

Citation: 1995 PTD 1159
Income-tax Appellate Tribunal Pakistan

Date of hearing: 24th October, 1994.

Before Sarfraz Ahmad, Accountant Member and Sardar Muhammad Anwar Ahmad Khan, Judicial Member

Asmar A. Sheikh for Appellant.
Ahmad Kamal, D.R. for Respondent.

ORDER

SARDAR MUHAMMAD ANWAR AHMAD KHAN (JUDICIAL MEMBER).---These four appeals for the assessment years 1983-84 to 1986-87 assail two separate orders of learned AA.C. Range-F, Lahore, dated 2-5-1987.

2. Brief facts giving rise to these appeals are that the assessee is a Private Limited Company deriving income from supply of scientific instruments to different institutions, colleges and hospitals. For the assessment year 1983-84 return was filed to declare the sales at Rs.6,59,802 with G.P. rate of 28.35%. In view of defects detailed in the body of the assessment order the I.T.O. rejected the declared version and estimated the sales at Rs.7,50,000 and subjected them to a G.P. rate of 35%. Not satisfied with the treatment meted out the appellant went in appeal. The A.A.C. set aside the order for de novas decision on estimation of sales. In re-assessment for non-compliance of statutory notices ex parte assessment was made and same income as before was repeated. For the assessment year 1984-85 the assessee had declared a loss at Rs.64,783. However, for the assessment years 1985-86 and 1986-87 no return was filed in spite of service of notices under section 56 and under section 61 of the Ordinance. The case was fixed a number of times but as the assessee did not bother to attend the proceedings, the J.T.O. completed the ex parte assessment under section 63 of the Ordinance and adopted the net income at Rs.1,00,000, Rs.1,50,000, Rs.2,00,000 respectively for the years 1984-85, 1985-86 and 1986-87.

3. It was contended by the learned counsel for the assessee that the ex parte assessment made for the assessment year 1983-84 is not legally sustainable in the eyes of law. It was contended that according to the I.T.O. this case was fixed for hearing on 21-1-1987 on which date no one on behalf of the assessee attended and ex pane proceedings were taken. But surprisingly the I.T.O. has passed the ex parte order on 24-1-1987 for which date no notice was given to the assessee. To support his contention learned counsel for the assessee cited a decision of the Lahore High Court reported as 1981 PTD 210. For the

assessment years 1984-85 to 1986-87 it was contended that the I.T.O. had adopted the net income without evolving any formula which is not legally correct. It was also argued that no notice was properly served upon the assessee and the ex parte assessments were illegal. The learned D.R. on the other hand, supported the orders of the officers below and contended that ex parte assessments were rightly made.

4. We have considered the contentions and find force in the submissions made for the assessee. For the assessment year 1983-84 notice of hearing was given for 21-1-1987 while the ex parte assessment was framed on 24-1-1987 which is not legally sustainable. In the case reported as 1981 PTD 210 the question before the High Court was as under:---

"Whether on the facts and circumstances of the case the Appellate Tribunal was justified in holding that the Income Tax Officer could resort to section 23(4) of the Income Tax Act only on 2-12-1971 and not on any subsequent date on which no notice had been given to the respondent?"

The Honourable High Court came to the conclusion that the ex parte action of the I.T.O. was not justified as no notice was given to the assessee for subsequent date on which the order was passed. The High Court held as under:---

."As stated above, in the present case, the conditions required under the law are not satisfied. The Income Tax Officer has acted illegally in making ex parte assessment on a date which was not fixed for hearing without furnishing the assessee with requisite notices. We, therefore, are of the view that - the ex parte assessment made by him under section 23(4) of the Act on 15-12-1971 was bad in law as he could do so on 2-12-1971:'

5. The facts and circumstances of the present case before us are exactly similar. The date of hearing was fixed for 21-1-1987 while the ex parte assessment was passed on 24-1-1987. In these circumstances we set aside the assessment for the assessment year 1983-84 and remand the case back to the I.T.O. with direction that the assessee should be provided a reasonable opportunity of being heard before framing the assessment. Since we have set aside the assessment for the assessment year 1983-84, the assessment for subsequent years 1984-85 to 1986-87 are also set aside for de novo consideration, by the I.T.O. after ascertaining the correct position.

6. As a result all the appeals are accepted to the extent indicated above.

Order accordingly.