

**IN THE APPELLATE TRIBUNAL INLAND REVENUE,
LAHORE BENCH, LAHORE.**

I.T.A. No. 1203/LB/2014
(Tax year-2011)

I.T.A. No. 1204/LB/2014
(Tax year-2012)

I.T.A. No. 1205/LB/2014
(Tax year-2013)

M/s. Chenab Steel Re-rolling Mills, Lahore. Appellant

Vs.

The Commissioner Inland Revenue, Lahore.Respondent

Appellant by:- Mr. Muhammad Amir Qadeer, Advocate
Mr. Umer Rashid, Advocate

Respondent by: Mr. Sajjad Haider Afzal, D.R.

Date of hearing:-10.06.2014

Date of Order:-10.06.2014

ORDER



These three appeals are directed against the consolidated impugned order of the learned CIR (A) dated 31-05-2014 in respect of the order passed by the taxation officer u/s. 221/113 of the Income Tax Ordinance, 2001 passed in case of steel re-rolling unit, which did not charge and pay minimum tax u/s 113(ibid) in respect of Tax Years 2011, 2012 and 2013 on the following common grounds:-

- “1. That the order of CIR dated 31-05-2014 as well as the Impugned Order of the DCIR U/S. 221/113 of the Income Tax Ordinance, 2001 dated NIL are unwarranted, void ab initio, illegal and without lawful authority, hence, liable to be annulled.
2. That the minimum tax chargeable u/s. 113 of the Income Tax Ordinance, 2001 in case of this Tax-payer is as under:-

Turn-over	Rs.668,501,464/-for the Tax Year 2011, Rs.682,263034/- for the Tax Year 2012 and Rs.828168633/- for the Tax Year 2013.
Minimum Tax @ 1%	Rs.6,685,015/-for the Tax Year 2011, Rs.6822630/- for the Tax Year 2012 and Rs.4140843/- for the Tax Year 2013.

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Less: Reduction @80% Allowed by Cl. (8) of Pt. Of the Schd. to the Income Tax Ordinance, 2001.	Rs.5,348,012/-for the Tax Year 2011, Rs.5458104/-for the Tax Year 2012 and Rs.3312675/- for the Tax Year 2013.
Net payable Minimum Tax	Rs.1,337,003/- for the Tax Year 2011
Flood Surcharge	Rs.58,494/- for the Tax Year 2011.
Total Tax Payable	Rs.1,395,497/- for the Tax Year 2011, Rs.1364526/-for the Tax Year 2012 and Rs.828168/- for the Tax year 2013.

the learned Inland Revenue Officer has charged the same at Rs.6,685,014/- for the Tax Year 2001, Rs.6878923/- for the Tax Year 2012, Rs.4140843/- for the Tax Year 2013.

which

is factually incorrect.

Out of chargeable amount of Rs.1,395,497/- for the Tax Year 2011 at Rs.1364526/-for the Tax Year 2012 and Rs.828168/-for the Tax Year 2013, this appellant/Taxpayer has already paid Rs.920,565/- for the Tax Year 2011, at Rs.924894/-for the Tax Year 2012 and Rs.1384461 for the Tax Year 2013 and the balance remains at Rs.474,932/- for the Tax Year 2011, Rs.439632/- for the Tax Year 2012 . Nothing to be paid for the Tax year 2013.

3. That the CIR Appeals was not justify in confirming the order of DCIR and misinterpreted and misunderstood the law.
4. That the steel re-rolling products manufactured and sold by this Appellant/Tax-payer do/did fall within the ambit of 'fast moving consumer goods' (f.m.c.gs.), to which 80% reduction of minimum tax has been allowed under Clause (8) of Pt.111 of the 2nd Schedule to the Income Tax Ordinance 2001.

The expression 'fast moving consumer goods' has not been defined in the Income Tax Ordinance, 2001. Its meaning have, therefore, to be ascertained from the text books on Commerce.

According to the "Dictionary of Commerce" by Naveen Chand Jain, " Fast moving consumer goods" products with high levels of sales which are sold within a short period of time".

According to the "Product Management in India" by Ramanuj Majumdar (ISBN 978-81-203-1252-4), the following are the main characteristics of FMCGs:-

From the consumers' perspective:

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- (i) Frequent purchase;
 - (ii) Low involvement (little or no effort to choose the item-products with strong brand loyalty are exceptions to this rule); and
 - (iii) Low price.
- From the marketers' angle:
 - (i) High volumes;
 - (ii) Low contribution margins;
 - (iii) Extensive distribution networks; and
 - (iv) High stock turn-over.

When the steel re-rolling products are viewed in the perspective of the above characteristics, they do fall within the definition of FMCGs.

5. That there is no 'mistake apparent from the record' in the deemed assessment u/s. 120 of the Income Tax Ordinance, 2001 .

The e-filed Return cannot be submitted until allowed by the Federal Board of Revenue's e-filing system, hence, there cannot be any mistake in such a return, and the resultant deemed assessment.

6. That Section 221 of the Income Tax Ordinance, 2001 takes care of only 'any order passed by him (the Commission)'.

A deemed assessment order u/s. 120 of the Income Tax Ordinance, 2001 falls outside the ambit of 'any order passed by the Commissioner' envisaged by Section 221 of the Income Tax Ordinance, 2001.

The impugned rectification Order is thus void ab initio, illegal and without lawful authority, as it has allegedly rectified a deemed assessment u/s. 120 (ibid).

7. That as the deemed assessment had been made by the e-filing system devise by the Federal Board of Revenue consciously and deliberately in accordance with the consistent practice of the Department in consonance with the view prevailing at the relevant time, it cannot be alleged to have been replete with any 'mistake apparent from the record' rectifiable u/s. 221 of the Income Tax Ordinance, 2001. Reliance is placed on 2006 PTD 2590.

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8. That the impugned Order u/s. 221 of the Income Tax Ordinance, 2001 is tenable neither on the legal score, nor on the factual plane".

2. Detail of the turnover, income declared and the tax in this respect is as under:-

Description	Tax Year 2011	Tax Year 2012	Tax Year 2013
Turn over declared	668,501,464	682,263,034	828,168,663
Net Income declared	2,585,182	2,814,635	4,685,860
Tax charged on Taxable Income	646,296	689,586	870,536
Total Tax Pay able as per Declared Income	727,330	745,879	964,253
Turn over tax thereon @ 1 %	6,685,014	6,822,630	4,190,843

3. Brief facts leading to these appeals as mentioned in the proceedings of the case are that in reply to the Show Cause Notice, the Appellant/Taxpayer contended that as he dealt in fast moving consumer goods (f.m.c.gs.), he was entitled to 80% reduction in the minimum tax chargeable @ 1% in respect of Tax Year 2011, 2012, and @ 0.5% in respect of Tax Year 2013 adhering to clause (8) of Part III of 2nd Schedule to the Income Tax Ordinance, 2001. The Taxation Officer did not agree with the contention of the appellant and passed a consolidated order dated 31-05-2014 under section 221 of the Ordinance, 2001 for all the three years under review.

4. Appeals filed against the said Order before the learned C.I.R. (A) failed, as according to the learned C.I.R. (A), Clause (8) of Part III of 2nd Schedule to the Income Tax Ordinance, 2001 did not apply to this case because that clause dealt with 'distributors' only, and this appellant/taxpayer, being a manufacturer, was not covered therein.

5. Learned A.R. appearing for the Appellant / Taxpayer argued that the steel re-rolling products manufactured and sold by this Appellant / Taxpayer fall within the definition of 'f.m.c.gs', hence, they qualify for 80% reduction allowed by the said clause (8) of Pt. III of the 2nd Schedule to the Income Tax Ordinance, 2001. He argued that as the matter involves interpretation of law, and arguments, it is not covered by Section 221 of the Income Tax Ordinance, 2001. It was submitted that even if the learned C.I.R. (A)'s interpretation is accepted that the said Clause (8) applied only

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to 'distributors', this Appellant / Tax-payer does fall within the definition of 'distributor' as contained in the Black's Law Dictionary, 8th Edition at page 509.

6. Conversely, the learned D.R. has supported the orders of the authorities below contending that the mistake of non-charging of minimum tax u/s 113(ibid) was apparent on the face of the record, hence, it was rectifiable. Regarding the applicability of Clause (8)(ibid) he reiterated the stance taken by the learned C.I.R. (A).

7. Having heard the rival parties and perusal of the relevant law, we are not persuaded by the Departmental stance. For the sake of convenience Clause (8) of Pt. III of the 2nd Schedule to the Income Tax Ordinance, 2001 is reproduced hereunder:-

"(8). For the distributors of pharmaceutical products, fertilizers, consumer goods, including fast moving consumer goods, the rate of minimum tax on the amount representing their annual turnover under section 113 shall be reduced by eighty percent,"

which allow 80% reduction to the 'distributors' of certain goods.

Question arises whether a manufacturer of steel re-rolling products is included within the definition of a 'distributor'.

The word 'distributor' has neither been defined in the definition clauses contained in Section 2 of the Income Tax Ordinance, 2001, nor the said Clause (8) defines the same. We will, therefore, have to resort to the meanings of the word 'distributor' in the Legal Dictionaries.

Black's Law Dictionary, 8th Edition defines the word 'distributor' as under:-

"A wholesaler, jobber, or other manufacturer or supplier that rolls chiefly to retailers and commercial users." (at p. 509)

As the word 'distributor' takes within its fold manufacturer also, the learned C.I.R. (A) grossly erred in giving restricted meaning to this word

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and excluding the Appellant / Tax-payer from its enclave, as he is a manufacturer of steel re-rolling products.

8. We do subscribe the view taken by the learned C.I.R.(A) as to the strict interpretation of an exemption / concession clause, yet we hold that the construction of an exemption clause should not be as rigid and strict that purpose of allowing exemption is defeated. We are of the considered opinion that exemption clauses do require purposive interpretation instead of strict literal construction. While interpreting an exemption clause, clear purpose of allowing exemption must be kept in view, and it should be so interpreted that the exemption / concession may not be thwarted from the eligible tax-payers.

9. Now we revert to the goods covered by Clause (8) of Pt. III of the 2nd Schedule to the Income Tax Ordinance, 2001, which are as under:-

- (i) pharmaceutical products;
- (ii) fertilisers;
- (iii) consumer goods; and
- (iv) fast moving consumer goods.

The Appellant/Tax-payer's contention is that his steel re-rolling products fall within the expression "fast moving consumer goods".

10. The expression 'fast moving consumer goods' is not defined in the Income Tax Ordinance, 2001, hence, we lay hands to its definitions relied upon by the learned A.R., and not rebutted by the learned D.R., which are as under:-

According to the "Dictionary of Commerce" by Naveen Chand Jain, "Fast moving consumer goods" mean "products with high levels of sales which are sold within a short period of time"

According to the "Product Management in India" by Ramanuj Majumdar (ISBN 978-81-203-1252-4), the following are the main characteristics of FMCGs:-

↳ From the consumers' perspective:

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- (i) Frequent purchase;
- (ii) Low involvement (little or no effort to choose the item — products with strong brand loyalty are exceptions to this rule); and
- (iii) Low price.

↓ From the marketers' angle:

- (i) High volumes;
- (ii) Low contribution margins;
- (iii) Extensive distribution networks; and
- (iv) High stock turn-over.

As the f.m.c.gs. have been included in the said clause (8) by way of residuary goods, any goods/products qualifying the above-reproduced criteria may be considered as f.m.c.gs, and they are eligible for 80% reduction thereunder.

When the steel re-rolling products are viewed in the perspective of the above characteristics, they do fall within the definition of f.m.c.gs.

Now coming to the scope of rectification u/s 221 of the Income Tax Ordinance, 2001 in the particular scenario of this case, we realized that Income Tax Returns in all the three years viz., 2011, 2012 & 2013, were e-filed by the Appellant / Tax-payer. The e-filed Return cannot be submitted until allowed by the F.B.R.'s e-filing system, which has been devised according to well-defined formulas, hence, the concept of mistake therein is alien to such e-filed Returns.

12. As the deemed assessment had been made by the e-filing system devised by the Federal Board of Revenue consciously and deliberately in accordance with the consistent practice of the Department in consonance with the view prevailing at the relevant time, it cannot be alleged to have been replete with any 'mistake apparent from the record' rectifiable u/s. 221 of the Income Tax Ordinance, 2001. Reliance is placed on 2006 PTD 2590.

13. Even otherwise the scope of rectification is limited to the 'mistakes apparent from the record'. Where the alleged mistake admits of more than one interpretations, it cannot be said to be the one apparent from the

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record, and its rectification is not warranted u/s 221 of the Income Tax Ordinance, 2001. Reliance has been rightly placed by the learned A.R. on 2014 PTD (Trib.) 484 and 2013 PTD 508 (Kar.).

14. In the instant case, the matter of application or in-application of Clause (8) of Pt. III of the 2nd Schedule to the Income Tax Ordinance, 2001 is involved, which admits of more than one interpretation — one favouring the tax-payer, and the other suitable to the Department, hence, it falls outside the purview of rectification u/s 221 of the Income Tax Ordinance, 2001.

15. As a sequel to the above, we hold that the Orders passed by the D.C.I.R. u/s 221/ 113 of the Income Tax Ordinance, 2001 dated NIL in respect of Tax Year 2011, 2012 and 2013 and upheld by the learned C.I.R.

(A), are without any legal sanction, hence, the same are annulled.

16. All the three appeals filed by the taxpayer are allowed to the extent and in the manner mentioned supra.


(FIZA MUZAFFAR)
Accountant Member


(JAVAID MASOOD TAHIR BHATTI)
CHAIRMAN