

**APPELLATE TRIBUNAL INLAND REVENUE, MULTAN BENCH,
MULTAN.**

**ITA No.163/MB/2021
(Tax Year 2018)**

**M/s. Shujabad Oil & Feed Mills (Pvt.) Ltd., ...Appellant
Multan.**

Versus

The CIR, LTO, Multan.

...Respondent

**Appellant by: Mr. Muhammad Imran Ghazi, Advocate.
Respondent by: Mr. Tariq Bhatti, DR.**

**Date of Hearing: 23.11.2021
Date of Order: 23.11.2021**

ORDER

DR. MUHAMMAD NAEEM (Accountant Member): The titled further appeal pertaining to tax year 2018 filed at instance of the taxpayer has been directed against the appellate order dated 24.06.2021 recorded by CIR(Appeals-II), Multan.



2. Brief facts of the instant case are that the taxpayer, a private limited company, derives income from manufacturing of Oil & Feed, e-filed return for the year under consideration declaring loss at Rs.(16,631,676)/-. The taxpayer has filed refund application u/s 170 of the Income Tax Ordinance, 2001 (hereinafter called 'the Ordinance') on the basis of Advance Tax u/s 147, GDs u/s 148, Cash Withdrawal Certificates from Bank u/s 231A, Private Vehicle Tax Challans u/s 234, Electricity Bills u/s 235 and Telephone Bills u/s 236(1)(a) of the Ordinance. On the basis of said discrepancies, proceedings were initiated which culminated in passing of order u/s 170(4) of the Ordinance with the direction to issued refund amounting to Rs.38,126,527/- with the prior approval of Commissioner Inland Revenue, Corporate Zone, RTO, Multan vide order dated 26.08.2020 and by disallowing tax credit u/s 65B, advance tax u/s 147 and tax deductions u/s 231A, 234, 235 & 236 of the Ordinance. Feeling aggrieved, the taxpayer preferred appeal before CIR(Appeals-II) Multan, who annulled the refund order with the direction to call for record/documents from the taxpayer and get the refund claim reconciled and pass order afresh on merits by

providing opportunity of being heard to the taxpayer. Hence, the taxpayer has come up in further appeal before this Tribunal.

3. The learned counsel appearing on behalf of the taxpayer has termed the action of first appellate authority to be arbitrary. He apprised the court that the taxpayer has provided complete documents but the learned CIR(Appeals) has not appreciate the same and remand the case with certain direction. Firstly, he stated that the department disallowance of refund in advance tax paid u/s 147 of the Ordinance amounting to Rs.2,000,000/- without any cogent reason and without considered the mechanism of return of income in which amount of advance tax u/s 147 auto appears under relevant column of FBR online system "IRIS". Secondly, he apprised the court that the department rejected the refund paid in advance tax u/s 148 of the Ordinance for the reason that documents not verified. Thirdly, he affirmed that the advance tax paid u/s 231A on cash withdrawal from banks and the department has not appreciate the documents provided in this regard and reject the refund. Lastly, he stated that the advanced tax u/s 234, 235 & 236 of the Ordinance was rejected by the department for the reason that the electricity meter is not registered with the company name, original bills are not provided and token tax paid by the taxpayer are not verifiable in the absence of documentary evidence. In this regard, he stated that all the relevant documents are provided but he could not appreciate the same. The learned counsel also provided reported judgment of Honourable Lahore High in the case titled as CIR vs. M/s. Chicago Metal Works, wherein the court issued certain direction. In the light of these assertion, he seeks comprehensive direction for this Tribunal regarding claim of return. On the other hand, the learned DR appearing on behalf of the department has fully supported the impugned order.

4. Arguments heard and record perused. It is observed that the taxpayer of the case in hand has paid advance tax u/s 147 of the Ordinance and the said amount is rejected without bothering to check the veracity of the CPR's submitted by the taxpayer. It is further observed that the FBR is collecting the advance tax being a withholding agent and surprising to see that he could not verified



the same. It is directed to the department to check the CPR's provided by the taxpayer and allow the refund amounting to Rs.2,000,000/- if the same is found in accordance with law. As per contention of learned counsel, all the relevant documents i.e. GD's, CPR's are provided but the department disallowed the same without any cogent reason. It is further observed that the amount paid in advance tax u/s 148 of the Ordinance on import and the tax collected by the FBR Custom Wing at the time of import stage was not given effect. It is directed to the department to check the authenticity of the GD's and CPR's furnished by the taxpayer and allow the refund in this regard as per law. We further observed that the taxpayer paid advance tax u/s 231A of the Ordinance on cash withdrawal from banks. In this regard, he has placed certain documents i.e. certificates issued by the banks under rule 42 of the Income Tax Rules, 2002 alongwith bank statement and the concerned bank verified the stance taken by the taxpayer and saying that they deposited multiple taxpayer's withholding tax through single CPR's. Under such circumstances, we direct the department to verify the certificate issued by bank under Rule 42 and issue the refund in this regard accordingly. We observed that the refund rejected u/s 234, 235 & 236 of the Ordinance for the reason that relevant documents were not provided but the stance of the taxpayer is different that he has provided complete documentary evidence but assessing officer not appreciated the same. We direct the department to check the genuineness of the tax deducted on electricity, telephone bill as well as token tax paid on vehicles and issued refund in this regard after necessary verification and in case, if found otherwise, speaking order be issued with reasons of his decision. The Honourable High Court issued necessary directions to issue refund alongwith additional payment in the case titled as CIR vs. M/s. Chicago Metal Works in TR No.48 of 2011 dated 09.02.2015. Relevant extract is reproduced hereunder:-



"Nevertheless, the Commissioner is bound under subsection (4), to make a refund order within sixty days from receipt of application for refund. His inaction is made appealable under subsection (5). In our opinion, on expiration of sixty days, a negative order is presumed to have been passed. In case appeal is

accepted, against the inaction, and refund is determined by Appellate Court, the refund shall be taken as due on the date when sixty days expired from receipt of application for refund. Courts would not allow the department to take advantage of its own inaction within the stipulated period of sixty days."



5. In view of the foregoing facts and case law quoted supra, the orders passed by the authorities below are vacated to the extent of refund rejected u/s 170(4) of the Ordinance and directed to pay the refund claim due under the law after necessary and comprehensive payment verification. We Order accordingly.

Sd/-
(DR. MUHAMMAD NAEEM)
Accountant Member

Sd/-
(SAJJAD ASGHAR KHOKHAR)
Judicial Member

✓ Copy of the bench order forwarded to
1. The Appellant
2. The CIR. *M/S. Shujabad oil & Reed Mills (P) Ltd, MN*
By Order
ASSISTANT REGISTRAR
Appellate Tribunal in Revenue
Multan
[Signature]
04/01/22