

2010 PTD 1271

[IN THE INCOME-TAX APPELLATE TRIBUNAL PAKISTAN]

Present: SYED NADEEM SAQLAIN, JUDICIAL MEMBER and MAZHR
FAROOQ SHIRAZI, ACCOUNTANT MEMBER

I.T.As. Nos. 1129/LB to 1132/LB of 2008, decided on 20th May,
2009.

Shoaib Ahmed Sheikh for Appellant.

S.A. Masood Raza Qazilbash, D.R. for Respondent.

ORDER

Captioned four appeals pertaining to the tax years 2003 to 2006 have been preferred at the instance of the taxpayer, calling in question the combined impugned order dated 12-7-2008, passed by the learned CIT(Appeals), Gujranwala, Camp at Faisalabad. The taxpayer has challenged the impugned findings recorded by the learned First Appellate Authority on legal as well as factual premises. However, on the legal plane, thrust of arguments of the learned AR appearing on behalf of the taxpayer is that the service of the notices issued with regard to framing of assessments was not properly made upon the taxpayer. In the alternative, learned AR has taken up the grounds relating to merits of the case.

2. Learned counsel for both the parties have been heard.

3. As per facts borne out from the record, the taxpayer is a club established as limited company by Guarantee in 1910. No suo motu returns for the tax years under appeal were filed by the taxpayer, which led to the issuance of notices under section 114(4) of the Income Tax Ordinance, 2001 (hereinafter referred to

the Ordinance) and served through the courier service, OCS on 23-5-2007, which remained un-complied with. It has been mentioned in the appellate order that further notices were issued through the same courier service, which were also not responded to. After issuance of reminders, assessments were framed under section 121 of the Ordinance for all the tax years under appeal. Feeling dissatisfied with the impugned assessments, the taxpayer went in appeal before the learned First Appellate Authority, who vide order dated 12-7-2008 rejected the appeals of the taxpayer, hence the present appeals before the Tribunal.

4. Learned AR has vehemently argued the case and contended that no proper service of notices was made upon the taxpayer. It was argued that the Chenab Club is a leading club at Faisalabad, hence mode of service of notice by using courier service could not be considered as proper service. Learned AR further contended that section 218(2) of the Ordinance clearly has laid down procedure as to how service is to be effected under the Ordinance of 2001. Learned AR submitted that there is change in the law as compared to the repealed Ordinance. It was averred that in the new promulgated Ordinance, it has been provided that the service of notice shall be treated as properly served on the person, if personally served on the representative of person. Learned AR argued that no such effort was made by the Department. Further argued that the Department opted for the mode of courier service instead of registered post. While summing up, it was pleaded that the assessments framed in the absence of taxpayer could not be given legal credence. Contrarily, learned DR has opposed the arguments advanced by the learned AR. It was contended that the service of notices was made as per law laid down in section 218 of the Ordinance. Further argued that the taxpayer deliberately and willfully avoided to cooperate with the Department, hence Department had no alternative but to proceed ex parte in the absence of the taxpayer.

5. We have heard the learned representatives of both the

parties and also gone through the relevant orders. Before we embark upon adjudicating the issue in hand, it would be apt to reproduce hereunder section 218 of the Ordinance, which has been relied upon by both of the parties in their support:--

Section 218(2): Subject to this Ordinance, any notice, order or requisition required to be served on any person (other than a resident individual to whom subsection (1) applies) for the purpose of this Ordinance shall be treated as properly served on the person if:--

(a) Personally served on the representative of the person,

(b) sent by registered post or courier service to the person's registered office or address for service of notices under this Ordinance in Pakistan, or where the person does not have such office or address, the notice is sent by registered post to any office or place of business of the person in Pakistan; or''.

(c)

Perusal of section 218 clearly shows that though service through courier service has been provided under the law but this could not be read in isolation; if we go through the sequence of this section in which different modes of service have been provided, one cannot overlook mode provided under section 218(2) (a), which states that notice personally served upon the representative of a person shall be treated as proper service. We think that change brought about by the legislature was quite improvement in the law since where the notice is sent through registered post or courier service, the usual excuse of the assessee is that either he did not receive the notice or notice was not served upon the proper person. Obviously provision of service of notice upon the personal representative of the taxpayer would obviate this difficulty, especially, in case of registered companies and big

institution like the Chenab Club. Besides, in case, the taxpayer does not appear before the tax authorities in response to the modes of service provided in section 218(2) (a) (b), the Department ought to have adopted mode of service provided in section 218(2) (c), where procedure for service of notice as provided under the Code of Civil Procedure has been laid down that in case of failure to serve the notices in the prescribed manner, service of notice could be made through affixture. Admittedly, it was not difficult at all to serve the notice on the taxpayer or its authorized representative. We wonder that in a city like Faisalabad, a notice could not be served on the taxpayer or upon the representative of the taxpayer and that too in the case of the present taxpayer i.e. Chenab Club, which is the leading club in Faisalabad and, all the officials feel privileged to be member of the said club. At this stage, we are constrained to observe that no serious effort was made by the Department to approach the taxpayer in order to frame the assessments. We would also like to observe that the department will have to bring stark changes in its mindset and shed lethargic attitude in conducting tax proceedings, especially, in the light of prevalent tax culture in the country, where a taxpayer always feel price in not paying the tax.

6. For the foregoing reason, we deem it appropriate to vacate the impugned order passed by the learned CIT(A), set aside the case and remand it to the Taxation Officer for de novo assessment. Mr. Shoaib Ahmed Sheikh, Advocate, the learned AR is directed to take responsibility to get the taxpayer associated with the proceedings.

7. Assessee's appeals stand disposed of accordingly.

Order accordingly.