

Stereo. H C J D A-38.
JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

PTR No.281 of 2010

Commissioner Inland Revenue
Versus
M/s Zahid Jee Fabrics Limited, Faisalabad

J U D G M E N T

Date of hearing: 07.06.2021.
Applicant by: M/s Amjad Hussain Malik and Ch. Muhammad Shakeel, Advocates.
Barrister Ameer Abbas Ali Khan, A.A.G. on Court's call.
Respondent by: M/s Shahbaz Butt, Asad Abbas Raza and M. Usman Zia, Advocates.

MUHAMMAD SAJID MEHMOOD SETHI, J.- Through instant Reference Application under Section 133 of the Income Tax Ordinance, 2001 ("**the Ordinance of 2001**"), following question of law, urged to have arisen out of impugned order dated 15.01.2010, passed by learned Income Tax Appellate Tribunal, Lahore Bench, Lahore ("**Appellate Tribunal**"), has been proposed for our opinion:-

"Whether on the facts and in the circumstances of the case, the learned Tribunal was justified to vacate the order passed u/s 122(5A) of the Income Tax Ordinance, 2001 further amending the order in consequence of deemed assessment and amended assessments U/Ss 120 & 122(3) on the basis of original and revised returns respectively after conscious consideration of the matter?"

2. Brief facts of the case are that Taxation Officer served show cause notice upon respondent-assessee, a limited company deriving income from running a spinning unit, confronting certain discrepancies in its income tax return for the tax year 2006 and considered deemed assessment erroneous insofar as prejudicial to the interest of revenue and amended the same u/s 122(5A) of the Ordinance of 2001. Feeling aggrieved, respondent-assessee filed appeal before CIT (A), who vide order dated 23.12.2008, dismissed

the appeal. Being dissatisfied, respondent-assessee filed second appeal before learned Appellate Tribunal, which was allowed vide impugned order dated 15.01.2010.

3. Learned Legal Advisor for applicant-department contends that learned Appellate Tribunal was not justified to vacate the order passed u/s 122(5A) of the Ordinance of 2001, further amending the order in consequence of deemed assessment and amended assessment under Sections 120 & 122(3) on the basis of original and revised returns, respectively, after conscious consideration of the matter. In the end, he submits that impugned order is unsustainable in the eye of law.

4. Conversely, learned counsel for respondent-assessee defends the impugned order. He contends that Taxation Officer was not justified to disallow the revised return filed under Section 114(6) of the Ordinance of 2001, which should be treated as amended assessment order under Section 122(3) of the Ordinance *ibid*.

5. Arguments heard. Available record perused.

6. Perusal of record shows that respondent-assessee filed revised return of income under Section 114(6) of the Ordinance of 2001, which *inter alia* provides as under:-

“114. Return of Income.—

(6) Subject to sub-section (6A), any person who, having furnished a return, discovers any omission or wrong statement therein, may file revised return subject to the following conditions, namely:--

(a) it is accompanied by the revised accounts or revised audited accounts, as the case may be;

(b) the reasons for revision of return, in writing, duly signed, by the taxpayer are filed with the return.

.....”

Sub-section (6A) of Section 114 envisages as under:-

(6A) If a taxpayer files a revised return voluntarily along with deposit of the amount of tax short paid or amount of tax sought to be evaded along with the default surcharge, whenever it comes to his notice, before receipt of notice under sections 177 or sub-section(9) of 122, no penalty shall be recovered from him:

Provided that in case the taxpayer deposits the amount of tax as pointed out by the Commissioner during the audit or before the issuance of notice under sub-section (9) of section 122, he shall

deposit the amount of tax sought to be evaded, the default surcharge and twenty-five per cent of the penalties leviable under the Ordinance along with the revised return:

Provided further that in case the taxpayer revises the return after the issuance of a show cause notice under sub-section (9) of section 122, he shall deposit the amount of tax sought to be evaded, default surcharge and fifty per cent of the leviable penalties under the Ordinance along with the revised return and thereafter, the show cause notice shall stand abated."

7. The return filed by the assessee becomes an assessment order in terms of Section 120, which envisages that such return shall be taken for all purposes of this Ordinance to be an assessment order issued to the taxpayer by the Commissioner on the date return was furnished. Similarly, the revised return under Section 114 (6) within period prescribed therein also is to be taken for all purposes of this Ordinance to be an amended assessment order issued to the taxpayer by the Commissioner on the day on which the revised return was furnished in terms of Section 122(3). Now if Commissioner intends to amend assessment orders taken in terms of Sections 120 & 122 (3), he has to proceed further on the basis of said assessments. Revised return, if competently filed, would have to be accepted and amended assessment order would be passed under Section 122 of the Act while return already filed loses its efficacy and becomes irrelevant to the extent of the omission / wrong statement. At the relevant time, no legal bar existed in filing revised return before completion of assessment proceedings. Assessee had the prerogative to revise the return of income before finalization of assessment, if it discovers any omission or wrong statement in earlier return. The action of assessing officer as well as first appellate authority treating the revised return, filed by the taxpayer as invalid, is beyond jurisdiction as there is no provision in the Ordinance of 2001, under which the applicant-department can declare a revised return as invalid. Reliance is placed upon Zaman Paper and Board Mills v. Taxation Officer, Circle-12, Company Zone, Lahore (2005 PTD 2577), Commissioner of Inland Revenue Zone-II, Regional Tax Office, Peshawar v. Messrs Saydon

Pharmaceutical Industries (Pvt.) Ltd., Industrial Estate, Jamrud Road, Peshawar (2015 PTD 374) and Commissioner of Income Tax/Wealth Tax, IBD. v. Messrs HI-TECH Plastic (Pvt.) Ltd. (2019 PTD 878).

8. Needless to say that no impediment can be put on the rights of a taxpayer granted to it by statute at the relevant time. Respondent-taxpayer had a right to revise his return and no provision of law restricted his right to file the revised return. If revised return was filed in accordance with law fulfilling the requirements of the provisions of Section 114(6) of the Ordinance, Adjudicating Authority had no power to declare it to be invalid in such a manner. Learned Appellate Tribunal, after discussing the facts and circumstances of the case as well as appreciating relevant provisions of law, rightly vacated the orders of assessing officer as well as first appellate authority, and allowed assessee's appeal for the tax year 2006. Learned Legal Advisor for applicant-department failed to pinpoint any illegality or legal infirmity in the impugned order.

9. In view of the above, our answer to the proposed question is in *affirmative* i.e. in favour of respondent-assessee and against the applicant-department.

10. This Reference Application, being without any merits, is *decided* against the applicant-department.

11. Office shall send a copy of this judgment under seal of the Court to learned Appellate Tribunal as per Section 133 (5) of the Ordinance of 2001.

(Abid Hussain Chattha)
Judge

(Muhammad Sajid Mehmood Sethi)
Judge

APPROVED FOR REPORTING.

Judge

Judge