

IN THE APPELLATE TRIBUNAL INLAND REVENUE LAHORE
BENCH, LAHORE

ITA No.878/LB/2018
(Tax Year 2011)
ITA No.2815/LB/2014
(Tax Year 2011)

Mr. Muhammad Safdar: Prop; Taj Flour Mills, Vehari. ...Appellant
Versus
CIR, RTO, Sahiwal. ...Respondent

Applicant by : Mr. Imran Ghazi, Advocate.
Respondent by : Mrs. Uzma Waqar, DR.

Date of hearing : 27.06.2018
Date of order : 17.07.2018



ORDER

Muhammad Ahmad (Accountant Member): Through titled appeals the appellant/taxpayer has assailed separate orders dated 05.01.2018 and 20.10.2014 passed by CIR(A-III), Lahore (Camp at Sahiwal) and CIR(A), Multan respectively. After hearing both the representatives of the parties the appeals are disposed off as under.

ITA No.2815/LB/2014: Facts of the case in brief are that return filed by the taxpayer running a flour mill, declaring income at Rs.421,852/- was firstly taken as deemed order in terms of section 120 of the Income Tax Ordinance, 2001. However, the case was selected for audit u/s 214C and the taxpayer was directed to produce documents/details. As per impugned order, the taxpayer did not make any response, therefore, audit proceedings were concluded by adding manufacturing/trading expenses in terms of section 174(2) of the Ordinance. Besides, this an addition of Rs.17,947,956/- has also been made u/s 111(1)(b) of the Ordinance to arrive at total income of Rs.20,882,995/- vide order dated 08.03.2014.

2. Being dissatisfied the taxpayer filed appeal before the CIR(A) contending that proper opportunity of hearing was not afforded and manufacturing/trading and profit & loss account expenses have been added on presumptions and whims without identifying the amount of

unverifiable nature of expenses. The CIR(A) after hearing the arguments annulled the impugned order with the following observations:-

"Arguments of the AR have been considered and facts of the case also examined. It is observed that the case was fixed for hearing vide notice No.1279 dated 19-02-2014 for compliance on 27-02-2014 giving 8 days for compliance. The case was again fixe for hearing on 28-03-2014 vide notice No.1534 dated 20-03-2014 which was served on 22-03-2014 on taxpayer, giving 6 compliance days only. Thereafter the deemed assessment was amended by passing ex parte order u/s 121 of the Ordinance, 2001 in violation of Board's C. No. 7(2)DT-14/94 dated 01-02-1994 which provides that three opportunities of fifteen clear days should be allowed for compliance before making estimate/assessment/drawing adverse inference against the taxpayer. Besides this, manufacturing/trading/ & profit/loss expenses have been added back on assumption without identifying the amount of unverifiable nature of expense.



It is further observed that huge addition under section 111(1)(b) has been made on account of closing stock declared at Rs.17,947,965/- as against capital shown as 'Nil in the return. It is observed that the appellant availed credit limit of Rs.31(M) and paid markup at Rs.388,004/- and at Rs.421,990/- on it during the year. While amending the deemed assessment the assessing officer allowed these financial charges against credit limit but failed to correlate it with the declared closing stock. The addition is therefore held unjustified.

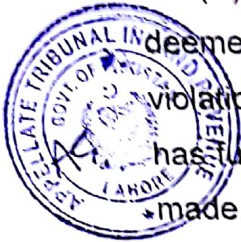
In view of above, the impugned order is annulled. The officer may examine the record/documents for correct appraisal of facts of the case and proceed according to law after providing proper opportunity of hearing. The appellant is also bound to attend the proceedings and provide the required details to the Audit Officer. "

3. The learned AR vehemently assailed the impugned order as unjustified and illegal. He contended that after having annulled the order of assessing officer by holding that addition made by him is unjustified the CIR(A) has erred in law to direct the DCIR(A) to call for the record and examine the same. He further contended that

according to law the CIR(A) was not empowered to remand the case particularly when he has held the action of assessing officer as without any justification. The DR, on the other hand, opposed the contention raised by the learned counsel for the taxpayer.

4. We have heard the rival arguments and also gone through the available record. Perusal of the impugned order reveals that the CIR(A) annulled the order of the assessing officer after holding that deemed order was amended by passing ex-parte order u/s 121 in violation of Board's Circular C.No.7(2)DT-14/94 dated 01.02.1994. He has further held that huge addition under section 111(1)(b) has been made on account of closing stock declared at Rs.17,947,965/- as against capital shown as 'Nil in the return. He has further observed that the appellant availed credit limit of Rs.31(M) and paid markup at Rs.388,004/- and at Rs.421,990/- on it during the year. However, while amending the deemed assessment the assessing officer allowed these financial charges against credit limit but failed to correlate it with the declared closing stock. Hence, the addition is held unjustified. Considering the findings recorded above we are of the opinion that the CIR(A) has erred in law to direct the assessing officer to examine record/documents for correct appraisal. Once the learned CIR(A) came to the conclusion that the impugned order is suffering from legal infirmities and he has annulled the same there remains no justification to issue further directions to the department to re-examine record/documents and to pass fresh order after allowing proper opportunity of hearing. As such the impugned order is vacated and the appeal filed by the taxpayer is allowed.

ITA No.878/LB/2018: In this appeal the taxpayer has assailed the order of CIR(A) dated 05.01.2018 whereby he has upheld the re-assessment order passed by the assessing officer u/s 129/121(1)(b). The learned AR contended that since the taxpayer has assailed the legality of original order in second appeal before the ATIR, passing



fresh order in response to CIR(A)'s order by the assessing officer is illegal and not sustainable. We do not agree with this proposition.

However, since we have allowed the taxpayer's appeal filed against original order, the same findings hold good in this appeal as well as a result of which orders of the authorities below shall stand vacated.

Both the appeals are disposed off in the manner indicated above.



Signature

(CH. SHAHID IQBAL DHILLON)
Judicial Member

Signature

(MUHAMMAD AHMAD)
Accountant Member

Copy of the bench order forwarded to
1. The Appellant... *Muhammad Safdar Ullah*
2. THE CIT,
By order
Muhammad
Assistant Registrar
Appellate Tribunal Inland Revenue
Lahore. 23.7.18