-D, in the name of Ch. Ijaz Ahmad, therefore, the investment to the extent of Rs.126,610,000/- generated through aforesaid sale of property is liable to be accepted.

6. As regard the appellant's claim of balance investment made out of encashment of foreign remittances, it is explained by the learned AR that the taxpayer had himself remitted foreign currency from USA in the shape of US $ 691590 in his bank accounts in Pakistan which were later on encashed through normal banking channel in Pak rupees but the assessing officer has unjustifiably and illegally disallowed the same. It is submitted by the learned AR that the said foreign currency encashment was converted into Pak rupees through normal banking channel was duly certified by the concerned bank vide letter dated 26-06-2008 and subsequently the contents of the same were confirmed by the bank on the request of the department vide letter dated 13.05.2011. The copies of these letters were placed on record by the AR. It is further contended by the learned AR that all the four conditions laid down in sub-section (4) of section 111, were fully complied with by the taxpayer, therefore, there was no justification for the disallowance of exemption to the foreign remittances.

7. We have heard the arguments *put forth* by the learned representatives of both the sides and have carefully gone through the available record. After due consideration, we find that the assertions made by the learned AR regarding investment made in the purchase of seven properties out of the funds generated through sale of property for a consideration of Rs.126,610,000/-, are quite plausible which was duly supported by the documentary evidences placed before us. The department has already accepted the sale of property for Rs.126,610,000/- in the hands of the purchasers whereas in the taxpayer's case (seller) they had rejected the same on the ground that the taxpayer inflated the figure. The department cannot be allowed to blow hot and cold in the same breath. The act of the department seems to be a double standard having no sanctity in the eye of law. Accordingly, it is directed that investment made by the taxpayer in the purchase of properties to the extent of Rs.126,610,000/- be treated as made from explainable sources and addition made in this behalf to that extent is hereby deleted.

8. So far as the amount of foreign remittances of US$ 691,590 is concerned, the learned AR submitted the following documents: -

i. Bank statement of current account bearing No.01626531601, maintained with Standard Chartered, Sialkot.

ii. Bank statement of US $ A/c No. 05792403866, maintained with Standard Chartered.
iii. Bank verification letter dated January 10, 2007.
iv. Bank verification letter dated June 26, 2008.
v. Bank verification letter dated 13-05-2011.

To appreciate the submissions of the learned AR, it would be appropriate to reproduce the provisions of section 111 of the Income Tax Ordinance, 2001 hereunder: -

> 111. Unexplained income or assets.-(1) Where-
> (a) any amount is credited in a person's books of account;
> (b) a person has made any investment or is the owner of any money or valuable article,
> (c) a person has incurred any expenditure, or
> (d) any person has concealed income or furnished inaccurate particulars of income including-
> i. the suppression of any production, sales or any amount chargeable to tax; or
> ii. the suppression of any item of receipt liable to tax in whole or in part.
>
> and the person offers no explanation about the nature and source of the amount credited or the investment, money, valuable article, or funds from which the expenditure was made suppression of any production, sales, any amount chargeable to tax and of any item of receipt liable to tax or the explanation offered by the person is not, in the Commissioner's opinion, satisfactory, the amount credited, value of the investment, money, value of the article, or amount of expenditure suppressed amount of production, sales or any amount chargeable to tax or of any item of receipt liable to tax shall be included in the person's income chargeable to tax under head "Income from Other Sources" to the extent it is not adequately explained.
> 2 .....
> 3. .....
> 4. Sub-section (1) does not apply,-

(a) to any amount of foreign exchange remitted from outside Pakistan through normal banking channels that is **encashed into rupees by a scheduled bank and a certificate from such bank is produced to that effect.**

The bare reading of the aforementioned sub-section (4) reveals that when amount of foreign exchange remitted from outside Pakistan shall not be added as unexplained income under sub-section (1) of section 111, however, if the taxpayer fulfills the following conditions: -

(c) the amount has been received through normal banking channel in Pakistan,
(d) encashed into Pak rupees through a schedule bank, and
(e) certificate from such bank is produced to that effect.

9. Under Private Foreign Currency Accounts Rules framed by the State Bank of Pakistan, any Pakistani national residing in or outside Pakistan, including those having dual nationality may operate bank account in foreign currency in any schedule bank and the said foreign currency account can be fed by remittances received from abroad, travelers cheques issued outside Pakistan, foreign currency notes and foreign exchange generated by encashment of securities issued by the Government of Pakistan. These accounts are free from all foreign exchange restrictions. In other words, account holders have full freedom to operate on their accounts to the extent of the balance available in the accounts either for local payment in rupees or for remittance to any country and for any purpose or for withdrawal in the shape of foreign currency notes and travelers cheques.

10. In the present case there is no dispute that the appellant has received US $ through normal banking channel and said transaction has been confirmed by the bank vide its letter cited supra. Therefore, the appellant has complied with only one condition enumerated above as clause (a) but there is no proof that the said amount was encashed by the bank into Pak rupees and further no certificate in this regard has been produced despite of several opportunities were provided by this Tribunal, the learned AR has failed to produce such certificate from the bank showing the date of encashment, exchange rate, amount encashed and certificate to the effect that the encashment of Foreign Currency has been reported to the State Bank of

Pakistan. The rationale behind the insertion of sub-section (4) in section 111 was to generate foreign remittances by the State to pay off foreign debts and to take benefit of such concession it is the national obligation of the appellant to surrender the foreign remittances (US $) before any schedule bank and receive encashment into Pak rupees but instead of doing so he opted to sell the US $ in the open market to earn profit. Since, the appellant has failed to encash the remittances as per prescribed law, therefore, he cannot be entitled to get benefit of the same. The provisions of section 111(4) of the Income Tax Ordinance, 2001 is just like an exemption clause which provides that if the taxpayer complies with the conditions enumerated above, then the taxpayer would be entitled to get benefit from the said provisions. The law is well-settled that exemption provisions are to be construed strictly and that it is always for the assessee/taxpayer to establish that his case clearly falls within the exemption clause. In re: *Army Welfare Sugar Mills Limited and others v. Federation of Pakistan* (1992 SCMR 1652) *the Hon'ble Supreme Court of Pakistan* settled the principle of interpretation of exemption clauses in fiscal statutes in the following words:-

> *"There are two basic principles of construing a provision of statute involving exemption from payment of tax, namely, the first rule is that the burden of proof is on the person who claims exemption. The Second Rule is that a provision relating to grant of tax exemption is to be construed strictly against the person asserting and in favour of taxing officer."*

As stated supra, the appellant has not strictly adhered to the provisions of section 111(4) of the Income Tax Ordinance, 2001. Therefore, by following the principle laid down by the Hon'ble Supreme Court and keeping in view the facts of the case, we are of the considered opinion that the assessing officer has rightly rejected the taxpayer's claim of exemption u/s 111(4) of the amount of Rs.41,493,600/-, therefore, the addition made u/s 111(1)(b) to the extent of such amount is hereby confirmed. Order of the learned CIR(A) in this regard is accordingly modified.

11. Appeal of the taxpayer is disposed of in the above manner.
