

**IN THE APPELLATE TRIBUNAL INLAND REVENUE, LAHORE BENCH,
LAHORE**

**ITA No.17/LB/2013
Tax Year 2010**

The CIR, Zone-II, RTO-II, Lahore. ... **Appellant**

Versus

M/s. Sayyed Machinery Limited, Liberty Market, Lahore. ... **Respondent**

Appellant by : Mrs. Fouzia Adil, DR
Respondent by : Mr. Zaheer-ud-Din Bbar, FCA
Date of hearing : 22-11-2016
Date of Order : 23-11-2016




ORDER

Titled appeal has been preferred at the instance of department against impugned order dated 03.10.2012 passed by the learned CIR (Appeals-IV), Lahore challenging cancellation of assessment order passed under section 121(1)(d) of the Income Tax Ordinance, 2001.


2. Brief facts emanating from the record of the case are that taxpayer, a public limited company, filed income tax return for the tax year 2010 declaring taxable income at Rs.991,231/-. The return was deemed to be an assessment order in terms of section 120 of the Income Tax Ordinance, 2001. Later on, the case of the taxpayer was selected for audit under section 177 of the Ordinance by Commissioner Inland Revenue. Statutory notices and notice under section 121(1)(d) of the Ordinance were issued but partial compliance was made. Due to non-furnishing books of account and purchase ledger etc, the assessing officer framed amended assessment under section 121(1)(d) of the Ordinance.

3. The taxpayer, being aggrieved with treatment meted out by the adjudicating authority, filed appeal before the learned CIR(Appeals), who cancelled the order passed under section 121(1)(d) of the Income Tax Ordinance, 2001. Feeling discontented, the department has come up in appeal before this Tribunal.




4. Learned DR appearing on behalf of the department has contended that the treatment accorded by the learned CIR(A) is unjustified, illegal and not in accordance with law. Various opportunities were provided to the taxpayer but who had not bothered to comply the notices which were sent time and again. Learned DR has contended that taxpayer has asked to provide documents to substantiate his contentions but he failed to do so. The learned DR has relied upon reported judgment of the Honourable Lahore High Court cited as 1975 PTD 58 (HC Lah.) wherein it has been held that if the assessee does not appear or produce his evidence on specified date in response to the notices. Income Tax Officer can proceed ex-parte against the assessee for the defaults committed by him. On the other hand learned AR appearing on behalf of the taxpayer has supported the order passed by the learned CIR(A) which is justified, well-reasoned and in accordance with law.


5. We have gone through the facts of the case and carefully considered contentions of both the parties. Learned DR states that the learned CIR(A) is not justified in canceling the order of OIR without any solid reasons and documentary proof and proposed if the case is remanded to Taxation Officer for re-examination of the case



on merits. We are of the firm view that affording opportunity of defence is one of the cardinal principles of natural justice. We, therefore, set aside the impugned order and remand the case to the Revenue for afresh re-examination of the case on merits after affording proper opportunity of defence to the taxpayer. The taxpayer is also directed to associate himself with the denovo proceedings and submit all documentary and material evidences to the assessing officer in support of his claim.

6. The departmental appeal is accordingly disposed off in the above manner.


(MUHAMMAD WASEEM CH.)
Judicial Member


(ABDUL NASIR BUTT)
Accountant Member