

APPELLATE TRIBUNAL INLAND REVENUE, BENCH-I, ISLAMABAD

ITA No.1787/IB/2017
(Tax Year 2013)

Mr. Saad Ullah, Branch Manager
HBL, Jhawarian, Tehsil Shahpur,
District Sargodha.

Appellant

Vs

The Commissioner Inland Revenue,
Zone-I, RTO, Sargodha.

Respondent

Appellant by
Respondent by

Sardar Abdul Wahab, Advocate
Mr. Zaheer Ahmed Qureshi, DR

Date of hearing
Date of order

17.02.2021
17.02.2021

ORDER

M. M. AKRAM (Judicial Member): The above titled appeal has been filed by the appellant taxpayer against the Order No.0734 dated 06.10.2017 passed by the learned Commissioner Inland Revenue (Appeals), Sargodha for the Tax Year 2013 on the grounds as set forth in the memo of appeal.

2. Brief facts of the case are that the appellant taxpayer is a Branch Manager at Habib Bank Limited (HBL), Jhawarian, Tehsil Shahpur, District Sargodha. An amount of Rs.1,770,000/- was outstanding against the tax defaulter namely Mr. Shahzad Ahmed Khan Maken having CNIC: 38404-0948915-5. The Assessing Officer served a notice dated 28.04.2017, purporting to be issued under section 140 of the Income Tax Ordinance, 2001 upon the Branch Manager, HBL, Jhawarian, informing the Bank that a sum of Rs.1,770,000/- was due from the aforesaid tax defaulter and that any money held by it, or which may be so held in future, to the credit of the defaulter in his Bank account, should be paid over to the Assessing Officer to the extent of that liability but the appellant failed to do so. Therefore, a show cause notice dated 10.05.2017 under section 182(1) of the Ordinance was issued to the appellant in his personal capacity for imposition of penalties under serial Nos.10, 13 and 14 of sub-section (1) of section 182 total amounting to Rs.1,848,100/- for non-compliance of notice under section 140 *ibid*. In response to, the appellant vide his letter dated 12.05.2017 informed that an amount of Rs.8,238.83/- was available in the account of the tax defaulter but it cannot be remitted without providing the

copy of the order of permission granted by the concerned Commissioner Inland Revenue for serving notice under section 140 of the Ordinance which is essentially required for the purpose of Bank record. The explanation tendered by the appellant was found unsatisfactory therefore, another opportunity was provided to him by the Assessing Officer vide letter dated 16.05.2017 for compliance on 19.05.2017. On the due date i.e 19.05.2017, the appellant submitted a banker cheque for Rs.8,238,83/- in favour of the Assessing Officer. In spite of this fact, the Assessing Officer imposed the penalties under the foregoing serial Nos. of sub-section (1) of section 182 amounting to Rs.1,848,100/- vide order dated 19.05.2017. The appellant taxpayer being aggrieved, filed an appeal before the learned CIR (A) who vide order dated 06.10.2017 disposed of the appeal of the appellant. Still feeling aggrieved, the appellant has now come up before this Tribunal and has assailed the impugned order on a number of grounds.

3. This case came up for hearing on 17.02.2021. Learned AR reiterated the contentions already submitted in the grounds of appeal as set forth in the memo of appeal. Further contends that the appellant finally complied with the notice issued by the Assessing Officer by issuing a cheque of Rs.8,238.83/- in his favour. Therefore, the proceedings under the provisions of section 182 of the Ordinance could not be invoked by the Assessing Officer in the instant case for the purpose of imposition of penalties. Learned DR opposed the appeal on the ground that learned Commissioner (Appeals) has passed a speaking order and there is no illegality or lacuna in his order.

4. We have heard both the parties to the case and perused the record. The submissions made on behalf of the appellant have substance. We are of the view that the Assessing Officer acted in excess of his jurisdiction contemplated in section 140 of the Ordinance. The first reason for holding so is that a perusal of the record shows that the appellant informed the Assessing Officer vide his letter dated 12th May, 2017, that the account of the tax defaulter showed a credit balance of Rs.8,238.83/- and that this amount had been set apart by him subject to providing the copy of permission order granted by the concerned Commissioner Inland Revenue for serving the notice under section 140 ibid as required under Bank Ordinance and further instructions from the Assessing

Officer. On 19.05.2017 admittedly, the Bank issued a cheque of Rs.8,238.83/- in favour of the Assessing Officer pursuant to his notice. Under these circumstances, imposition of penalties through order dated 19.05.2017 is unsustainable in law and uncalled for.

5. It may also be noted that the mode prescribed by section 140 of the Ordinance for recovering arrears of tax has vested in the Commissioner Inland Revenue a special jurisdiction. It is a jurisdiction which extends beyond that ordinarily enjoyed by the Commissioner in the matter of recovering arrears of tax. It is a jurisdiction directed against a person who is not the taxpayer, but who has been selected by the statute because money is due or may become due from him to the tax defaulter or he holds money or may subsequently hold money for or on account of the taxpayer/defaulters. The jurisdiction extends not merely to requiring such person to pay the amount of the arrears to the Commissioner, but further to treating him as an assessee in default under sub-section (5) of section 140 ibid where he does not pay. It is a serious matter for a person to be exposed to such a proceeding, where the only reason is that he is or may become a debtor of the tax defaulter or holds or may hold money for or on account of him. In our opinion, the powers conferred upon the Commissioner Inland Revenue by section 140 are intended to be exercised with the greatest caution, and should be construed strictly. In the instant case the proceedings were initiated under section 140 of the Ordinance against the Branch Manager of HBL, Jhawarian and the notice was issued in his personal capacity to him rather than the Bank that is holding the money on behalf of the tax defaulter. It was open to the Assessing Officer to recover the tax due by serving a notice upon the Bank, which was a debtor to the tax defaulter, to pay over the money which it held in the tax defaulter's account. It is well settled that the relationship between a banker and his customer in this country is that of a debtor and his creditor where the banker holds the fund of the customer under a saving/current account or fixed deposit. Therefore, under the law, if the Bank commits a default than it would be entitled to treat as assessee in default under sub-section (5) of section 140 of the Ordinance.

6. We have also observed that the Assessing Officer imposed penalties under Serial Nos. 10, 13 and 14 of sub-section (1) of section 182 of the Ordinance which do not apply

in the instant case. The order passed by the Officer is considered in the nature of misuse of powers. The offences mentioned against above mentioned serial Nos. read as under:

"10. Any person who: -

- a) makes a false or misleading statement to an Inland Revenue Authority either in writing or orally or electronically including a statement in an application, certificate, declaration, notification, return, objection or other document including books of accounts made, prepared, given, filed or furnished under this Ordinance;
- b) furnishes or files a false or mis-leading information or document or statement to an Income Tax Authority either in writing or orally or electronically;
- c) omits from a statement made or information furnished to an Income Tax Authority any matter or thing without which the statement or the information is false or misleading in a material particular.

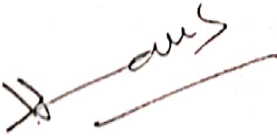
13. Any person who obstructs any income tax authority in the performance of the official duties.

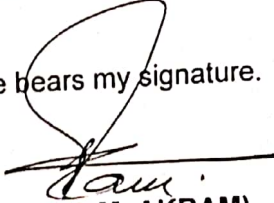
14. Any person who contravenes any of the provision of this Ordinance for which no penalty has, specifically, been provided in this section."

7. We observe that none of the penalties mentioned in above para apply in the instant case. In having applied the penalty provisions, the Assessing Officer has demonstrated a complete absence of understanding of the law of penalty under the Ordinance. The learned Commissioner Appeals has equally shown inability to check a blatant misuse of powers by the Unit Officer. In view of the foregoing, we deem it appropriate to send a copy of this order to the Member (Operation), FBR to take notice of misuse of powers by the concerned Officer.

8. For what has been discussed above, the appeal of the appellant is accepted and both the orders passed by the lower authorities are annulled.

9. This order consists of (04) pages and each page bears my signature.


(IMTIAZ AHMED)
ACCOUNTANT MEMBER


(M. M. AKRAM)
JUDICIAL MEMBER