

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

STA No.624/LB/2013

M/s Xtreme Thrill, Lahore. **Appellant**

Versus

The CIR Zone-I, RTO, Lahore. **Respondent**

Appellant by : Mr. M. M. Akram, Advocate
Respondent by : Ch. Jaffar Nawaz, D.R.

Date of hearing : 04.07.2014
Date of order : 04.07.2014

ORDER

The titled appeal preferred at the instance of the registered person is directed against the order in appeal No.447 dated 13.06.2013 passed by the learned Commissioner Inland Revenue (Appeals), (Camp at Lahore), Multan.

2. Facts of the case in brief are that on scrutiny of monthly sales tax return for the tax period 07/2007 to 03/2010 it was observed that the appellant had claimed inadmissible input tax against exempt supplies amounting to Rs.19,03,816/-, incorrectly take benefit of zero rating supplies amounting to Rs.34,77,232/-, failed to pay the Sales Tax amounting to Rs.24,16,150/-, concealed sales/services valuing Rs.14,25,517/- and claimed input tax at Rs.17,93,023/- against the fake invoices issued by the dummy suppliers. On the basis of these allegations a show cause notice was issued calling upon the appellant as to why evaded amount of Sales Tax along with default surcharge and penalty may not be recovered from him. As per the impugned order reasonable opportunity of hearing was afforded but neither the appellant appeared nor any adjournment has been sought, therefore, the adjudication proceedings were culminated in the shape of passing the order in original No.01/2010 dated 16.06.2010. Being aggrieved, an appeal was preferred before the

learned CIR(A) who vide order dated 13.06.2013 has upheld the treatment. Hence, this appeal.

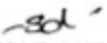
3. The learned A.R has assailed the impugned order as unjustified and contrary to the facts of the case. He submitted that the order in original was passed without affording reasonable opportunity of hearing to the taxpayer which is against the principle of 'Audi Altrem Patrum'. To elaborate his contention it was submitted that after issuing show cause notice on 19.05.2010 the case was firstly fixed for hearing on 31.05.2010. The appellant sought adjournment through letter dated 28.05.2010 which was duly received on the Taxpayers Facilitation Counter (TFC). Further stated that the next date of hearing was fixed on 09.06.2010 for which the appellant had duly applied for adjournment vide letter dated 08.06.2010. Similarly, it was pointed out that a Writ Petition was also moved before the Honourable Lahore High Court, inter alia, challenging the jurisdiction and the Honourable Court had granted interim relief directing the department to restrain from passing the final order. However, after the lapse of almost two year a notice for recovery of an amount of Rs.98,23,006/- alongwith default surcharge of Rs.38,03,268/- and penalty at Rs.22,19,071/- was received. The learned A.R submitted that from the facts narrated above it is abundantly clear that the order in original was passed on the back date i.e. 16.06.2010 for which no notice for hearing was issued. The learned A.R contended that in the light of facts stated above the learned CIR(A) has upheld the order in original without application of judicious mind in a summary manner and his order is not sustainable in the eyes of law. The learned D.R, on the other hand, supported the impugned order for the reasons stated therein. He submitted that since the appellant had failed to appear or submit any reply the order of the Adjudication Officer is perfectly

legal and the impugned order of the learned CIR(A) does not call for any interference

4. After having heard the rival arguments and perusing the available records it has been observed that the appellant had been charged without affording proper opportunity of hearing which is violative of the principle of natural justice. It is also observed that the learned CIR(A) has also rejected the contention of the appellant in a non-speaking order in the summary manner. Therefore, the orders of the authorities below are set aside and the case is remanded to the Taxation Officer for passing the order afresh as per law after affording reasonable opportunity of hearing.

5. The appeal is disposed of accordingly.


(CH. SHAHID IQBAL DHILLON)
JUDICIAL MEMBER


(MUHAMMAD AKRAM TAHIR)
ACCOUNTANT MEMBER