

THE APPELLATE TRIBUNAL INLAND REVENUE, LAHORE BENCH,
LAHORE.

ITA No.1987/LB/2020

[Tax Year 2018]

M/s. Super Asia Electronics., Gujranwala.

Appellant

Versus

The CIR, RTO., Gujranwala.

Respondent

Appellant by: Mrs. Khalida Irshad, Adv.

Respondent by: Mr. Matee-ur-Rehman, DR.

Date of hearing: 03.11.21. Date of Order: 17.02.2022.

ORDER

RIZWAN AHMED URFI (ACCOUNTANT MEMBER): The titled Income Tax Appeal has been filed by the assessee / appellant which is directed against order dated 15.06.2020, passed by the learned CIR(Appeals), Gujranwala in respect of Tax Year 2018.

2. Brief facts necessary for disposal of appeal are that the taxpayer is an association of persons (AOP) and derives income from the business of electronics goods. Return for tax year 2018 was filed by the taxpayer to declare income of Rs.1,300,000, which was deemed to be assessment order in terms of Section 120(1) of the Income Tax Ordinance, 2001 ('the Ordinance'). The learned Additional Commissioner Inland Revenue ('the OIR') examined the assessment record and found that deemed assessment for the year was erroneous in so far as prejudicial to revenue on ground that the taxpayer had declared sales amounting to Rs.46,651,487 as per sales tax returns for the year 2018 but failed to discharge its minimum tax liability @1.25% of the turnover as required under section 113 of the Ordinance in its income tax return. In response to show cause notice issued under section 122(9) read with section 122(5A), the taxpayer furnished its reply which was considered unsatisfactory. Therefore, deemed assessment was amended under section 122(5A) of the Ordinance by charging minimum tax under section 113 at Rs.583,144.



3. Being aggrieved the taxpayer filed appeal before the CIR(Appeals) Gujranwala who vide appellate order No.1049 dated 15.06.2020 confirmed the impugned treatment for the reasons recorded therein. The taxpayer being dissatisfied has come up in further appeal before this forum.

4. The learned A.R of the appellant strongly agitated the treatment accorded by the lower fora on multiple grounds. At the outset, it was contended that the deemed assessment was neither erroneous nor prejudicial to revenue. Therefore, section 122(5A) was wrongly invoked in this case. It was added that charging minimum tax under section 113 of the Ordinance was outside the domain of section 122(5A). It was further averred that the taxpayer received fixed margin on sale of goods which fell within the ambit of 3rd Schedule to the Sales Tax Act, 1990 and had correctly declared said margin as its turnover in the return of income. Contesting the treatment accorded by the learned CIR (Appeals), learned AR argued that confirmation of amendment order by placing reliance on a case reported as 2017 PTD (Trib.) 2234 was illegal as the facts in said case were totally different from those of the appellant. He contended that minimum tax in cases like that of the appellant was chargeable on turnover comprising margin allowed by the principal companies and not on the sales. In support of this argument, reliance was placed on a case reported as 2015 PTD (Trib.) 1926. Alternatively, it was contended that the appellant being a dealer of electronics goods was entitled to 80% reduction in minimum tax chargeable.

5. The learned D.R on his turn supported the orders of authorities below for the reasons recorded therein.

6. Rival contentions of the parties have been considered in the light of record and reported cases. The moot point to be decided is whether minimum tax under section 113 of the Ordinance in this case was chargeable on gross sales or gross margin derived by the taxpayer. It is noted that this Tribunal has already decided this



issue in a number of reported and unreported cases. In the judgment 2015 PTD (Trib.) cited at bar, this Tribunal has held as under:

"To conclude, on the basis of facts of the case and keeping in view of the decisions of the superior courts as referred above, we find force in the arguments of the learned AR that while charging and confirming the issue of minimum tax both the authorities below have not appreciated the true and correct facts of the case, therefore, it is held that margin of profit/ commission as declared by the taxpayer in its revised return is amendable to minimum tax u/s 113 of the Income Tax Ordinance, 2001 if exceeds the minimum threshold of charging turnover tax."

Facts of the case cited supra are the same as that of the appellant in the instant case. Therefore, ratio decided in the above case squarely applies to the case in hand so that minimum tax was chargeable on the gross margin declared by the taxpayer in its return, and not on entire sales.



It is noted that the learned CIR (Appeals) while rejecting taxpayer's appeal has relied upon the case reported as 2017 PTD (Trib.) 2234. It will be useful to reproduce here relevant extract from said case which reads as under:

"The appellant's primary contention contained in grounds of Appeal No. 3 through 12 and debated during hearing is that he, being a distributor of a manufacturer who charges fixed margin on sales done on behalf of the manufacturer, is a commission agent and, as such, is liable to pay minimum tax on his commission which is his turnover @ 1% under section 113. The learned CIR (A) rejected the contention of the appellant that he was a commission agent on the ground that he himself had declared sales in the Audited Final Accounts."

It is seen that facts mentioned in the above-mentioned case are different from those of the case in hand since the appellant in this case has declared margin, and not sales, in its return of income. It

is concluded, therefore, that reliance of learned CIR (Appeals) on the aforesaid case was misplaced.

8. In view of foregoing discussion, we are inclined to hold that minimum tax under section 113 of the Ordinance in this case was to be charged on turnover declared by the appellant in its return of income. The impugned action of charging minimum tax on sales instead of turnover declared by the appellant is thus found to be illegal and contrary to facts of the case.



9. Consequently, orders of the authorities below are vacated being not maintainable and appeal of the taxpayer is accepted.

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**(MIAN TAUQEER ASLAM)
JUDICIAL MEMBER.**

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**(RIZWAN AHMED URFI)
ACCOUNTANT MEMBER**

Copy of the bonafide order forwarded to

1. The Appellant.....

2. THE CIR,

*M/S Super Asia Electronics - G1/100
Wak*

*For order
25/2/22*

Assistant Registrar
Appellate Tribunal Inland Revenue
Lahore.