

APPELLATE TRIBUNAL INLAND REVENUE OF PAKISTAN
MULTAN BENCH, MULTAN

ITA No.328/MB/2023

(TAX YEAR 2021)

Mr. Mehboob Hussain,

Basti Cheena Adda, Near Talai,

Dera Road, Rajanpur

CNIC.3240260192685

...Appellant

Versus

The CIR, Multan ZONE,

RTO, Multan

...Respondent

Appellant by : Mr. Muhammad Imran Ghazi, Advocate

Respondent by : Mr. Muhammad Qaswar Hussain, DR

Date of Hearing: 22.06.2023

Date of Order : 22.06.2023

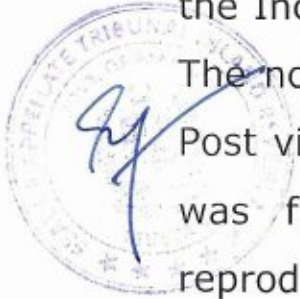
ORDER



MEAN ABDUL BASIT (JUDICIAL MEMBER):- The titled appeal has been filed by appellant/taxpayer against the Order dated 18.10.2022 passed by the learned Commissioner Inland Revenue (Appeals-I), Multan [**CIR(A)**] whereby the order passed under section 122(1) of the Income Tax Ordinance, 2001 (**the Ordinance, 2001**) was confirmed.

2. Brief facts leading to this appeal are that the taxpayer is an individual doing business in the name as "Mehboob Tractors and Motors and Al-Mujahid Tractor and Commission Agent", who e-filed return of Income for Tax year 2021 declaring taxable income at Rs. 955,000/- which constituted a deemed assessment order, u/s 120(1)(b) of the Ordinance 2001. Later on, the department got definite information from FBR databases that the taxpayer had made

an investment in purchase of sugar from different sugar manufactures. On the basis of material evidence available on record, a show cause notice dated 11.02.2022 u/s 122(9) of the Income Tax Ordinance 2001 was issued to the taxpayer. The notice was properly served to the taxpayer by Pakistan Post vide receipt dated 17-02-2022. The date of compliance was fixed for 26-02-2022. The show cause notice is reproduced as under:-



"Dear taxpayer,
Thanks for filling your income return for tax year 2021 in which following resulted were declared in Pak Rupees.

Net assets current Year _____Rs. 836,000/-
Business income declared _____Rs. 955,000/-

Return of income for tax year 2021 was deemed to be an assessment order u/s 120 of the Income Tax Ordinance, 2001.

On the examination of deemed assessment order for the above year, it was found that you have not discharged your obligation to declare true affairs of your financial transactions.

This office has definite information from FBR database that:

You have made purchase of sugar from different mills amounting to Rs. 6,986,029/- as under:-

Tandlianwala Sugar Mills

Invoice No-----Date of Invoice

1406

04-Feb-2021

The taxpayer filed the reply to the notice, but the assessing officer did not accept the explanation of the taxpayer which resulted in passing the amended assessment order dated 09.06.2022 as under:

Taxable Income.....	Rs.955000/-
Addition u/s 111(1)(d).....	Rs.6986029/-
Assessed taxable income.....	Rs.7941029/-
Tax Chargeable.....	Rs.1899360/-
Tax Withheld.....	Rs.45,500/-
Demanded Income Tax.....	Rs.1,853,860/-

The Appellant being aggrieved, filed an appeal before the CIR(A), which was rejected vide order dated 18.10.2022. Being dissatisfied with the order of CIR (A) the taxpayer challenged the order of learned CIR(A) by availing the remedy of second appeal in terms of section 131 of the Ordinance, 2001, hence this appeal.



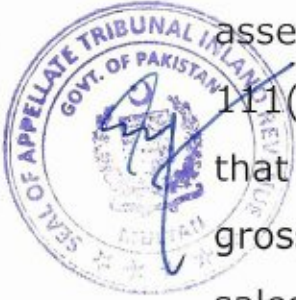
3. Mr. Muhammad Imran Ghazi Advocate appears on behalf of the appellant / taxpayer, whereas the respondent tax department is represented by Mr. Muhammad Qaswar Hussain the learned DR.

4. The learned AR argues that Order of CIR (A) Multan is bad in law and contrary to the facts of the case. The learned AR further submits that learned CIR(A) did not appreciate the fact that the appellant had actually received sugar in consideration of sale price of sugarcane supplied to the sugar mill. The learned AR contends that CIR (A) has erred in law in confirming the order u/s 122(1) read with section 111 through which the assessing officer added the total amount of sugar purchased during the Tax Year 2021 in the income of appellant without allowing the cost of sales. The learned AR relied on the judgment reported as 2023 SCMR 534 to maintain that in case of undeclared sales / purchases income after deducting the cost of sales can be added to the income of taxpayer. The learned DR, countermanding the arguments of learned AR, submits that the appellant could not substantiate its claim of receipt of sugar as a consideration of price of supply of sugarcane to the sugar mill with acceptable documentary evidence. The learned DR by backing up the order of CIR(A), submits that the appellate order is well reasoned, speaking and in accordance with facts of the case. He prayed for upholding the order of CIR(A).

5. We have heard the parties and perused the case file. The appellant contends during the hearing that he is farmer and grows sugarcane; and during the tax year 2021 the appellant sold the sugarcane to the Tandlianwala Sugar Mill and in return the mill gave sugar equal to the value of sugarcane supplied to it instead of cash. The appellant in support of this claim furnished the certificate issued by the sugar mill to the assessing officer, but record shows that this aspect of the case has not been dilated upon which has caused the severe legal dent in the case. The learned assessing officer and the learned CIR(A) should have made an inquiry with regard to the claim of the appellant of receiving the sugar against the sale of sugarcane to the sugar mill. It should have also been established whether the appellant had been involved in the business of sugar during the previous tax years, but the orders of tax authorities below are silent in this regard. We therefore of the candid view that the tax authorities, at first, should have made any inquiry that whether the appellant owned the agricultural land for cultivation of sugarcane; and then should have moved on to get whether the appellant had purchased the sugar or had received the sugar from the sugar mill in consideration of supply of sugarcane. The impugned orders (amended assessment order and first appellate order) are completely silent on this issue, which persuaded us to declare that both the orders are not sustainable under the law of practicing statutes.

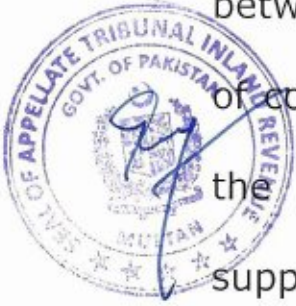
6. The other issue germane to present controversy, in the event of falsification of appellant's claim of receiving sugar in consideration of supply of sugarcane, is whether the whole value of undisclosed sales can be added to the income of

taxpayer without allowing cost of sales. There is no dispute that there was a difference between the purchases declared in the return of total income for tax year 2021 and the purchases known to the tax authorities through definite information. It is noted based on the information regarding the purchase of sugar that all items of trading/profit accounts were drastically different. It is however, the assessing officer was not justified in making addition u/s 111(1)(d) of the Ordinance, 2001. It is simple proposition that sales of goods invariably involve cost of sales and even gross business income is the difference of sales and cost of sales. Obviously, Sales were made after having purchased the goods, therefore, treating sales alone as income without considering purchases was illegal and baseless action. The allegation of suppression of sales was not valid and did not warrant addition u/s 111(1)(d) of Ordinance, 2001. It is also obvious that the taxpayer had suppressed both sales and purchase, but it was in fact the difference of sales and purchase (gross profit) which was allegedly concealed for the purposes of charging of income tax. The reasons for adding the total sales value in the income of appellant that the provisions of section 111 of The Ordinance 2001 are punitive in nature, therefore, no verifiable credit can be given to the appellant, is highly misconceived and misdirected. Therefore, in our opinion the actual suppressed income will be the difference of gross profit admittedly, derived by the taxpayer. It is an admitted position that the assessing officer without considering the purchase price added the total amount of sale of sugar to income, whereas legally speaking purchase value should have been subtracted from sales price for making addition under section 111 of the Ordinance 2001.

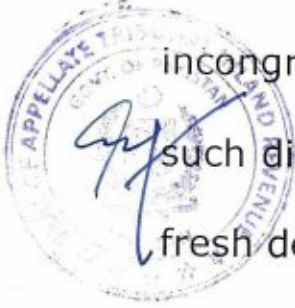


7. The honorable Supreme court of Pakistan in a recent case reported as Commissioner Inland Revenue Zone-II Regional Tax Office VS Mian Liaqat Ali, Liaqat Hospital, Lahore (**2023 SCMR 534**) has articulated the principle that addition can only be made of the amount of difference between purchase value and sales value because the denial of cost of sale is not justified. The appellant did not declare the purchase of sugar, if it was not in consideration of supply of the sugarcane, in his tax return for tax year 2021, but to add the total amount of undeclared sales / purchase without allowing the cost of sales runs counter to the verdict given by the honorable Supreme court in the judgment of Mian Liaqat Ali supra. We therefore declare that the orders of tax authorities i.e. amended assessment order dated 09.06.2022 and first appellate order dated 18.10.2022 as unwarranted by law and cannot be let to remain in field.

8. In view of the above narrated legal and factual position both the orders i.e. amended assessment order dated 09.06.2022 and first appellate order dated 18.10.2022 are hereby set aside and the case is remanded back to the assessing officer for fresh decision strictly in accordance with the observation made hereinabove in this order and in particular the law laid down by the honorable supreme court of Pakistan in the case of Mian Liaqat Ali Supra. The



taxpayer shall provide all evidence and record in support of his claim and the assessing officer, if observes any incongruity in the evidence and record, shall communicate such discrepancy in writing to the taxpayer before making a fresh decision.



9. The appeal stands disposed of as above.

10. It is certified that the order in hand consists of seven (07) pages, and I have affixed my signature on each page.

Sd/-
(MIAN ABDUL BASIT)
JUDICIAL MEMBER

Sd/-
(DR. MUHAMMAD NAEEM)
ACCOUNTANT MEMBER

Copy of the bench order forwarded to

1. The Appellant Mr. Mehboub Hussain, Rajanpur

2. The Respondent " " " "

BY ORDER

07/09/23
ASSISTANT REGISTRAR
Appellate Tribunal, Income Tax
Muzaffargarh