APPELLATE TRIBUNAL INLAND REVENUE OF PAKISTAN
MULTAN BENCH, MULTAN

ITA No. 550/MB/2022
(Tax Years, 2017)

Waqas Edible Oil Product (pvt) Limited
Adda Billi Wala, Bahawalpur Road
Multan
NTN 7259326 — Appellant

Vs

The Commissioner Inland Revenue Corporate Zone RTO, Multan. — Respondent

Appellant By : Mr. Imran Ghazi, Adv
Respondent By: Mr. M.Qaswer Hussain, DR.

Date of Hearing: 18-08-2022
Date of Order : 18-08-2022

O R D E R

MIAN ABDUL BASIT, (JUDICIAL MEMBER):- This is an appeal under section 131 of the Income Tax Ordinance, 2001 (the Ordinance, 2001) challenging the order dated 19.07.2022 passed by the learned Commissioner Inland Revenue (Appeals-I), Multan [**CIR(A)**] through which the assessment orders passed under section 121(1)(d) of the Ordinance, 2001, was confirmed.

2. Succinctly the facts of the case leading to this appeal are that the case of taxpayer for tax year 2017 was automatically selected for audit under section 214D of the Ordinance, 2001, the tax department, therefore issued a notice under section 177(1) of the Ordinance, 2001 for production of record to conduct the audit. The tax department afforded three opportunities to provide the record to the appellant / taxpayer, but the taxpayer did not furnish the record which drove the assessing officer to proceed for best judgment in contemplation to section 121 of the Ordinance, 2001. The assessing officer issued a show cause notice under section 121(1)(d) of the Ordinance, 2001 read with section 177(10) of the Ordinance, 2001 intending to make the best judgment in case of non-provision of record. But again, the appellant, despite of issuance of three notices for compliance by the tax department, did not attend the office of the assessing officer which persuaded the assessing officer to pass the order in shape of best judgment assessment

and a tax demand of Rs. 56,371,080/- was created accordingly. The appellant assailed the order passed under section 121(1)(d) of the Ordinance, 2001 before the learned CIR(A) but could not be able to earn the satisfaction of learned CIR(A) which resulted into upholding the order of assessing officer. The appellant has now come up before this tribunal to challenge the orders of the tax authorities, hence this appeal.

3. On due date Mr. Muhammad Imran Ghazi, appeared on behalf of the appellant company and Qqswar Hussain DR appeared on behalf of the respondent department.

4. The learned AR on behalf of appellant taxpayer mainly accentuated that the assessing officer had ignored the circular dated 24.04.2020 while proceeding for audit in the case selected under section 214D of the Ordinance, 2001, which rendered the proceedings as illegal. The learned AR further submitted that the assessing office did not disclose any material available with him to proceed under section 121 of the Ordinance, 2001. The order of the learned CIR(A) was more an academic discussion without discussing the merit of case, the learned AR pleaded. The learned AR contended that the assessing officer had not only enhanced the sale but had also disallowed the expenses on presumption and assumption basis which was in derogation to section 121 of the Ordinance, 2001. The learned DR on the other hand submitted that the appellant did not provide the record despite of ample opportunities were provided to the appellant company, hence the assessing officer did not have any other option except to frame the opinion by exercising the power of best judgment assessment. The orders of the tax authorities bellow do not have any legal and factual error and the appellant did not come with any evidence to dislodge the finding of the tax authorities, the learned DR argued. The learned DR, fervidly supporting the orders of the authorities bellow prayed for the dismissal of appeal.

5. We have heard the rival parties and gone through the record of appeal file. We, when confront the learned DR that whether the procedure for conclusion of audit selected under section 218D of the Ordinance, 2001 issued vide circular date 24.04.2020, was followed in the instant case, the learned DR admitted that record does not show this aspect of the case. We

have also noted that the assessing officer without adhering to the instruction of the board issued vide letter dated 24.04.2020 straightaway proceeded to make the best judgment assessment that too without bring on record the material evidence, which is the prime condition to invoke the provision of section 121 of the Ordinance, 2001. From the perusal of the appeal file, it is established without any doubt that board's instructions were not followed which the assessing officer being the officer of FBR was mandatorily required to follow as per the provision of section 214 of the Ordinance,2001.

6. It is also observed that notice under section 177 of the Ordinance, 2001, followed by three reminders were issued for provision of record but none of three were responded. It was therefore the assessing officer issued a show cause notice dated 14.04.2018, which as per the order was also not responded, and the assessing officer, therefore passed the best judgment assessment order under section 121(1)(d) of the Ordinance, 2001 vide order dated 28.02.2022. The learned assessing officer while framing the assessment order enhanced the sales and disallowed the expenses without referring any material evidence. The duo amounts were added in the income of the appellant resulting into creation of tax demand at Rs. 56,371,080-. The whole exercise was done under section 121(1)(d) of the Ordinance, 2001 which in order to attend the issue under appeal properly, is being reproduced hereunder:

> ***121 Best Judgment assessment*** *(1) Where as person fails to:*
>
> *(a)------*
> *(aa)-----*
> *(b)------*
> *(c)------*
>
> *"(d) produce before the Commissioner, or [a special audit panel appointed under sub-section (11) of section 177or any person employed by a firm of chartered accountants [or a firm of cost and management accounts] under section 177, accounts, documents and records required to be maintained under section 174, or any other relevant document or evidence that may be required by him for the purpose for making assessment of income and determination of tax due thereon,*
>
> *The* ***Commissioner may, based on any available information or material and to the best of his judgment****, making an assessment of the taxable income [or income] of the person and the tax due thereon [and the assessment, if any, treated to have been made on the basis of return or revised return filed by the taxpayer shall be of no legal effect."*

From the perusal of above provisions, it reveals that in case the assessee is failed to provide the record in pursuance to notice under section 177 of the Ordinance, 2001 the Commissioner may on the basis of available information and material, make an assessment of taxable income of the assessee. Whereas, the perusal of the order of the learned assessing officer shows that no material or information is referred in the assessment order which is a mandatory requirement to initiate proceedings under section 121 (1)(d) of the Ordinance, 2001. It is a statutory requirement within the contemplation of section 121(1)(d) of the Ordinance, 2001 that the commissioner should have some material or information to proceed against the taxpayer/assessee under section 121 (1)(d) of the Ordinance, 2001. The ultimate corollary of the above discussion is that if the Commissioner does not have any information or material for assessment and determination of the tax liability, in contrary to what has been declared by a taxpayer in its return for particularly tax year, he could have not opted to proceed under section 121(1)(d) of the Ordinance, 2001. The assessment order also shows that lump-sums enhancement of sales and additions by way of disallowance of expenses, which is in defeats and against the mandate of the section 121 of the Ordinance, 2001. The learned CIR(A) while passing the order in appeal also does not address this particular issue and passed the order by simply observing that appellant was failed to provide record for conducting of audit.

7. We, at the same time, also of the view that the appellant should have attend the assessment proceedings and furnish the explanation and record for finalization of the proceedings initiated by the assessing officer. This case was dealt without following the board's instructions in line with the letter dated 24.04.2020 which make the whole proceedings as flawed. What the assessing officer should have done was to first consider the selection of audit under section 214D in the light of board's instructions before making any amendment and or best judgment. There is no cavil in understanding that the case of the appellant was not proceeded in accordance with the procedure laid down through the letter dated 24.04.2020 by the Federal Board of Revenue and thus the orders of the tax authorities are not let to remain in field.

8. In the sagacity of above discussions both the orders (the original assessment order dated 28.02.2022 and appellate order dated 19.07.2022) are

hereby annulled and the matter is remanded back to the assessing officer with the direction to proceed strictly in accordance with the board's letter dated 24.04.2020. If the assessing officer is satisfied that the case of the appellant is proceedable under the said letter, he will seek the explanation in writing from the appellant before any further action permissible under the law in line with the board's letter dated 24.04.2020.

9. This order consists of five (05) pages and each page bears my signature.

Sd/-
(MIAN ABDUL BASIT)
Judicial Member

Sd/-

(DR. MUHAMMAD NAEEM)
Accountant Member

Copy of the bench order forwarded to
1. The Appellant Waqas Edible Oil Product (Pvt) Ltd Multan
2. The Respondent
BY ORDER
ASSISTANT REGISTRAR 26/08/2022
Appellate Tribunal Inland Revenue
Multan