INCOME TAX APPELLATE TRIBUNAL OF PAKISTAN

ITA No. 2570/LB OF 2012 DECIDED ON 20/06/2014
CITATION: 111TAX420 ; ;

Income Tax Ordinance, 2001 -- Sections 120(1), 122, 122(1), 122(9), 111(1)(b) --

Amendment of assessments -- Definite information not insight -- Re-assessment on basis of declaration of Taxpayer made before bank -- Fishing and roving enquires -- Addition -- Validity -- Department received information that Taxpayer purchased immovable properly -- Show Cause Notice issued to taxpayer to explain source of investment -- Another notice issued to taxpayer confronting bank loan documents wherein he had declared monthly income at Rs.64,700 whereas in return of income for Tax year 2007, Taxpayer had declared total income at Rs.206,000. This was deemed to be fraud and suppression of income -- Explanation of taxpayer that declared income for obtaining loan from bank cannot be made basis for amending his deemed assessment, rejected by assessing officer and confronted amount of Rs.570,400/- was treated as unexplained income in terms of section 111(1)(b) -- CIR(A) upheld action of assessing officer in appeal -- Scope -- Whether initially, proceedings were initiated by AO on basis of piece of information that Taxpayer has purchased property for consideration of Rs.570,400/- and he has to explain source of investment which he did to entire satisfaction of Assessing officer -- Held yes (2) Whether AO issued another Show Cause Notice confronting taxpayer with new set of information which was acquired from Taxpayer's own declaration made before bank authorities where he declared that his monthly income is Rs.64,700/- which AO treated said information as definite information and proceeded to make addition u/s 111(1)(b) -- Held yes (3) Whether it is well settled principle that amending provision u/s 122(5) can be invoked only when order passed by officer was found amendable on basis of definite information and that information should be manifest in Show Cause Notice and not subsequently by fishing inquiry -- Held yes (4) Whether AO was not justified to invoke provisions of section 122, therefore, subsequent addition made u/s 111(1)(b) is not maintainable in the eye of law which is deleted and order of CIR(A) is accordingly vacated -- Held Yes --

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

Present: CH. ANWAAR UL HAQ, JUDICIAL MEMBER.

I.T.A. No. 2570/LB/12 (Tax Year 2007), decided on 20-06-2014.

M. Asif Dilshad, taxpayer-in-person, Appellant.

Mrs. Misbah Nawaz, DR, Respondent.

Date of hearing: 20-6-2014.

ORDER

[The Order was passed by Ch. Anwaar Ul Haq, Judicial Member]- The titled appeal pertaining to tax year 2007, has been preferred at the instance of taxpayer, calling in question the impugned order dated 25-06-2013, passed by the learned CIR (Appeals), Multan.

2. Briefly stated, the relevant facts in brief are that the taxpayer in this case is an individual filed his return of income for the tax year 2007, declaring business income at Rs.206,000/- which was deemed to be treated as assessment in terms of section 120(1) of the Income Tax Ordinance, 2001. Subsequently, the department received information that the taxpayer has purchased a immovable property for a consideration of Rs.2,756,000/-. On the basis of this information, the department issued statutory notices to explain the sources of investment. The taxpayer duly responded to the notices issued and explained that the investment was made after obtaining Saiban Loan at Rs.12,90,000/- from NBP, from sale proceed of Plot at Lalazar Colony at Rs.700,000/- from encashment of Regular Income Certificates at Rs.240,000/- and out of past savings at Rs.526,000/-. The assessing officer accepted the investment being made from verifiable sources. However, the assessing officer issued another notice to the taxpayer and confronted that he had provided bank loan documents wherein he had declared monthly income at Rs.64,700/- whereas in the return of income for tax year 2007, the taxpayer had declared total income at Rs.206,000/-. This means that the taxpayer has suppressed his income to the extent of Rs.570,400/- during the tax year 2007. In response, the taxpayer contended that his declared income for obtaining loan cannot be made basis for amending his deemed assessment. However, the assessing officer rejected the explanation of the taxpayer and proceeded to pass an amended order u/s 122(1) whereby the confronted amount of Rs.570,400/- was treated as unexplained income in terms of section 111(1)(b) of the Income Tax Ordinance, 2001. Being aggrieved, the taxpayer went in appeal before the learned CIR(A) and assailed the treatment accorded by the assessing officer. However, the learned CIR(A) vide impugned order upheld the action of the assessing authority.

3. The taxpayer assailed the orders passed by the authorities below as contrary to law and facts of the case. It is submitted by the learned taxpayer that the assessing officer was not justified to invoke the provisions of section 122 and amend the deemed assessment when no `definite information' is available with him to make such amendment of assessment. It is submitted by the learned taxpayer that the proceedings in the case were initiated on the basis of information that the taxpayer has purchased a property and he has to prove that the investment was made out of available sources. It is contended that the taxpayer has satisfactorily explained the sources of investment and the same was also accepted by the assessing authority but he again proceeded on the basis of taxpayer's declaration made before the

bank authorities while obtaining loan and has unjustifiably made the impugned order on the basis of information provided to the bank authorities. It is contended by the leaned taxpayer that declaration made before the bank authorities cannot be termed as "definite information" to invoke the provisions of section 122 of the Ordinance. It is asserted that the assessing authority changed his stance again and again which tantamount to fishing inquiries which is not permissible under the law as he has to proceed on `definite information' to make amendment of assessment. On the contrary, the learned DR supported the orders passed by the authorities below.

4. I have considered the submissions made at the bar and have carefully gone through the available record. After due consideration, I find that initially proceedings were initiated by the assessing officer on the basis of piece of information that the taxpayer has purchased a property for a consideration of Rs.570,400/- and he has to explain the sources of investment which he did to the entire satisfaction of the assessing officer. The assessing authority issued another show cause notice confronting the taxpayer with a new set of information which was acquired from taxpayer's own declaration made before the bank authorities where he declared that his monthly income is Rs.64,700/-. The assessing authority treated the said information as "definite information" and proceeded to make addition u/s 111(1)(b) which action is not maintainable in the eye of law. It seems that the assessing officer has indulged in fishing and roving enquiries because no such issue was raised in the original show cause notice issued u/s 122(9) and after receipt of reply to the original show cause notice, the assessing officer had issued a second notice raising altogether a new issue which action is not maintainable in the eyes of law. The Revenue was not within its right to make fishing inquiries. It is a well settled principle that amending provision u/s 122 (5) can be invoked only when an order was passed by the Officer was found amendable on the basis of a `definite information' and that information should be manifest in the show cause notice and not subsequently by a fishing inquiry. The main difference between `information' and `definite' one was that in case of definite information officer had not to probe. The officer has to point out specific facts of transaction that is from whom and in what connection it was received, whether it was a sale proceed.

5. Furthermore, the declaration made before the bank authorities cannot be termed as "definite information" as such declaration was filed with banks was merely for the purposes of obtaining financial assistance/loans and this cannot be termed as `definite information' for the purposes of invoking the amending provisions of law. A declaration or an admission made before a third party can at best be considered as an information on the basis of which the assessing officer is empowered to start investigation and to find out as to whether that information is correct or not. Perusal of the record reveals that no such effort was made by the assessing officer to prove that the declaration made before the authorities below is correct and the taxpayer has earned more

income than that declared in the return of income.

6. Hon'ble Supreme Court of Pakistan in the case reported as (1993) 68 Tax 1(S.C. Pak.)=1993 PTD 1108, has interpreted the term "definite information" in the following manner:-

> "The expression definite information, and similar expression used in the above noticed provision or other related provisions certainly meant much more than mere material so as to cause a reasonable belief of even such evidence which might had to a definite belief. Unless there is direct information and there is no further need to put the said definite information to trial by putting in further supporting material the process of self assessment could not be reopened".

7. The issue of declaration made before the bank authorities has been decided by this Tribunal in a number of cases including, 1992 PTD 739 and in a case reported as (2006) 93 Tax 238=2006 PTD (Trib) 2012, in almost identical circumstances as involved in the present case it was held as under:-

> "Perusal of the above would reveal that the learned Tribunal has recognized the customary practice of projected figures for obtaining loans and has held unequivocally that such projected figures are not good ground for frustrating the assessment. Now, if the above principle is applied to the very basis of reopening of the present assessments, it can safely be inferred that once admitted that the statements filed with the bank were merely for the purposes of obtaining financial assistance, those cannot assume the character of definite information for the purposes of invoking the provisions of section 65 of the Ordinance".

8. In view of the above, I am inclined to hold that the assessing officer was not justified to invoke the provisions of section 122, therefore, the subsequent addition made u/s 111(1)(b) is not maintainable in the eye of law which is hereby deleted. Order of the learned CIR(A) is accordingly vacated and appeal of the taxpayer is accepted.

Appeals rejected.

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COMPUTER OF Ghazi & Company ON 30/10/2015 AT 17:20:42

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