

APPELLATE TRIBUNAL INLAND REVENUE LAHORE BENCH LAHORE
(Camp at Multan)

ITA No.512/LB/2013
(Tax Year 2010)

M/S. Muhammad Iqbal Khan Multan. ... Appellant

Versus

The CIR Zone-I RTO., Multan. ... Respondent

Appellant by:- Mr.Mueed A. Kh. Advocate

Respondent by:- Syed Bahadar Ali Shah D.R.

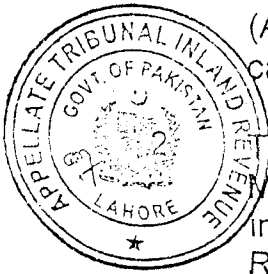
Date of hearing:-18-12-2014

Date of Order:-18-12-2014

ORDER

The above titled appeal has been filed by the taxpayer against the impugned order dated 09-01-2013 passed by the learned CIR(Appeal), Multan on the following grounds:-

"1. That the order of the learned Commissioner of Income Tax (Appeals), Multan is bad in law and against the facts of the case.



That the learned Commissioner of Income Tax (Appeals), Multan is erred in upholding the order of the DCIR who interfered the agricultural income declared by the taxpayer at Rs.6,00,000/-without any jurisdiction. His remarks are incorrect, irrelevant and baseless.

3. That the learned CIR (Appeals) Multan is erred in confirming the addition under Section 111(1)(b) without any substantive reasons and ignoring the decision of the learned Tribunal as

held "probe into agricultural is beyond the Assessing Officer jurisdiction" which is unjust, unfair and unwarranted.

4. That the Learned CIR (Appeals) is unjustified in ignoring the fact that none of the agriculturist is paying the tax as per second schedule Provincial agricultural income tax moreover this is the subject of Provincial Government to tax the same so the action is irrelevant and against the spirit of law".

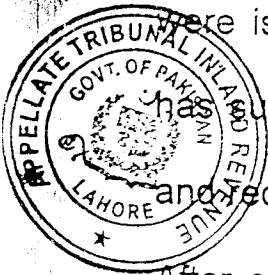
2. Brief facts of the case are that the taxpayer is an individual.

Return of income for tax year 2010 was filed declaring income as under:-

Other source	Rs.60,000/-
Business income	Rs.27,481/- (exempt)
Property income	Rs.1,871/-

3. On receipt of information regarding investment on purchase of Motor Vehicle for a consideration of Rs.1,239,000/-, various show causes were issued. In response thereto, the learned counsel for the taxpayer has submitted written reply alongwith wealth statement as on 30-06-2010 and reconciliation thereof by disclosing agricultural income at Rs.600,000/-.

After examining the said documents the taxpayer was required to furnish explanation/documents regarding agricultural income disclosed for the first time without documentary evidence and assets as on 30-06-2009 to the tune of Rs.2,376,239/-. The learned A.R further submit written reply dated.12.11.2012 alongwith copy of payment of agricultural tax paid at Rs.7,000/- which was found unsatisfactory. Therefore, final show cause



notice was issued on 14-11-2012 for compliance by 20-11-2012. In response thereto, the taxpayer furnished reply which was found unsatisfactory, hence an amount of Rs.473,333/- was found unexplained and already completed deemed assessment was amended u/s 122(1) read with section 122(5) by making addition u/s 111(1)(b) at Rs.473,333/-. Being aggrieved the taxpayer approached the learned first appellate authority who vide an order dated 09-01-2013 rejected the appeal of the taxpayer, hence the instant appeal by the taxpayer.

4. Both the parties have been heard and relevant orders perused.

The learned counsel of the taxpayer vehemently argued that the agricultural Income is exempt u/s.41 of Income Tax Ordinance, 2001. He

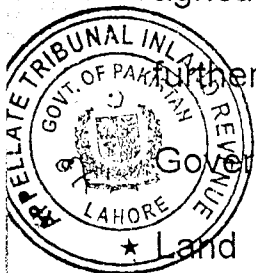
Further argued that the agricultural Income is subject of Province Government. The appellant has been declaring Income from Agricultural

Land since 1988-89. According to Notification No.3359-2001/56-A-III

issued with the signature of Secretary to Government of Punjab that

"please to direct that every person deriving income in a year having cultivated land measuring 50 Acres or more.....shall file the return of his total Agricultural Income". From above it is clear that the Second

Schedule is restricted to the holding of 50 Acres- while the appellant is owner of land of 23 Acres only, even otherwise the matter related to

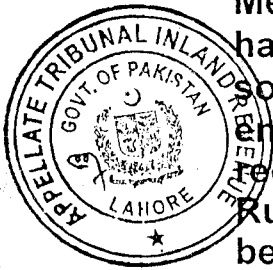


Provincial Government and not to the Federal Government. Further submitted that the Provincial Government has the every right to charge tax whether on area basis or on income basis. The Federal Government has no right to interfere the system opted or adopted by the Provincial Government. In this regard reference was made to an unreported judgment of the Tribunal passed vide ITA No.630 to 632/LB/2000 dated 26.11.2001, wherein it was held that probe into agricultural income is beyond the assessing officer's Jurisdiction. In an other judgment the Tribunal has settled the issue vide ITA No.07/LB/2012 dated 30-01-2012 with the following observations:

"The Federal Government has no authority to tax agricultural income. It has been averred by the learned counsel that the taxpayer was cultivating about two squares of agricultural land. He has filed claims of agricultural income savings to explain the investment in acquisition of impugned plot. The taxing authority could have easily forwarded such claim to the Provincial agricultural income tax in concurrence with the CIR(A) on the issue and accordingly order deletion of addition on this income and direct the taxing authority to forward the claim of agricultural income to the Provincial authorities for proper taxation".

Reference was also made to a decision of the Hon'able Lahore High Court, Lahore passed vide writ petition No.9708/2013 dated 24.04.2013 wherein there Lordship held that:

"In this background, we called Member (Taxation), Board of Revenue. He stated that the Agricultural Tax even though levied under the Act, has not taken root on an operational level due to lack of proper infrastructure. On a question posed by the court he submitted that there has been no assessment of agricultural Tax in Punjab according to his record and the same is the case with the imposition of penalties under the Act. The statement made by the Member (Taxation) made it clear that the Agricultural Tax has not been operationalised in the filed and is presently source than a still-born tax which needs to be properly enforced. The Member failed to show any record of recovery maintained under Section 6 of the Act read with Rule 19 of the Rules to establish that the Agricultural Tax is being collected under the Act. Certainty that the petitioner had committed default in payment of agricultural income tax".



The learned CIR(A) rejected the appeal of above noted appellant while he has accepted the appeal vide appeal No.152 dated.19.08.2013 of Ghulam Rasool Urf Kashif Iqbal, on reliance of Judgment of ITA No.07/LB/2012, with following words:

"The taxing authority could have easily forwarded such claim to the Provincial Agricultural Income Tax Authority for levy of Agricultural Income Tax.....I feel no hesitation to annul the impugned amended Order with the direction to the department, refer the matter to the Provincial Authority for charging of Agricultural Tax".

Thereafter the succeeding CIR(A) has also accepted the plea vide Appeal No.381 dated. 11.12.2013 in the case of Kh.Shahid Raza of Uch Sharif with the following remarks:-

“Reliance is place on Tribunal Judgment in ITA No.07/LB/2012 wherein deletion of Agricultural Income has been endorsed by the Tribunal with the direction to get claim of Agriculture Income verified from provincial authorities for proper taxation”.

5. It is pertinent to mention here that If the decision of the learned CIR(A) is accepted and the taxpayer pay the tax, even then the liability of Provincial Government for taxation on agricultural Income Tax remained intact, so it would tantamount to double taxation which is not permissible under the law. In this view of the matter, we have no hesitation to vacate the order of the learned CIR(A) and cancel the impugned amended order passed u/s 122 (5) of the Income tax Ordinance, 2001, by the DCIR for the tax year 2010.

It is ordered accordingly.

Sd/-
(SIKANDAR ASLAM)
ACCOUNTANT MEMBER

Sd/-
(JAWAID MASOOD TAHIR BHATTI)
CHAIRMAN

Aftab

Copy of the bench order forwarded to

1. The Appellant, *Mb. Mubinnas Iqbal Khan Multan*
2. THE CIR, *Multan*

By order

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25/11/15
Assistant Registrar
Appellate Tribunal Inland Revenue
Lahore

