APPELLATE TRIBUNAL INLAND REVENUE,
MULTAN BENCH, MULTAN

ITA No.890/LB/2017
(Tax Year 2011)
ITA No.891/LB/2017
(Tax Year 2012)
ITA No.892/LB/2017
(Tax Year 2013)
ITA No.893/LB/2017
(Tax Year 2014)
ITA No.894/LB/2017
(Tax Year 2015)

CIR, RTO, Bahawalpur. Appellant

Versus

M/s FFC Educational Society C/o FFC Plant Site, Goth Machi, Sadiqabad. Respondent

Appellant by: Mr. M. Qaswar Hussain, DR
Respondent by: Mr. M. Younsas Ghazi, FCA
Mr. M. Imran Ghazi, Adv.

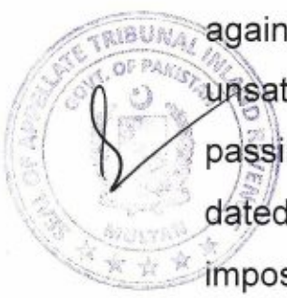
Date of hearing: **07-07-2022** Date of order: **22-07-2022**

ORDER

Dr.Muhammad Naeem (Accountant Member): The titled appeals for tax years 2011 to 2015, preferred at the instance of Revenue / Department directed against the appellate order No.152 to 156 dated 19.01.2017 passed by the learned CIR(A), Bahawalpur.

2. Facts in brief leading to the instant departmental appeals are that the taxpayer running an educational institution filed its returns declaring receipts at Rs.141,000,000/- and loss at Rs.(2,315,223/-) for Tax Year 2011, receipts at Rs.150,617,104/- and loss at Rs.(504,565/-) for Tax Year 2012, receipts at Rs.195,908,975/- and loss at Rs.(7,730,256/-) for Tax Year 2013, receipts at Rs.221,547,581/- and income at NIL for Tax Year 2014 and receipts at Rs.212,001,852/- and Income at NIL for Tax Year 2015. Deemed assessments stood completed u/s 120 of the Income Tax Ordinance, 2001 ("hereinafter called the Ordinance"). Later on, the Additional Commissioner Inland Revenue (assessing officer) observed that

return of total incomes have been found erroneous insofar it was prejudicial to the interest of revenue, that the taxpayer was legally obliged u/s 113 of the Income Tax Ordinance, 2001 to pay minimum tax on the receipts as defined under said section for Tax Year 2011 to Tax Year 2015 but the taxpayer failed to pay the said tax. It is also further observed by the assessing officer in Tax Year 2013 that taxpayer has also claimed provision for gratuity at Rs.30,711,775/- which is inadmissible as per section 34(3) of the Income Tax Ordinance, 2001. On the basis of said discrepancies amendment proceedings were initiated by way of issuance of show cause notices against which explanation tendered by the taxpayer was treated unsatisfactory. Resultantly, the proceedings culminated in the passing of amended assessment orders u/s 122(5A) of the Ordinance dated 03.11.2016, wherein minimum tax at the applicable rates were imposed and in Tax Year 2013, in addition of minimum tax also made inadmissible the provision of gratuity.



3. Being aggrieved, the taxpayer filed first appeal before the learned CIR(A) assailing the orders of the assessing on a number of legal and factual grounds. The learned CIR(A) vide impugned appellate orders annulled the amended orders passed by the assessing officer. Felt aggrieved, the Revenue / Department filed the instant second appeal before this Tribunal on the following common grounds of appeal: -

i) That the order of the learned Commissioner Inland Revenue (Appeals) is against the facts of the case and law.

ii) That the learned Commissioner Inland Revenue (Appeals) was not justified to annul the amended order by holding that the income of the taxpayer falls under clause (92) of part-I of the second schedule to the Income Tax Ordinance, 2001.

iii) That the learned Commissioner Inland Revenue (Appeals) himself admitted in concluding paragraph of appellate order for T.Y. 2014 that the taxpayer did not enjoy the status of NPO being an educational institute as the taxpayer was not recognized as NPO by the department u/s 2(36) of the Income Tax Ordinance, 2001. So, he was not justified to annul the order.

iv) That the learned Commissioner Inland Revenue (Appeals) was not justified to trespass the jurisdiction of the Zonal CIR by holding that the taxpayer is non-profit organization.

v) *That the learned Commissioner Inland Revenue (Appeals) ignored the true spirit of Section 2(36) of the Income Tax Ordinance, 2001 which only is to recognize the taxpayer as NPO and no exemption from taxation is available under this section.*

vi) *That the learned Commissioner Inland Revenue (Appeals) ignored the relevant Clause (58) of Part-I of the second schedule to the Income Tax Ordinance, 2001 which allow the exemption to the NPO.*

vii) *That the learned Commissioner Inland Revenue (Appeals) was not justified to ignore the fact that the taxpayer filed application before the Zona CIR for approval under section 2(36) of the Income Tax Ordinance, 2001 for tax year 2014 and before this no application was ever filed.*

4. For Tax Year 2014 & 2015, the department preferred to put the following grounds for adjudication:

i) *That the order of the learned Commissioner Inland Revenue (Appeals) is against the facts of the case and law.*

ii) *That the learned Commissioner Inland Revenue (Appeals) himself admitted in concluding paragraph of appellate order for T.Y. 2014 that the taxpayer did not enjoy the status of NPO being an educational institute as the taxpayer was not recognized as NPO by the department u/s 2(36) of the Income Tax Ordinance, 2001. So, he was not justified to annul the order.*

iii) *That the learned Commissioner Inland Revenue (Appeals) was not justified to trespass the jurisdiction of the Zonal CIR by holding that the taxpayer is non-profit organization.*

iv) *That the learned Commissioner Inland Revenue (Appeals) ignored the true spirit of Section 2(36) of the Income Tax Ordinance, 2001 which only is to recognize the taxpayer as NPO and no exemption from taxation is available under this section.*

v) *That the learned Commissioner Inland Revenue (Appeals) ignored the relevant Clause (58) of Part-I of the second schedule to the Income Tax Ordinance, 2001 which allow the exemption to the NPO.*

vi) *That the learned Commissioner Inland Revenue (Appeals) was not justified to ignore the fact that the taxpayer filed application before the Zona CIR for approval under section 2(36) of the Income Tax Ordinance, 2001 for tax year 2014 and before this no application was ever filed.*

5. The learned DR appearing on behalf of the department has termed the action of learned CIR(Appeals) to be arbitrary simply by reiterating the above mentioned grounds and no new set of arguments has been put forth. On the other hand, the learned counsel appearing on behalf of the taxpayer has fully supported the impugned orders simply by reiterating the basis evolved therein.

6. The learned elaborated his view point that taxpayer being society registered under the Societies Registration Act, 1860 vide Registration No.RP/202 of 1996-1997 dated 18.02.1997 with the sole object to impart education of secondary and higher education in locality of Sadiqabad as Non-Profit Organization by way of its memorandum of association. The taxpayer registered with Directorate of Secondary Education Bahawalpur Division, Bahawalpur with the name of FFC Grammar Higher Secondary School for Girls and FFC Grammar High Secondary School for Boys on 08.12.1996. Thereafter Board of intermediate and Secondary Education, Bahawalpur also recognized the FFC Model Grammar School on 06.01.1997 and finally taxpayer also be recognized by British Council vide Registration No.PK498 on 31.01.2020. Hence, order u/s 122(5A) rightly be annulled after making reliance on reported judgment of apex Supreme Court of Pakistan vide 2006 PTD 2502 and judgments of Hon'ble ATIR in ITA No.344/LB/2011 and another one title LUMS, Lahore dated 31.01.2012.

7. The learned A.R. also urged that for Tax Years 2011 to 2013, the CIR(A) rightly held that taxpayer being Non-Profit Educational Institution is entitled to get exemption from tax on any income including turnover tax u/s 113 of the Ordinance in the light of Clause (92) of Part-I of Second Schedule and allowed the provision of gratuity in Tax Year 2013 which is not agigated by the department before this forum and for Tax Years 2014 & 2015, Section 100C is silent regarding requirement of recognization u/s 2(36) and it is first time introduced by Finance Act, 2019. Therefore, for Tax Years 2011 to 2015, there was no requirement of getting certificate u/s 2(36) of the Ordinance. Reliance is placed on judgment of Appellate Tribunal Inland Revenue in ITA No.1429/LB/2020 dated 02.10.2020 titled M/s Fatima Fertilizer Welfare Fund vs CIR(Appeals), Bahawalpur.

8. The learned A.R. contended that department is itself confused in arguments that taxpayer being not a non-profit organization is not

entitled to get exemption from tax on any income or entitled to get tax credit upto 100% as provided u/s 100C due to non-recognized by Commissioner under section 2(36) of the Ordinance, however, through grounds of appeals, department relied on the Clause (58) of Part-I of the second schedule to the Income Tax Ordinance, 2001 which should be extended to taxpayer as NPO by appellate authority.

9. Finally, the A.R. referred the Section 113(4) of the Income Tax Ordinance, 2001 which defines the definition of "turnover" for the purpose of minimum tax. He urged that society is welfare institution / non-profit organization by way of its operations and its basic source of inflow is "donation" to meet with the day to day expenses. Hence, charge of turnover tax u/s 113 on donations is contrary to the law as it is neither fall under the scope of gross sales or gross receipts derived from sale of goods, nor it is gross fees for the rendering of services for giving benefits or execution of contracts etc. Hence, even otherwise, the claim of department through grounds of appeals are required to be rejected.

10. Arguments heard and record perused. Perusal of assessment order reveals that main reasons for denial of benefit of Clause (92) of Part-I of Second Schedule for Tax Years 2011 to 2013 and tax credit u/s 100C for Tax Years 2014 & 2015 by the AO are due to following reasons recorded in orders:

i) The Educational Institution is not registered/constituted by or under any law of the country as Non Profit Organization.
ii) No certificate u/s 2(36) of the Income Tax Ordinance, 2001 has been issued to the taxpayer by the concerned Commissioner Inland Revenue.
iii) Section 100C was enacted through Finance Act, 2014 and has no retrospective effect and before this any Non Profit Organization would have to seek approval of the Chief Commissioner Inland Revenue for exemption from payment of tax as per Clause (58) of Part-I of the 2nd Schedule and whereas no such Certificate has been issued by the concerned Chief Commissioner Inland Revenue. Further Section 100C(2)c of the Income Tax Ordinance has also allowed exemption from taxation subject to approval of the Chief Commissioner Inland Revenue.

11. We have noted that these findings are not based on correct appreciation of law inasmuch as clause (92) of Part-I of 2nd Schedule is independent of clause (58) of Part-I. There is no doubt that taxpayer is an educational institution in the light of various Notifications and Circulars issued by the Board defining the other educational institution. The core issue before us that either turnover tax u/s 113 is exempt or not in current scenario? This provision of clause (92) of Part-I of 2nd Schedule is reproduced for ready reference as under:-

> *"(92) Any income of any university or other educational institution established solely for educational purposes and not for purposes of profit."*

Clause (92) liberally used word "any" before income and as well as for "any" university or other educational institution as well. Use of adjective "any" in clause (92) makes it evident that exemption there under applies to all incomes, whether these are real or deemed through a fiction of law created by legislature. Reliance is placed on judgment of apex Court reported as 2006 PTD 2502, wherein such word commended upon as follows by their lordships of honorable Supreme Court:

> *"The word 'any' used in subsection (1-A) of section 59 of the Ordinance was not without significance in the case of Ch. Zahoor Ellahi M.N.A. v. The State (PLD 1977 SC 273) the import the word 'any' was considered in the context of section 13(1)(b) of the Defence of Pakistan Ordinance (XXX of 1971) where under it was provided that ... "no court would have authority to revise such order or sentence... or to transfer any case from a Special Tribunals... or have any jurisdiction of any kind in respect of any proceedings in a Special Tribunal." It was held that word 'any' was of very wide amplitude and was defined in Stroud's Judicial Dictionary as a word which excluded limitations or qualifications and, therefore, 'any order' would include both interim as well as final orders. Similarly, in N.W.F.P. v. Muhammad Irshad (PLD 1995 SC 281), this Court took the view that expression 'any law' was used to enlarge the amplitude of the term to which it was attached and there seemed to be no reason why expression 'any law' occurring in Article 8(1) of the Constitution would be so narrowly construed as to excludes from its purview a regulation which possessed the efficacy of law in a part of Pakistan..... In M.Amjad v. Commissioner of Income Tax and 2 others (1992 PTD 513), it was held by a learned Division Bench of the High Court of*

Sindh that the word 'any' used in the context of section 59 of the Ordinance was a word of expansion indicative of width and amplitude sufficient to bring within the scope and ambit of the words it governed, all that could possibly be included in them…"

12. Further to above submissions as to applicability of provisions of Clause (92) in respect of minimum tax, we are fully inclined with the earlier judgment of this Tribunal recorded in ITA No.344/LB/2011 wherein similar matter was decided of another educational institution in the following words:

"…Since the company is working as a nonprofit making entity, working solely for the purpose of profit and is claiming exemption under clause (92) of Part-I of the Second Schedule to the Ordinance. As the whole receipts of the Institution have been accepted as exempt from tax by the department, therefore charging of minimum tax u/s 113 is illegal and against the law. We, therefore, endorse the findings of the learned CIR(A) and maintain the order of learned first appellate authority…"

In the case of M/s LUMs, Lahore judgment of Appellate Tribunal Inland Revenue dated 31.01.2012 wherein Tribunal has held in the following manner:

"In our view, the appellant's case on merit is also quite clear, especially when we take into account the earlier finding already recorded by another honorable bench of this Tribunal in ITA No.344/LB/2011. The issue, so far as this Tribunal is concerned, stands adjudicated. We feel fully convinced by the submissions of the learned AR that the provisions of clause 92 extends exemption to 'any' income of qualifying educational institutions. Under the provisions of section 113 of the Ordinance, the turnover is deemed to be income of the taxpayer and since the relevant clause grants exemption to all types of incomes, therefore, the turnover would also remain exempt from levy of minimum tax. The position under the 2001 Ordinance is different from repealed 1979 Ordinance. The provisions of 2001 Ordinance is different from repealed 1979 Ordinance. The provisions of 2001 is lack non abstante characteristics as was provided for in 1979 Ordinance. Under the provision of 2001 Ordiance, a taxpayer that has been extended an exhaustive and all-emcompassing exemption in respect of any income cannot be burdened with the levy of minimum tax under section 113 of the Ordinance as 'deeming income' provisions contained in sub-section (2) thereof do not carry a non onstante status."

13. Considering the facts of the case in the light of above judgments, we have observed that the case of the taxpayer is fully qualified to be assessed under clause (92) of Part-I of 2nd Schedule of Ordinance. As such we are of the considered opinion that the orders passed by the assessing officer u/s 122(5A) dated 03.11.2016 are not sustainable. Operations of a welfare organization are based on "donations" which can't be termed as turnover as defined under section 113(4) of the Ordinance, 2001. The Cornell law School defines the word "donations" as follows:

> *A donation is a gift - usually one of a charitable nature. A donation is a voluntary transfer of property (often money) from the transferor (donor) to the transferee (donee) with no exchange of value (consideration) on the part of the recipient (donee). (The recipient gives nothing in exchange for the donated property.)*

It is trite law that nobody could be made liable to pay tax on basis of presumptions or intendment, except on basis of explicit provisions of law. Reliance is placed on reported judgment of the Tribunal reported as 2013 PTD 2268. Even otherwise, the requirement of approval as non-profit organization as defined u/s 2(36) of the Ordinance, 2001 was firstly introduced and inserted in Section 100C by the Finance Act, 2019 which cannot be operate retrospectively. Therefore, for Tax Years 2011 to 2015, there was no requirement of getting certificate u/s 2(36) of the Ordinance. Reliance is placed on unreported judgment of this Tribunal in ITA No.1429/LB/2020 dated 02.10.2020 titled M/s Fatima Fertilizer Welfare Fund vs CIR(Appeals), Bahawalpur. Relevant excerpt of the judgment is reproduced hereunder for clarity:

> *7. From the bare perusal of above provisions. It becomes crystal clear that non-profit organizations, trusts or welfare institutions are exempt from taxation. An alarming aspect of the case, which has been brought to the notice of the Bench is that the department accepted the stance of the taxpayer of being welfare society for tax year 2014 but for the year under consideration the claim of the taxpayer of tax credit u/s 100C of the Ordinance has been rejected without bringing on record any plausible reasons. It is pertinent to note that condition regarding getting approval of the Commissioner u/s 2(36) of the Ordinance was introduced through Finance Act, 2019 and is not applicable for the year under consideration i.e. 2016."*

14. We also don't find ourselves in agreement with the line of arguments adopted by learned DR as per grounds of appeal. After bare perusal of the impugned order and available record, we are of the considered view that while allowing relief to the taxpayer, the learned CIR(Appeals) has fully justified his action as per finding given in the impugned order. We find that no exception can be taken to the treatment as accorded by the learned CIR(A) which is wound to be fair and reasonable in the ambient circumstances of the taxpayer. The learned DR during the course of hearing has failed to put-forth any plausible reason which may persuade us to interfere in the impugned orders. Therefore, the orders passed by the learned CIR(Appeals) being in accordance with law and facts of the case, are upheld and departmental appeals being devoid of merits are dismissed. We order accordingly.

Sd/-

(Dr.Muhammad Naeem)
Accountant Member

Sd/-
(Shahid Masood Manzar)
Chairman

Copy of the bench order forwarded to
1. The Appellant M/s FFC Educational Society C/o FFC Plant Site G.T.H Machi Sadiqabad
2. The DR

27/9/2022

Appellate Tribunal Inland Revenue Multan