

30

**APPELLATE TRIBUNAL INLAND REVENUE (PAKISTAN)**  
**KARACHI BENCH**

Present: MR. HABIB ULLAH KHAN, A.M  
MR. M. AMINULLAH SIDDIQUI, J.M

**ITA NO.1084/KB/2021**  
(Tax Year 2018)  
Under Section 122(5A)

Umaiz Raja, Hyderabad.....Appellant

Versus

CIR, A-VI, Zone-III, RTO-I, Karachi.....Respondent

Appellant by: Mr. A. S. Jafri, Advocate  
Respondent by: Mr. Riaz Ali Shah, DR

Date of Hearing: 02-12-2021  
Date of Order: 24-12-2021

**ORDER**

**HABIB ULLAH KHAN (ACCOUNTANT MEMBER)**: Captioned appeal has been filed by the appellant/taxpayer against the Order under Section 129(1) of the Income Tax Ordinance, 2001 dated 23-06-2021, passed by the learned Commissioner Inland Revenue (Appeals-II), Karachi [CIR(A)] on the grounds set forth in the memo of appeal.

2. Brief facts of the case gathered from the available record are that the taxpayer filed return of income and wealth statement for the year under consideration. Perusal of the wealth statement revealed steep increase in wealth by way of revising his wealth statement under section 116(3) of the Income Tax Ordinance, 2001 ('The Ordinance'). Consequently, the deemed assessment made under section 120 read with revised wealth under section 116(3) of the Ordinance was found 'erroneous' in so far as 'prejudicial to the interest of revenue' which prompted the department to confront the issue(s) through a Show Cause Notice (SCN) under section 122(9) for Amendment of Assessment under Section 122(5A) of the Ordinance.

3. Facts revealed that the appellant filed declaration under the Tax

Amnesty Scheme by disclosing concealed assets and payment of tax there upon. The said declaration was held invalid on the premise that the tax liability was paid on 3<sup>rd</sup> July, 2019 whereas, according to the view held by the Additional Commissioner, the last date for payment of tax was 30<sup>th</sup> June, 2019. On the basis of delayed payment the said declaration was excluded from the purview of Tax Amnesty Scheme and concealment proceedings were initiated by invoking the provision of section 122(5A) of the Ordinance. During the course of proceedings, the appellant was confronted on the purported concealment of income/assets through show cause notice under section 122(9) read with section 111(1)(d) of the Ordinance. Reply was furnished by the appellant by explaining that the payment date was extended by the FBR from 30<sup>th</sup> June, 2019 to 3<sup>rd</sup> July, 2019, hence the declaration of Tax Amnesty Scheme was well within the prescribed time limit as envisaged under section 6(1) of the Assets Declaration Ordinance, 2019. Based on the proceedings, the Additional Commissioner passed the order under section 122(5A) dated 26.2.2021 which was agitated before the learned CIR (A) who decided the appeal on 23.6.2021. Aggrieved by the treatment meted by the learned CIR (A) the taxpayer filed the instant appeal before this Tribunal for redressal of grievances.

4. On the due date, Mr. A. S. Jafri, Advocate attended the court proceedings on behalf of the taxpayer while Mr. Riaz Ali Shah, DR attended on behalf of the department.

5. We have heard the arguments advanced by the learned representatives of both parties and also perused the case record. The issues involved in the instant appeal are as follows;

- i. Legality and jurisdiction of Order passed by ADCIR under section 122(5A) of the Ordinance.
- ii. Opportunity of being heard.
- iii. Addition under section 111 of the Ordinance.

6. We have considered the peculiar facts of the case in the backdrop of the case record and arguments of the learned representatives of both

parties. Regarding the mandate of the department to initiate proceedings under Section 122(5A) plethora of case law is available which endorse the legal mandate of the department to invoke the provisions of Section 122(5A) in case the deemed assessment under Section 120 are 'erroneous' in so far as 'prejudicial to the interest of revenue'. Reference in this regard is made to the judgment of the honorable Islamabad High Court in ICA Nos.183-W of 2012 where twenty writ petitions were disposed off through a single judgment quoted supra. In these petitions the vires of Section 122(5A) were challenged on the premise that Commissioner had no authority to delegate powers under Section 122(5A) to the Additional Commissioner. It was pleaded that revisional authority can not be exercised by any sub-ordinate officer. While disposing off the writ petitions the honorable court placed reliance on the august Supreme Court judgment in the case of M/s Ocean Pakistan Ltd where it has been held that the Additional Commissioner is legally competent to exercise powers under Section 122(5A) of the Ordinance. In the said judgment of the honorable High Court, it has been concluded that the Additional Commissioner was competent to exercise powers under section 122(5A) of the Ordinance and there was no illegality or infirmity in the exercising of powers under section 122(5A) of the Ordinance. On the basis of dictum laid down by the Hon'ble Court discussed supra, it is evident that the department has a right to amend any order (including deem order under section 120) considered 'erroneous' and 'prejudicial to the interest of revenue.' Accordingly, on this score the ground of appeal is not acceptable.

7. Reverting to the main issue it has been observed that the appellant availed the Tax Amnesty Scheme as per Assets Declaration Ordinance, 2019. Accordingly, the admitted tax liability was paid on 3<sup>rd</sup> July, 2019 amounting to Rs.2,20,000/- the evidence of which was available on record. The Taxation Officer initiated the concealment proceedings under section 111 of the Ordinance on the premise that since the last date of payment was 30<sup>th</sup> June, 2019, therefore, the appellant was not eligible to avail the Tax

Amnesty Scheme due to belated payment i.e. 3<sup>rd</sup> July, 2019. During the course of proceedings before us the evidence was produced which authenticates the fact that the payment date to avail amnesty scheme was extended upto 3<sup>rd</sup> July, 2019 which is verified by plausible evidence. The eligibility of the Declaration was verified in the context of provision of section 6(1) of the Ordinance wherein payment date was extended upto 3<sup>rd</sup> July, 2019 the admissibility of the Declaration where tax had been paid after 30<sup>th</sup> June, 2019 was elaborately examined by the honourable FTO in the order No. 0011/OM/2020 dated 8-1-2020 where para 18 of the Order clarifies the issue in the following words;

*"18. The emphasis of the Department that the tax chargeable of the declaration was not the requirement of the Ordinance, appears to be vague. The reason is available in the language of the section 6(1) of the Ordinance, wherein payment of tax was made mandatory till 3.07.2019 by using the word 'shall' which is considered to be 'mandatory' and not 'directory' to the defaulting declarants, which cannot overlook the requirements of law, as mentioned in section 6(1)ibid.*

8. Considering the provision of the Assets Declaration Ordinance, 2019 as enunciated by the honourable FTO in his order *supra*, we are of the considered view that since the tax liability was duly paid on 03-07-2017, the appellant was eligible to avail Tax Amnesty Scheme. Therefore, without going into the merits of other issues of the case, we hold that the exclusion of the Declaration under the said Scheme was beyond the legal mandate of the Taxation Officer. While holding that the appellant was eligible to avail the Tax Amnesty Scheme, the assets/income declared under the said scheme were duly covered by the protective clauses of the scheme which envisaged that the income/assets declared in the said scheme were protected from the operations of the normal provisions of the Income Tax Ordinance, 2001, therefore, we hold that concealment/amendment proceedings initiated under section 122(5A) by the department were not legally sustainable hence, all consequential proceedings are hereby

declared null and void.

9. The appeal is disposed off as discussed above.

Sd/-  
(M. AMINULLAH SIDDIQUI)  
JUDICIAL MEMBER

Sd/-  
(HABIB ULLAH KHAN)  
ACCOUNTANT MEMBER