

[IN THE INCOME TAX APPELLATE TRIBUNAL, PAKISTAN]

Present: JAWAID MASOOD TAHIR BHATTI, JUDICIAL MEMBER

I.T.A No. 165/LB of 2007, decided on 2nd June, 2008.

Sabiha Mujahid, D.R. for Appellant.

Malik Mumtaz Hussain Khokhar for Respondent.

ORDER

JAWAID MASOOD TAHIR BHATTI (JUDICIAL MEMBER).- Through this appeal, the appellant Department has objected the impugned order of the learned CIT(A) dated 6-12-2006 for the tax year 2005 on the following grounds:-

- (2) That the learned CIT (A) was not justified to equate amendment under section 122 with ex parte assessment.
- (3) That the learned CIT (A) was not correct to hold that amendment under section 122 ought to have been made on the date fixed for hearing.
- (4) That the learned CIT (A) was not justified to accept evidence not produced in the amendment proceedings.

Mrs. Sabiha Mujahid representing the appellant Department has contended that taxpayer in this case has filed return on 30-9-2005 under section 114(1) of the income tax Ordinance, 2001 and assessment in the case was made under section 120 (1) (a) of the Ordinance, 2001 later on, definite information came into the possession of the Department that taxpayer has purchased a residential plot measuring 1-Kanal at Lodhran vide Registered Deed No. 350 dated 14-3-2005 for consideration of Rs. 622,200. As the taxpayer in accordance with tax record had not sufficient sources to acquire this property, assessment already made has been amended under section 122(1) read with section 122 (5) of the Ordinance, 2001, which has been cancelled by the learned CIT (A) without any justification.

On the other hand, Malik Mumtaz Hussain Khokhar, Advocate has appeared on behalf of the assessee/respondent and has contended that the learned CIT (A) has rightly knocked off the order passed under section 122(1) read with section 122(5) of the Ordinance,

2001, as in order to acquire lawful jurisdiction to amend the already completed assessment, issuance of notice under section 122 as specified in Rule 68 of the income tax Rules, 2002 is mandatory. He has contended that in this case, assessment has been made by the Taxation Officer without issuance of notice under section 122 as specified in Rule 68 and due to non-issuance of notice, no valid jurisdiction was acquired to amend the already completed assessment therefore, amended order made by the taxation Officer is not maintainable in the eyes of law as has already been held by this Tribunal in its order dated 18-1-2005 in ITA No. 5884/B/2004 in the case of CIT v. Messrs Akram Brothers, Rahim Yar Khan while rectifying the order through order dated 17-6-2005 in MA No. 244/LB/2005. The learned counsel has contended that when law requires something to be done in a particular manner, the same must be done in that manner, or may not be done at all. Reliance in this respect has been placed on the decision of the Hon'ble Lahore High Court in the case reported as 2001 PTD 781. The learned counsel, in this regard, has referred rule 68 of income tax rules, 2002, which says that "An amend assessment order related issue notice or/letter issued by the Commissioner under section 122 shall be in the manner or pro forma specified in part-II of the 1st Schedule to these Rules.". He has also referred part-II of the 1st Schedule, wherein pro forma of notice/letter under section 122 of the Ordinance, 2001 in accordance with rule 62 has also been referred. The learned counsel, in this regard, has also placed before this Bench the notice issued by the Taxation Officer, dated 6-9-2006, which is under section 122(1) read with section 122(9) of Income Tax Ordinance, 2001.

I have heard the learned representatives from both the sides and have also perused the impugned order of the learned CIT (A) and the assessment order.

It has been contended on behalf of the assessee/respondent that in this case, the assessee has been condemned unheard by the Taxation Officer while making the order under sections 122(1)/122(5) of the Ordinance, 2001. Before the learned CIT (A) as well as this tribunal, it has been contended by the learned counsel for the assessee that addition made by the Taxation Officer under section 111(1)(b) of the Ordinance, 2001 is without any valid jurisdiction, as the assessee has sufficient well known sources to make investment in the purchase of above referred plot, as the assessee prior to doing business of sweet and bakery, was cultivating agricultural land measuring 23-acres on

lease and had also life savings and contribution of his wife, who is also earning income from embroidery works and is an existing assessee at N.T. No. 24-09-2777568. I have further noted that before the Taxation Office as well as learned CIT (A), on behalf of the assessee, copies of khasra Gardawari and copy of registered Haqdaran Zameen showing receipt of 23-acres of land along with wealth statement and its Re-Conciliation in respect of assessee and his wife were also filed, detail of which has already been given by the learned CIT (A), in the consolidated impugned order. I have further noted that learned CIT (A) after consulting from assessment record has observed that last notice was issued by the Taxation Officer fixing the date of hearing as 4-10-2006 and in the diary sheet, the Taxation Officer has failed to mark absence of the assessee on 4-10-2006, or to show his intention to proceed ex parte on that date of default, if any. The contents of the relevant order sheet entries are reproduced hereunder:--

"29-6-2006

"Assessment completed under section 122 (1)  
read with section 122(5)."

I am of the view that in the light of the above position of the case, it is confirmed that ex parte assessment was made on 6-10-2006, which is the date when neither the case was fixed for hearing, nor any notice regarding appearance was issued to the assessee. I am, therefore, of the view that the learned CIT (A) has rightly cancelled the order placing reliance on the judgment of Hon'ble Lahore High Court reported as 1973 PTD 283. I also confirm the observations made by the learned CIT (A) that on the merits of the case also, the assessee had sufficient, well known and explained sources to make the said investment and the addition made has been deleted.

Keeping in view facts and circumstances of the case and the legal position discussed above, the appeal filed by the Department is, therefore, dismissed.

Appeal dismissed.