

ORDER SHEET
IN THE LAHORE HIGH COURT,
MULTAN BENCH, MULTAN.
 JUDICIAL DEPARTMENT


ITR No. 01 of 2020

Commissioner Inland Revenue Vs. M/s. Muhammad Riaz & Sons

Sr. No. of order/ proceeding	Date of order/ proceeding	Order with signature of Judge, and that of parties or counsel, where necessary.
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15.11.2022. Mr. Abdul Razzaq Raja, Advocate / Legal Advisor for applicant-department.
 Rana Muhammad Hussain and Muhammad Imran Ghazi, Advocates for respondent-taxpayer.

Through instant Reference Application under Section 133 of the Income Tax Ordinance, 2001 (“**the Ordinance of 2001**”), following questions of law, asserted to have arisen out of impugned order dated 17.10.2019, passed by learned Appellate Tribunal Inland Revenue, Lahore Bench, Lahore (Camp at Multan) (“**Appellate Tribunal**”), have been pressed and argued for our opinion:-

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1. Whether the credit entries appearing in the bank statement of a person which remained unexplained despite provision of proper opportunity, does not constitute definite information in terms of section 122(8) of the Income Tax Ordinance, 2001 attracting the provisions of section 122(5) read with section 111(1) of the Ordinance?
2. Whether under the facts and circumstances of the case, the Appellate Tribunal was justified to observe that no notice u/s. 122 of the Ordinance has been issued to the appellant ignoring notice dated 18.01.2018 through which show cause notice u/s. 111(1)(d) and u/s. 122(9) read with Section 122(1), 122(5) was duly confronted?
3. Whether under the facts and circumstances of the case, the learned Appellate Tribunal was justified to observe that the department made all correspondence on wrong address which is not registered with FBR, ignoring fact that the taxpayer replied to notice issued on the said

address as reproduced in order and also revised return in response to these notices?"

2. Brief facts of the case are that respondent-taxpayer, deriving income from business of oil, was registered with FBR since 12.06.2007. The discrepancies of bank account, noted in investigation report made by Director Intelligence and Investigation Inland Revenue, Multan, were confronted to respondent-taxpayer through show cause notice dated 04.10.2016, which culminated in passing order dated 31.01.2017. Being aggrieved, respondent-taxpayer preferred appeal before CIR (Appeals), Multan, which was rejected vide order dated 26.04.2017. Feeling dissatisfied, respondent-taxpayer filed second appeal before learned Appellate Tribunal, which was allowed vide order dated 17.10.2019, whereby orders passed by fora below were vacated. Hence this Reference Application.

3. Learned counsel for applicant-department was confronted with the findings of facts noted by learned Appellate Tribunal to the effect that arbitrarily ex-parte assessment order was passed because all correspondence was made on wrong address and that even suppressed income was not separately identified. However, despite arguments at some length, he could not rebut that findings are of facts and failed to show that the proposed question are arising out of the impugned order.

4. Under the law, issuance of notice and its service on correct address is a condition precedent for assumption of jurisdiction, which means a valid and proper service as required by law and not otherwise. In the instant case, no evidence has been brought on record that the notices were issued and served upon respondent-taxpayer, which clearly shows that income was

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determined without associating the taxpayer. In absence thereof, *ex parte* assessment so framed is arbitrary and unjustified. Even otherwise, impugned findings that statement of suppressed income was not specifically identified, are of facts and learned Legal Advisor for applicant-department could not displace the findings of facts arrived at by learned Appellate Tribunal, therefore, we have no reasonable cause to disagree therewith. It has to be shown that the findings are either against record or perverse for warranting interference by this Court in exercise of reference jurisdiction.

8. Since the decision by learned Appellate Tribunal is based on findings of facts, therefore, we decline to exercise advisory jurisdiction.

This Reference Application is decided against applicant-department.

9. Office shall send a copy of this order under seal of the Court to learned Appellate Tribunal as per Section 133(5) of the Ordinance of 2001.

(Muhammad Raza Qureshi)
Judge

(Muhammad Sajid Mehmood Sethi)
Judge

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Application No. _____
 Date of presentation _____
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