

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

ITA No.1991/LB/2012
(Tax year 2009)

M/s. Plasticans (Pvt) Ltd., 120/3, Industrial
Estate, Kot Lakhpat, Lahore. ... Appellant

Versus

The CIR, RTO, Lahore. ... Respondent

Appellant by : Mr. Nouman Iftikhar, ITP.
Respondent by : Ms. Fauzia Adil, DR.

ITA No.198/LB/2013
(Tax year 2009)

The CIR Zone-VIII, RTO-II, Lahore. ... Appellant

Versus

M/s. Plasticans (Pvt) Ltd., 120/3, Industrial
Estate, Kot Lakhpat, Lahore. ... Respondent

Appellant by : Ms. Fauzia Adil, DR.
Respondent by : Mr. Nouman Iftikhar, ITP.

Date of hearing : 22.04.2014
Date of Order : 22.04.2014

ORDER

These cross appeals, pertaining to tax year 2009, have been filed by the taxpayer and Revenue, against order dated 16.11.2012, passed by the learned CIR (A), Lahore.

During the course of hearing the AR did not press the legal grounds; Rests of the grounds are discussed hereunder:-

1. Addition under the head sale:-

Learned counsel for the appellant submitted that addition made in the declared sales to the tune of Rs. 3,097,167/- on the basis of variation in sales rate is incorrect and uncalled for due to the reason that all supplies were made to recognized companies i.e. M/s Atlas Honda Limited, Shezan International Limited. These companies do not accept the supplies without prior agreement of rates. He further argued

that the variations in items rates as identified by the assessing officer are dependent on the market competition so as to satisfy the customer and continued sales. Therefore, supplies are made as per agreed rates. He contended that during the audit proceedings, purchase orders and sales invoices of the aforesaid companies were also furnished which can be easily verifiable from the customers directly. No third party or direct cross verification was executed. He produced copies of item wise sales detail, sales tax Invoices and purchase orders issued by the customers before us.

We have heard both the parties and perused the relevant record on file. In view of documents furnished we, in the interest of justice and fair play, deem it appropriate to vacate the orders of below authorities on this issue and remand the case to the concerned assessing officer. The concerned officer is directed to proceed according to law after providing proper opportunity of hearing to the appellant/taxpayer. The taxpayer is directed to prove his case before officer concerned.

2. Addition under the head stock in trade u/s 111(1)(a):-

Learned counsel for the appellant contended that addition of Rs. 3,245,192/- made under the head stock-in-trade u/s 111(1)(a) of the Ordinance is totally based on assumptions and incorrect application of accounting principle. Further, as per accounting principles the closing stock appears in the trial balance only when it is adjusted against purchases by the entry as there is no adjustment during the said year. The correlation of opening and closing stock figures between trial balance and balance sheet is against the accounting principles. He produced before us copies of trial balance and relevant notes to the audited accounts to fortify his arguments.

We have heard both the parties and perused the relevant record on file. We in the interest of justice and fair play deem it appropriate to remand the case to the concerned assessing officer with direction to examine the documents and pass a speaking order. The concerned officer is also directed to proceed according to law after providing proper opportunity of hearing to the appellant/taxpayer.

3. Addition on account of cash in hand u/s 111(1)(b):-

Learned counsel for the appellant contended that assessing officer made an addition of Rs. 2,863,967/- on account of cash in hand u/s 111(1)(b) of the Ordinance on the point that there is a difference between the total of debit/credit sides and balance of cash account as on 30-06-2009. He asserted that such a calculation can never be found to be correct but in fact would lead to illegal assumptions. Further the alleged correct debit balance of cash account as pointed out by the assessing officer does not correlate with our ledger which was provided during the audit proceedings to the assessing officer, therefore assumption of wrong calculation of debit balance of cash account is unfounded and unprecedented. He submitted a reconciliation statement along with copy of cash book, wherein the breakup of cash in hand is as follows:

Opening balance (evident from audited accounts)	Rs. 125,048
Total debit (evident from total of cash book's debit side)	Rs. 5,251,671
Total credit (evident from total of cash book's credit side)	Rs.(4,909,910)
Closing balance (evident from audited accounts)	Rs. 466,809

He vehemently asserted that figures assumed by assessing officer amounting to Rs. 2,040,652 (debit) and Rs. 1,573,843/- (credit) are not appearing anywhere in the cash book, apparently looks that it is a

calculation mistake, assessing officer wrongly took six digit figures in five digit and came out with the said assumed figures.

In view of the foregoing situation the issue under consideration requires further investigation/examination. Hence, the matter is remanded to the officer concerned who will decide the issue after examining the record. The taxpayer is directed to produce all the relevant record before the officer concerned.

4. Addition on account of suppression in sales (closing stock):-

Learned counsel for the appellant submitted that assessing officer after verifying the bills of entries and the details of local purchases provided during the audit proceedings has made an addition of Rs. 1,200,046/- on account of suppression in sales for alleged closing stock of imported raw material. He asserted that all material purchases are named as PMC (Plastic Molding Compound) either purchased from local market or through imports. There is no difference in ABS (Acrylonitrile Butadiene Styrene)/PMC (Plastic Molding Compound) but in fact are two names of the same raw material. ABS falls under the broader scope of PMC. To clarify all local raw materials is identified as PMC whereas the same when imported is called ABS which is a category of PMC. The appellant for its internal control has segregated its stock statement as per local and imported category ABS (PMC) and other material falling under the category of PMC, the assessing officer considered the total closing stock of ABS(PMC) as imported which only once imported during the year. Remaining year the appellant purchased ABS(PMC) from local market and the closing stock of ABS(PMC) contains local and imported material. He further contended that the very purpose of an audit is not to make an addition

in the income of a taxpayer but to check the veracity of the expense made.

In support of his contentions he submitted month wise local purchase/import and consumption of PMC alongwith quantitative and qualitative reconciliations. He vehemently contested that assessing officer made the addition on guess work without understanding the nature of material purchased locally or imported.

We have heard both the parties and perused the relevant record on file. In view of arguments made bar we, in the interest of justice and fair play deem it appropriate to remand the case to the concerned assessing officer with direction to check the veracity of said documents and pass a speaking order. The concerned officer is also directed to provide proper opportunity of hearing to the appellant before passing order.

5. Addition on account of suppression in sales (retrieval of data):-

Learned counsel for the appellant submitted that addition made by the assessing officer on account of alleged suppression in sales on the basis of retrieval of data of sales tax of third parties from e-FBR portal amounting to Rs. 1,848,228/- is illegal and against the fact of the case. He contended that all the third parties (buyers) are recognized companies i.e. M/s Atlas Honda Limited; M/s Shezan International Limited; M/s CCL Pharmaceuticals (Pvt) Limited; M/s Pak Electron Limited and M/s Star Laboratories (Pvt) Limited and are existing active taxpayers who failed to incorporate the true quantum of purchases made from the appellant in their respective sales tax returns. He further contended that appellant on its end provided to the assessing officer monthly sales tax returns alongwith sales invoices raised to the

atoresaid customers during the period which can easily be verified from the customers. He added that the appellant requested the customers to provide detail of purchases made by them from the appellant and the said certificates were provided to assessing officer during audit proceeding. He contended that the sales tax law allows the taxpayer to take credit of purchases in later months than the month in which the seller has declared the sales; but assessing officer did not verify the transaction by looking at this provision of sales tax law. He produced party wise purchase verifications which prove that the party wise sales provided to the assessing officer are in line with the purchases made by the buyers from appellant.

In view of the foregoing discussion we are of the view that the issue under consideration requires further investigation/examination. Hence, the matter is remanded to the officer concerned who will decide the issue of input tax after examining the documents. The taxpayer is also directed to produce all the relevant record before the officer concerned having jurisdiction of the case.

6. Addition under section 174(2):-

The following additions have been made under various heads.

Head of Account	Claimed	Disallowed
Salaries, Wages & Benefits	Rs. 2,398,500	Rs. 508,000
Freight & Octroi	Rs. 428,424	Rs. 214,212
Repair & Maintenance	Rs. 505,686	Rs. 252,843
Miscellaneous	Rs. 428,424	Rs. 159,528
Packing & Forwarding	Rs. 505,686	Rs. 236,024
Total	Rs. 4,266,720	Rs. 1,370,607

Learned counsel for the appellant contended that expenses incurred are fully verifiable. The basis adopted for the disallowance of the above is simply that no evidence has been provided, whereas all the vouchers and books of accounts produced before the assessing officer for

examination. He submitted that act of assessing officer to add back the expenses without looking at the supporting evidences is unjust and uncalled for.

We have heard both the parties and perused the relevant record on file. On this ground we do not find ourself in agreement with the argument of AR. The disallowances under the heads being reasonable are confirmed. The taxpayer's appeal on this ground is dismissed.

7. Addition under section 21(c).

Learned counsel for the appellant submitted that assessing officer made additions of Rs. 1,800,000/- and Rs. 55,000/- under the heads "directors' remuneration" and "legal & professional" respectively on the basis that tax has not been deducted and deposited. He contended that copies of challans as evidence of deposit of tax were submitted but totally ignored by the assessing officer and made illegal additions. He produced copies of tax deposit challans before us.

We have heard both the parties and duly considered the arguments put-forth by the learned counsel for the appellant. We remand the case to the assessing officer for denovo consideration. The assessing officer shall pass speaking order after examining evidence to be produced by the appellant.

8. Addition under section 21(l):-

The learned counsel for the appellant contested that assessing officer has made an addition of Rs. 1,299,506/- u/s 21(l) of the Ordinance on adhoc basis and without giving any plausible reasoning. The assessing officer took figures of cash withdrawal from bank and made the said addition instead of verifying the expenses from cash book and supporting vouchers. All the payments were expended on petty purchases to meet the day-to-day needs which do not attract the

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provisions of section 21(l) of the Ordinance. The evidence of the same was also furnished during audit proceedings. He produced before us copy of bank ledger account. He further contended that addition made merely on stock phrases is not maintainable.

We have heard both the parties and perused the relevant record on file. Keeping in view the arguments of AR we in the interest of justice and fair play deem it appropriate to remand the case to the concerned assessing officer with direction to check the veracity of documents and pass a speaking order. The concerned officer is also directed to proceed according to law after providing proper opportunity of hearing to the appellant.



Addition on account of Depreciation:-

Learned counsel for the appellant contended that disallowance of depreciation amounting to Rs. 540,887/- on the ground that it was an accounting depreciation and tax depreciation schedule was not e-filed by the appellant with the income tax return is illegal and uncalled for as the appellant has charged depreciation on the same rates as prescribed in the Third Schedule to the Ordinance. Thus, the view of the assessing officer at the time of rejection of accounting depreciation without allowing tax depreciation which is approximately the same is absurd and without any logic. He submitted before us schedule of tax depreciation alongwith copy of Third Schedule.

In view of the foregoing discussion the issue under consideration requires further investigation/examination. Hence, the matter is remanded to the officer concerned who will decide the issue of input tax after examining the documents. The taxpayer is also directed to produce all the relevant record before the officer concerned having jurisdiction of the case.

10. Initiation of penalty proceedings:-

As regard the initiation of penalty proceedings separately against the appellant, learned counsel for the contended that the penal provisions under the Ordinance are criminal/quasi-criminal in nature. A mandatory condition required for the levy of penalty is the establishment of mens-rea which is an essential ingredient of a criminal offence. He submitted that in the instant case, no deliberate fault can be attributed towards the appellant so as to levy of penalty. In view of the foregoing situation the issue under consideration requires further investigation. Hence, the matter is remanded to the officer concerned who will decide the issue of penalty after examining the document. The taxpayer is directed to produce all the relevant record before the officer concerned having jurisdiction of the case.

Learned DR on the other hand, strongly opposed the contentions of learned AR and supported the orders of authorities below.

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The department is in appeal against setting aside by the CIR(A) on two issues. Since the matter has already been discussed thoroughly while deciding taxpayer's appeal, therefore, the departmental appeal is disposed off accordingly.


(NAZIR AHMAD)
Judicial Member


(FIZA MUZAFFAR)
Accountant Member