

IN THE APPELLATE TRIBUNAL INLAND REVENUE, LAHORE

MA No.114/LB/2017  
(Tax year 2007)

M/s. Bankers Avenue Co-operative Housing Society,  
2<sup>nd</sup> Floor, The Bank of Punjab, Lahore. Appellant

Versus

The CIR, RTO, Lahore. Respondent

Appellant by : Mr. Muhammad Shahid Baig, Advocate  
Respondent by : Mr. Ali Adnan Khan, D.R.

Date of hearing : 10-03-2017

Date of Order : 13-03-2017

O R D E R



QAMAR-UL-HAQ BHATTI (JUDICIAL MEMBER): Thorough this miscellaneous application pertaining to tax year 2007, the order of the Tribunal recorded in ITA No. 1285/LB/2010, dated 02.02.2017 has been sought to be re-called and rectified u/s 221 of the Income Tax Ordinance, 2001.

2. Both the learned representatives appearing at the bar have been heard and the relevant available record perused.

3. The Applicant is a Co-operative Housing Society, registered under section 16 of The Cooperative Societies Act, 1925 and engaged in the business of development of land and its sale to its members. The return for the Tax year 2007 was filed by the Applicant declaring following results which was deemed to be an assessment order under section 120 of the Income Tax Ordinance, 2001:

Gross Receipts:	
Admission Fee	Rs. 210,000/-
Profit on placement	Rs. 1,861,225/-
Tender Fee/Misc. Income	Rs. 50,000/-
Transfer Fee	Rs. 401,000/-
Rs. 2,522,225/-	
Management Administrative	Rs. 2,536,468/-
Net profit	Rs. (14,123)
Minimum Tax	Rs. 12,611/-

4. The case was selected for audit, whereby tax affairs of the Applicant for the tax year 2007 were selected for Audit by the Commissioner, Audit Division-1, RTO, Lahore. During the Audit proceedings, the Assessing Officer found that the Taxpayer purchased land during the tax year 2007 for Rs. 56,670,000/- and the value of the same was declared in the balance sheet at Rs. 1,058,547,951. The taxpayer received members deposits towards land at Rs. 1,003,944,198/-. The explanation tendered by the Applicant regarding payment through proper banking channel to the arrangers at Rs. 1,002,493,750/- was turned down and the assessment was amended vide order dated 23.04.2010 u/s 122(1) and 122(5) of the Income Tax Ordinance, 2001 whereby the members deposits towards land were recognized as revenue and the cost of the land as per DC rates was allowed as deduction, to make the amended assessment as under:



Members deposit towards land:	Rs. 1,003,144,198/-
Cost at which land has been purchased	Rs. 56,670,000/-
Stamp duty plus other incidental cost	Rs. <u>1,700,100/-</u>
Differential Amount	Rs. 944,774,098/-
Add Income Declared	Rs. <u>(14,243)</u>
Taxable Income for the Year	Rs. 944,759,864/-
Tax @ 25%	Rs. 236,189,966/-
Tax already paid	Rs. <u>189,620</u>
Balance Tax Payable	Rs. 236,000,346/-

5. Being dissatisfied with the Impugned Amended Assessment order dated 23.04.2010, the Appellant/Applicant preferred Appeal before the Commissioner Inland Revenue (Appeals-II), Lahore on account of various grounds. The learned Commissioner Inland Revenue (Appeals-II), Lahore accepted the appeal of the Applicant vide order dated 24.06.2010 and amended assessment order dated 23.04.2010 passed by the Assessing Officer u/s 122(1)/122(5) of the Income Tax Ordinance, 2001, was annulled. The relevant Para of the order passed by the CIR (Appeals-II), Lahore is reproduced below for the sake of ready reference:

*"I have given due consideration to the facts of this case. From perusal of the impugned order it is observed that the Taxation*

*Officer has been influenced by the price mentioned in the sale deed and thus he did not accept the declared price. However, I am not inclined to accept this observation of the Taxation Officer for the reason that the Taxation Officer has himself admitted on page 9 of the impugned order that the appellant provided bank statement showing payment of Rs. 1,002,493,750/- to the arrangers. He also provided the complete identifying particulars of the arrangers. I think, the onus was on the Taxation Officer to prove that there was some collusive arrangement between appellant and arrangers and to establish that the money paid to them was not for the purchase of land. The observation of the Taxation Officer that the arrangers did not attend the office shows innocence of the taxation officer. The statute provides enough powers to the Taxation Officer to ensure the attendance of the Arrangers and to see whether it is genuine transaction or not. Now not having done this, onus was not discharged by the Taxation Officer. Besides, there was no definite information that the purchases were inflated it was only his presumption that the money was not paid for the purchase of land (what else?). therefore, not having satisfied the requirements of sub-section 5 read with sub-section 8 of section 122, the amended order u/s 122(1) cannot be sustained under the law. Resultantly the order passed under section 122(1) is annulled. I must conclude that Department can still pursue the arrangers, who have received the money from Society in order to see, whether the difference between cost paid to the land owner has been appropriated by them or not. Needless to say, the Department can take necessary action to bring them to tax net accordingly, keeping in view the facts of the case. It is a classic case where tax compliant person has been penalized and tax defiant persons have been let off the hook, so to say."*



6. Being dissatisfied with annulment of Impugned Assessment, the Department filed second appeal against the order dated 24.06.2010 before the Appellate Tribunal Inland Revenue, Lahore. The case was fixed for hearing on 25.11.2016. The Departmental Representative reiterated the grounds of Appeal, whereas, Applicant's Representative supported the order of CIR (Appeals-II) and submitted additional Arguments.

7. The ATIR decided the departmental appeal by holding as under:

*"We have given anxious thought to the averments made by the rival parties and peruse the relevant available records. After having scrutinize the relevant record, we have noted that the tax payer's case was selected for audit u/s 177 of the Ordinance, 2001 and thereafter the concerned assessing officer issued various notices on 16.01.2009, 26.01.2009, 04.02.2009, 07.04.2009, 27.01.2010, 09.03.2010, 31.03.2010, 14.04.2010 and 19.04.2010 to the taxpayer for the requisition of the concerned documents Further observed that the appellant was*

*pecially requested by the assessing officer to provide certain information regarding land, cost of land, and especially to provide documentary evidence of payment of CVT, Stamp Duty and other incidental cost paid at the time of purchase of land. However, the Taxpayer-Appellant failed to submit the evidence regarding, payment of stamp duty and other incidental cost. Also noted that the assessing officer after providing a reasonable opportunity being heard to the Taxpayer-Appellant as explained above regarding issuance of notice in different dates had decided the case in the following manner: -*

*..... On the contrary the learned CIR (Appeals-II), Lahore has given undue favour to the taxpayer-respondent and annulled the assessment order without any plausible reasoning.*

*In view of the aforementioned discussion, we are of the considered view that the assessing officer had passed the order after scrutinizing the relevant records, the other documents furnished by the learned taxpayer during the course of hearing before him as well as the on the basis of the facts and circumstances of the case. Consequently, we have valid reason to Vacate the order of the learned CIR (Appeals-II), Lahore dated 24.06.2010 and constrained us to agree with the order of the assessing officer dated 23.04.2010 which certainly does not suffer from any factual or legal infirmity and is hereby maintained. This would result into acceptance of the departmental appeal for the tax year 2007 in the manner as indicated above."*



8. During the course of hearing of Miscellaneous Application, the learned Counsel submitted that the order of the Hon'able Appellate Tribunal shows that the findings of the learned Commissioner Inland Revenue (Appeals-II), Lahore contained in operative part of his order as well as all of the submissions made at the bar and the documents submitted, admitted & acknowledged by the Assessing officer in the body of the impugned order, have been totally ignored. The Hon'able Appellate Tribunal while passing the impugned order dated 02.02.2017 has not applied judicious mind to grounds and reasoning given by the Commissioner Inland Revenue (Appeals-II), Lahore. The AR emphasized that in the presence of the bank statement as well as copies of fourteen crossed bank cheques, there is no doubt about the declared value of land in Financial Accounts, which has eluded consideration of the Hon'able

Tribunal while passing the impugned order dated 02.02.2017. The learned AR opined that after tendering arguments and furnishing the above details on behalf of the appellant, the Honorable Bench was totally satisfied and inclined to reject the departmental appeal, however, the order has been passed otherwise without any judicial reasoning. Neither findings of learned CIR(Appeals-II), Lahore have been considered nor any of the Arguments of the Applicant/Appellant have been accounted for while deciding the appeal. The Appellate Tribunal while passing the impugned order dated 02.02.2017 has failed to appreciate that there is an onerous duty to discuss and dispose of what has been argued. The AR also stated that the findings of the learned CIR(Appeals-II), Lahore and arguments of the Applicant's Counsel have neither been considered nor adjudicated by the Honourable Tribunal. It has further been contended that the Order of the learned Appellate Tribunal Inland Revenue dated 02.02.2017 is erroneous and the mistake regarding non-adjudication of all the arguments of the Applicant and non-consideration of the operative part of the Commissioner Inland Revenue (Appeals-II), Lahore's order is apparent from the face of the record, hence the impugned order of the Hon'able ATIR is liable to be recalled and rectified. Reliance is placed, inter alia, on the following case laws:

- 2008 PTD 169 SC
- 2008 PTD 194 Lah.
- 2012 PTD 723 Kar.
- 2006 PTD 155 (Trib.)
- 2005 PTD 805 (Trib.)
- 2002 PTD 2830 Lahore High Court
- 2005 PTD 890 (Trib.)
- 2006 PTD 594 (Trib.)
- 2014 PTD 1064 (Trib.)
- 2014 PTD 1207 (Trib.)
- 2015 PTD 2502 (Trib.)

9. On the other hand, the learned DR supported the earlier order of this Tribunal and strongly contended that the order was



passed after taking into account all the aspects of the case and the Miscellaneous Application of the Taxpayer is meant for review, which power is not available with the Tribunal, hence this Application merits out right dismissal.

10. We have carefully listened the Arguments of both sides, perused our earlier order, orders of CIR (Appeals-II) and Assessing officer and found that the operative part of the Commissioner Inland Revenue (Appeals-II), Lahore's order has escaped consideration of this Tribunal and an incorrect finding has been recorded in our earlier order, so we have examined the bank statement, copies of fourteen crossed bank cheques, MOU signed with Arrangers, proof of loan facility availed from Bank of Punjab, three valuation reports, etc and found that the contiguous land in Question was purchased by the Applicant Society through two arrangers namely Muhammad Ashraf and Mr. Aftab Zahoor on the strength of a Memorandum of Understanding dated 21.10.2004. Total payment was made to the arrangers as per MOU through fourteen cheques as declared in final accounts. However, as per D.C rates, the value of land was Rs 56,670,000/-.



11. To substantiate the value of land declared in final Accounts, following documents were submitted:

- i. Three valuation reports by different valuers,
- ii. MOU signed with arrangers,
- iii. Bank statement,
- iv. Copies of fourteen cheques with summary,
- v. Sanction advice of BOP to sanction loan for purchase of land.

12. The Assessing officer has himself admitted in the Impugned Assessment Order as under:

- (i) Page 9, 2nd Last Para: During the course of audit proceedings, it was explained by the

manager of the society that the land was purchased through arrangers and an MOU was signed in this regard. The taxpayer has also provided the bank statement showing the payment of Rs 1,002,493,750/- to the arrangers.

- (ii) Page 10, Para B: The mere claim that an MOU was signed with the arrangers to arrange the land for the society and payment against the cost of the land was made to the arrangers @ 6.5m per acre through banking channels, does not prove that the land has been purchased for Rs. 6.5 Million per acre. The MOU does not prove that the amount of Rs.6.5 million per acre was ultimately paid by the arrangers to the sellers of the land. It is reiterated that the taxpayer has failed to provide evidence of payment of Rs. 1,058,547,951/- to the people with whom the sale deeds were executed.
- (iii) Page 12, Reply of AR: Another point was raised by your officer that to ascertain the correctness of the Memorandum of Understanding, notices were issued to the arrangers but nobody made compliance. The Commissioner was intimated that this statement is not correct. In fact, the then assessing office failed to deal with the matter fairly and justly. Resultantly the Arranger Mr. Aftab Zahoor Raja, filed a complaint against that officer. The Director General, RTO, ordered the Commissioner Audit Division-I to conduct inquiry against issuance of illegal notice under sections 176 (1)(b) of the Income Tax Ordinance, 2001.

The said arranger also appeared before the Commissioner and his detailed version was recorded. During the course of investigation, the said Arranger, Aftab Zahoor Raja also filed his statement under section 176(1)(b) of the Income Tax Ordinance confirming the contents of the said MOU.

The arranger, inter alia, administered on oath that the entire sale proceeds as agreed in the MOU were paid by the Bankers Avenue Cooperative Housing Society to the respective



*sellers through Bank account of one of the arrangers, Mr. Muhammad Ashraf. He further confirmed that the sale deeds were executed as per the prescribed DC rates.*

*This matter was ultimately taken up by the Federal Board of revenue and the jurisdiction of this case was transferred by the FBR from RTO Lahore to RTO Rawalpindi. So, it is totally incorrect to say that no compliance was made by the Arrangers in response to the notices issued by the department under section 176.*



(iv) Page: 13 Docs produced: *The taxpayer has also placed reliance on the following documents:*

(1) *Property Evaluation Report of Unit-III Consultant,*

(2) *Assessment Report by S.U Malik & Co.,*

(3) *Report regarding approximate value of land by Indus Surveyors Pvt. Ltd.,*

(4) *Copies of fourteen cheques total amounting to Rs. 1,002,493,750/- showing payment of land by the taxpayer through the bank account of the Arranger of the land, namely, Muhammad Ashraf.*

13. The above findings/observations of the Assessing officer contained in the Impugned Assessment Order clearly reveals that total payment of Rs.1,002,493,750/- was transferred through proper banking channel via fourteen cheques which was accordingly declared in final accounts. No provision of the fiscal statute requires to make payment to the sellers through baking channel however as per MOU the society yet made total payments to arrangers through fourteen crossed bank cheques. Thus there was hardly a reason to doubt that value of land was overstated in the Final Accounts. Similarly, findings of the Learned Commissioner Inland Revenue (Appeals-II), Lahore contained in his order dated 24.06.2010 are very clear and in accordance with the facts & law. The learned Commissioner Inland Revenue (Appeals-II), Lahore has stated in his order that the Taxation officer himself admitted on Page 9 of the Impugned Assessment



order that the appellant has provided the evidence of payment of Rs. 1,002,493,750 to the arrangers. He has also pointed out the complete identifying particulars of the arrangers. Thus in this view of the matter, the onus was on Taxation officer that there was some collusive arrangement between the Appellant and the arrangers and to establish that the money paid was not for the purchase of the land. The observation of the Taxation officer that the arrangers not attended the hearing shows his innocence. The statute provides enough powers to the taxation officer to ensure the attendance of the arrangers and to see that it is a genuine transaction or not. Not having done so, the onus was not discharged by the taxation officer besides there was no definite information that the purchase of the land was misstated. It was only his presumption that the money was not paid for the purchase of land. Owing to above findings, the amended assessment order was not sustainable under the law. Resultantly the order u/s 122(1)/122(5) of the Income Tax Ordinance, 2001 was annulled. The department was further guided to pursue the arrangers who had received the money from society in order to see whether the difference between the amount paid to the land owners has been appropriated to the land owners or not. The learned Commissioner Inland Revenue (Appeals-II), Lahore was pleased to observe that it was a classic case whereby tax compliant person has been penalized and the tax defiant person let off the hook.

14. We have further observed that findings of the assessing officer regarding non-attendance of Arrangers in compliance to notice u/s 176 is also incorrect. One of the Arrangers namely Mr. Aftab Zahoor Raja attended and provided his affidavit. The contents of the Notice u/s 176(1)(b) and affidavit are reproduced as under for ready reference:



Office of the  
Deputy Commissioner/Taxation Officer

of Income Tax, Audit-03, Audit Division-I,  
Regional Tax Office (Third Floor) Lahore

Dated: 17th April, 2009

To

Mr. Aftab Zahoor Raja,  
29-D, Khuda Baksh Colony,  
Defence Road, Lahore Cantt.  
N.T.No. 2835687

Mr. Aftab Zahoor Raja,  
Tehsil Nazim,  
Suhawa,  
Tehsil Municipal Administration Office,  
Suhawa, District Jehlum.

Sub:- **NOTICE U/S 176(1)(B) OF THE INCOME TAX ORDINANCE,  
2001 FOR PERSONAL ATTENDANCE AND RECORDING OF  
STATEMENT ON OATH.**

Reference above.

The audit proceedings in the case of M/s Bankers Cooperative Housing Society have brought into light certain facts/documents/evidences.

According to these, you signed a memorandum of understanding with the Bankers Cooperative Housing Society on 21-10-2004 by virtue of which you, and one other, have received an amount of Rs. 1,002,493,750/- for arranging land for M/s Bankers Cooperative Housing Society.

As per clause 2 of the said MOU you were to arrange approximate 200 acres of land @ 6.50 Million /acre inclusive of all charges, fees, duties and taxes payable on the said purchase. However, the registries of land purchased by you goes on to reveal that these were registered for only an amount of Rs. 221,500,000/- giving rise to a discrepancy of an amount Rs. 980,343,750/-.

The said discrepancy may entail massive tax evasion of Income Tax Capital Value Tax and Provincial Stamp Duty.

You are, therefore, required u/s 176 (1)(b) of the Income Tax Ordinance, 2001 to appear before the undersigned in person for recording of your statement under Oath on 24.04.2009 at 10:00 am at Tax House, Nabha Road, Lahore.

It is brought to your attention that failure to comply with the terms of this notice shall entail initiation of prosecution/penalty proceedings against you



Your cooperation in this regard shall be appreciated.

(SAHIBZADA UMAR RIAZ)  
Deputy Commissioner/Taxation Officer of  
Income Tax Audit-03, Audit Division-I,  
Regional Tax Office, Lahore  
Cell No. 0300-4190015

Copy to: -

- 1) Minister Local Government/ Chairman Punjab Local Government Commission.
- 2) Secretary to Chief Minister Punjab.
- 3) Secretary Local Government Punjab
- 4) Deputy Secretary Staff to Chief Secretary.
- 5) Additional Chief Secretary, Punjab
- 6) District Coordination Officer, Jehlum."



(SAHIBZADA UMAR RIAZ)  
Deputy Commissioner/Taxation Officer of  
Income Tax Audit-03, Audit Division-I,  
Regional Tax Office, Lahore  
Cell No. 0300-  
4190015"

**"STATEMENT U/S 176 (1)(B) OF THE INCOME TAX ORDINANCE, 2001  
OF AFTAB ZAHOOR RAJA S/O ZAHOOR AHMED RAJA,  
CNIC # 35201-6878132-9 R/O 90/5 ASIF JAN ROAD,  
LAHORE CANTT.**

I, Aftab Zahoor Raja S/O Zahoor Ahmed Raja, CNIC # 35201-6878132-9 R/o 90/5 Asif Jan Road, Lahore Cantt. do solemnly declare and affirm as under: -

➤ That I the above named deponent do hereby confirm the contents of Memorandum of Understanding dated 21<sup>st</sup> day of October ,2004 extended by and between:-

• **BANKERS AVENUE COOPERATIVE HOUSING SOCIETY LIMITED.**  
**AND**

• **MR. MUHAMMAD ASHRAF** CNIC # 35201-1677755-1 son of Haji Bagh Ali and Aftab Zahoor Raja (Deponent), CNIC No.35201-6878132-9 son of Zahoor Ahmed Raja

➤ **THAT** total amount (sale proceeds) was paid by M/s Bankers Avenue Cooperative Housing Society Limited to the respective sellers through bank account of Mr. Muhammad Ashraf, which was subsequently allocated to the concerned sellers as per agreements to sell executed between the sellers and Bankers Avenue Cooperative Housing Limited.

➤ **THAT** sale deed were registered by the sellers/buyer as per prescribed DC rates, as mutually agreed by the sellers/arrangers/buyers.

(AFTAB ZAHOOR RAJA)  
S/o ZAHOOR AHMED RAJA,  
R/O 90/5 ASIF JAN ROAD.

15. Obviously there is nothing in rebuttal that total payment of Rs. 1,002,493,750/- was made by the Applicant society to the sellers of Land through two arrangers namely Mr. Aftab Zahoor Raja and Mr. Muhammad Ashraf as per memorandum of Understanding dated 21.10.2004 as under:

**SUMMARY OF PAYMENTS MADE TO THE ARRANGER AGAINST PURCHASE OF LAND**


S. #	Date	Payment	Balance
1.	02-11-2004	72,109,375	72,109,375
2.	06-11-2004	11,3384.375	185,493,750
3.	11-11-2004	130,000,000	315,493,750
4.	12-11-2004	75,000,000	390,493,750
5.	12-11-2004	25,000,000	415,493,750
6.	13-11-2004	50,000,000	465,493,750
7.	29-11-2004	140,000,000	605,493,750
8.	23-12-2004	150,000,000	755,493,750
9.	29-08-2005	190,000,000	945,493,750
10.	28-11-2005	20,000,000	965,493,750
11.	13-02-2006	20,000,000	985,493,750
12.	22-03-2006	10,000,000	995,493,750
13.	29-08-2006	2,000,000	997,493,750
14.	16-11-2007	5,000,000	1,002,493,750



16. Bank statement pertaining to the Bank of Punjab is also available on record showing the transfer of above payments from the Bank A/C of the Society to the Bank Account of the Arrangers and Affidavit of the Arranger is also available to confirm the above transactions against which no counter Affidavit has been filed by the Department. Thus value of Land was rightly declared by the Society in the Final Accounts for the Tax Year 2007 at Rs. 1,058,547,951/- and the Department had no justification at all to reject the declared value of Land and to arbitrarily adopt the value of Land as per DC rate i.e. Rs. 56,670,000/- for the purpose of deduction from the Members Deposits. The reasons recorded by the learned CIR(Appeals-II) are very convincing, as reproduced at Page 2 of this order and the impugned Assessment has been rightly annulled by the Learned CIR (Appeals-II). As far as the

scope of section 221 of the Income Tax Ordinance, 2001 is concerned, sub-section (1) is reproduced as under for ready reference:

**221. Rectification of mistakes.** — (1) *The Commissioner, the Commissioner (Appeals) or the Appellate Tribunal may, by an order in writing, amend any order passed by him to rectify any mistake apparent from the record on his or its own motion or any mistake brought to his or its notice by a taxpayer or, in the case of the Commissioner (Appeals) or the Appellate Tribunal, the Commissioner.*



17. The Honourable Larger Bench of the Supreme Court of Pakistan in a reported judgment cited as 2008 PTD 169, has, inter-alia, defined the phrases 'error apparent on the face of the record, in the following words:

*"7. ....The court may not hesitate to review an order passed on erroneous assumption of material facts or misconstruction of law which has a substantial effect on the fate of case and is considered a wrong order. This Court in Zulfikar Ali Bhutto vs. State (PLD 1979 SC 741). M. Moosa Vs. Muhammad (1975 SCMR 115), Muhammad Abbas Khan Abbasi Vs. GOP (PLD 1984 SC 67) and Sikandar Abdul Karim Vs. State (1998 SCMR 908) having interpreted the expression error on the face of record has held that where an error of law or fact is discovered in the order itself, such an error falls within the category of error apparent on the face of record. The failure of the Court to take into consideration the material facts or statutory provisions which if so considered would have material effect on the fate of the case would also amount to an error on the face of record."*

18. It has been clearly provided in the above judgment that the failure of the Court to take into consideration the material facts, where if so considered would have material effect on the fate of the Case would also amount to an error on the face of the record. This Tribunal could not take into account the operative part of the order of the CIR (Appeals-II) as well as the facts narrated above, inter alia including the payment of Land made through proper banking channel, etc. hence the error regarding failure of the

19. Tribunal to take into consideration the material facts is floating on the surface of the record. While reaching to the conclusion, we have also taken guidance from the following case Laws:

**"2010 PTD 1016 Kar.**

14. In this judgement the Honourable apex Court has specifically observed that the Tribunal cannot sit on its own judgement unless an error is apparent or floating on the record, which in our opinion, in the present reference application was very much there. The ITAT recalled its order only after reaching to the conclusion that in their previous order they had recorded an incorrect finding of fact, which is apparent and floating on the surface of the record. We therefore in the light of the above findings and the decisions given by the superior courts are of the view that questions Nos. 2 and 3 also do not arise out of the order passed by the ITAT.

**2012 PTD 723 (Sindh High Court)**

13. ....We may observe that in case of any error in the findings of facts by the Tribunal the only course available to the applicant is to seek rectification of such error by moving appropriate application in accordance with law which has not been done in the instant case. Moreover, question of fact cannot be examined by this Court in its reference jurisdiction. Reference in this regard can be made to the judgements of the Hon'ble Supreme Court in the case of Lungla (Sylhet) Tea Co. Vs. CIT 1970 SCMR 872. S.M. Ilyas and Sons Vs. CIT PLD 1982 SC 259, Japan Storage Vs. CIT 2003 PTD 2849, and CIT Vs. NIT 2003 PTD 589.

**2008 PTD 925 Lah.**

6. Ongoing through the order, under challenge, it is observed that the Tribunal did not seriously look into the real grievance, voiced by the petitioner and instead, skipped away from the issue, on extreme erroneous assumptions and extraneous considerations.....

..... Assessment order does indicate that photocopies of invoices for the years 1993-1994 and 1994-1995 were produced before the assessing authority and in the assessment order this fact was taken note of that the assessee-company was engaged in the business of the export. So much so, the details, given in para 1, of the order, are indicative of the fact that export sales including export rebate were taken note of, similarly order of Commissioner Appeals also makes mention of the ground that export income covered under section



80 CC should have been assessed as a separate block of income. Same is the position with the initial order, passed in appeal by the Tribunal, which indicates that this point was raised but was not attended by the Tribunal. Despite the fact that in the opening part of the order this point was reproduced in ground 2 urged before the Tribunal, yet no reason what so ever was given for, either ignoring it or repelling it.

.....while deciding the application under section 156 of the Income Tax Ordinance, the Tribunal did not give any serious consideration to the main grievance of the petitioner Under section 156 of the Ordinance, any Income Tax Authority or Appellate Tribunal can amend any order passed by it, to rectify any mistake evident from the record on its own motion or any mistake being brought to its own notices by any other Income Tax Authority or by the assessee.

.....It is thus obvious that the Tribunal has the Authority to rectify the order if any mistake on the record is pointed out.

7. In this case, the assessee did not point out, an error on the face of record but the Tribunal, being oblivious of the facts noted supra, proceeded to dismiss the application, mechanically. The disposal of the application, in the manner as done in this case, cannot be treated to be lawful decision of the application.

2008 PTD 1940 Lah.

3. ....one cannot ignore that on all judicial forums, there is an honories duty to discuss and dispose what has been argued. The pleadings in this case in terms of Grounds 1, 2 and 6 with special reference to the ex-parte assessment has not been adjudicated by the learned tribunal

4. Even on pointing out by the Court, the learned Legal Advisor could not prove from the order, the disposal of the grounds Nos. 2, 3 and 6, which reads as follows:

5. The writ petition is therefore, accepted in the manner that the learned Income-Tax Appellate Tribunal is directed to dispose of afore mentioned grounds which have erroneously been omitted at the time of original decision.

2005 PTD (Trib.) 890

3. .... In the end it is prayed that since complete evidence which was furnished at the time of hearing of appeal escaped consideration by the Bench and this being mistake apparent from the record, therefore, the order passed by the Learned Tribunal in this case may kindly be rectified.. . . .



3. After having heard the learned AR's arguments and on going through the appeal record we are clearly of the view that the order passed by this Tribunal need to be rectified under section 35 of the Wealth Tax Act, 1963 as no finding has been given on such documents specifically furnished documents during the course of hearing of appeal proceedings. Consequently, the order, dated supra is recalled and the appeals are restored to their original numbers.

**2006 PTD (Trib.) 155**

9. Being the final Authority on question of fact, the Tribunal in deciding an appeal is bound to consider all the evidence and the arguments raised by the parties. It is not enough that the tribunal merely records a bare conclusion without setting out any reason in support thereof. If the Tribunal has done so, it could not be assumed that in so recording the conclusion the Tribunal had considered the evidence. The Tribunal has to act judicially in the sense that it has to consider with due care all material facts and evidence in favour and against the assessee and record its findings on all the contentions raised by the assessee or the Commissioner, as the case may be, in the light of the evidence and the relevant law.

11. There is no denying the fact that the Tribunal is the last fact finding Court. Meaning thereby on factual controversy this Tribunal is empowered to rectify its order provided material of primary importance, which was placed on record, has escaped consideration."

20. Above Judicial Pronouncements clearly provide that the Tribunal has to act judiciously in the sense that it has to consider with due care all material facts and evidence in favour and against the Taxpayer and record its findings on all the contentions raised by the Taxpayer or the Commissioner, as the case may be in the light of the evidence and the relevant Law. There is no denying the fact that the Tribunal is the Apex fact finding court, which means that on factual controversy this Tribunal is empowered to rectify its order, provided material of primary importance, which was placed or available on record, has escaped consideration. Evidently in this case, this Tribunal recorded incorrect findings in the earlier order ignoring the operative part of the order of CIR (Appeals-II), documents available on record, comprising of fourteen crossed Bank cheques and bank statement showing transfer of purchase





price of Land from the Bank Account of the Society and the Arguments of the learned AR based on the above documents and order of the CIR (Appeals-II) also escaped consideration of this Tribunal, hence for all the reasons recorded above, the earlier order of this Tribunal is recalled and the departmental appeal is dismissed having no merits at all & the order of the CIR (Appeals-II), Lahore is maintained and of course the earlier order of this Tribunal recorded in ITA No. 1285/LB/2010 dated 02.02.2017 is also rectified u/s 221 of the Income Tax Ordinance, 2001, in the above terms.



21. Resultantly the Departmental Appeal is dismissed having no merits at all.

*do*

(MASOOD AKHTAR SHAHEEDI)  
ACCOUNTANT MEMBER

*do*

(QAMAR-UL-HAQ BHATTI)  
JUDICIAL MEMBER