

APPELLATE TRIBUNAL INLAND REVENUE PESHAWAR BENCH
PESHAWAR

(Special Division Bench)

ITA No.22 (PB) of 2018
(Tax Year 2013)

M/s Utman Ghee Industry Pvt. Ltd. Plot
No.39, I.E, Gadoon Amazai, Swabi.

...Appellant.

Versus

The Commissioner-IR, RTO, Peshawar.

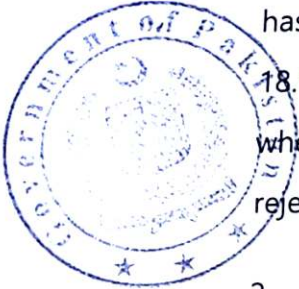
...Respondent.

Appellant represented by : Mr. Yawar Muhammad, ACCA/AR.
Respondent represented by : Mr. Faheem Sikandar, DR.

Date of Hearing : 14.03.2023.
Date of Order : 14.03.2023.

ORDER

DR. SHAH KHAN, ACCOUNTANT MEMBER:- The above titled appeal has been filed by the appellant taxpayer against the order dated 18.12.2017 of learned Commissioner Inland Revenue (Appeals), Peshawar, whereby appeal of the appellant taxpayer relating to tax year 2013 was rejected.

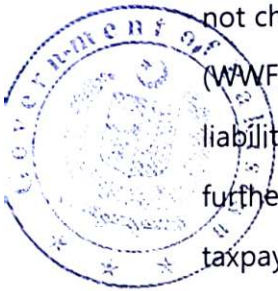


2. Briefly stated facts of the case are that the appellant company is a private limited company engaged in the business of manufacturing of vegetable oil and ghee. Return of income for tax year 2013 was e-filed declaring taxable income at Rs.162,198,112/-. The return was selected for audit under section 177 of the Income Tax Ordinance, 2001 **(the Ordinance)** by the Commissioner Inland Revenue and the appellant was informed accordingly. Consequently, IDR and subsequent statutory notices were issued and served and the assessment order was amended u/s 122 of the Ordinance. Since minimum tax u/s 148(8) was more than the normal tax worked out, the appellant was found liable to pay minimum tax and WWF amounting to Rs.5,038,380/- was also charged as required under the WWF Ordinance, 1971. On appeal, the learned CIR(A),

vide the impugned order, rejected the appeal of the appellant company and confirmed the order of Assessing Officer. Feeling aggrieved, the appellant company has filed the instant appeal before this forum on the grounds mentioned in the memo of appeal.

3. The case was fixed for hearing on 15.03.2023. On due date Mr. Yawar Muhammad, ACCA/AR appeared on behalf of the appellant company and argued his case, while Mr. Faheem Sikandar, Departmental Representative (DR) represented respondent Tax Department and supported the order of CIR(Appeals), Peshawar.

4. The learned AR contended that the impugned order of the learned CIR(Appeals) is wrong on facts and against the law because the WWF was not chargeable as the total normal tax liability plus Workers Welfare Fund (WWF) for the tax year 2013 in the case is less than the minimum tax liability under section 148(8) of the ordinance on import of edible oil. He further asserted that since the minimum tax liability of the appellant taxpayer u/s 148(8) is higher, hence WWF is not chargeable in such a situation. He further averred that in terms of section 4 of the WWF Ordinance, 1971, the basis of levy of WWF is income assessed and determined by the Assessing Officer rather than income under FTR or income covered by or relatable to minimum tax on the basis of declaration. In support of his stance, the AR relied on the judgment of the honorable Peshawar High Court reported as 2006 PTD 2368. The AR also assailed the levy of WWF on the ground that the honorable Supreme Court has declared the changes made in the WWF Ordinance, 1971 through Finance Acts 2006 and 2008 through money bills as illegal. In support of his plea, the learned AR also relied upon the judgment of the Honorable Supreme Court in C.As.1049 to 1055/201, 64 to 66/2013 & 1364 to 1371/2014 and others on 10.11.2016. The AR also contested the remand back of the additions made u/s 174(2)/21(l)/21(m) of the ordinance in the cost of sales and admin expenses, terming it to be unfair. The learned DR, on the other hand, defended the impugned finding of



the learned CIR(Appeals) on the issue of additions and charging of WWF, contending that the same was in accordance with facts and relevant provisions of the WWF Ordinance, 1971.

5. We have considered the arguments of both the learned DR as well learned AR of the taxpayer and have also perused record available on the appeal file besides the relevant provisions of law carefully. As regards the levy of WWF for the year, we have found substance in the plea of the AR of the appellant. In the case of M/s Latif Ghee Industries (Pvt) Ltd, reported as 2006 PTD 2368, the Honorable Peshawar High Court has found that when tax u/s 50(5) of the repealed income tax ordinance, 1979 is deemed to be the minimum tax payable, then charging WWF at 2% of the said income will become excessive and disproportionate to the purpose for which the minimum tax has been levied. In the said judgment, it was held that WWF on income covered u/s 80-DD of the repealed ordinance was not chargeable and it was held that WWF was leviable on real income and not on notional income such as the FTR.



6. We have come to know that three honorable High Courts have already considered and delivered exhaustive judgments on the vires of the amendments made through the Finance Acts 2006 and 2008. The full bench of the Sindh High Court in the case titled **M/s Shahbaz Garments (Pvt) Ltd Vs. Pakistan** (2013 PTD 969) declared the impugned levy of WWF to be a tax and, therefore, validated the introduction and enactment thereof through a Money Bill. The honorable Lahore High Court, on the other hand, in **East Paksitan Chrome Tannery's** case reported as 2011 PTD 2643 and **M/s Azqard Nine Ltd Vs. Pakistan through Secretary and others** (PLD 2013 Lahore 282) has declared the impugned levy made through amendments in the WWF Ordinance, 1971 vide Finance Acts 2006 and 2008 as a fee and not as a tax and thus struck down the legislation as being *ultra vires*. The honorable Peshawar High Court through judgment dated 29.05.2014 in **M/s Associated Industries**

Limited and others Vs. Federation of Pakistan in W.P No.1425/2010

declared the amendments through the Money Bills as *ultra vires*.

7. We have also noted that in C.As. 1049 to 1055/201, 64 to 66/2013 & 1364 to 1371/2014 titled as **Workers Welfare Funds, M/s Human Resources Development, Islamabad and others Vs. East Pakistan Chrome Tannery (Pvt) Ltd and others** (PLD 2017 SC 28), the honorable Supreme Court of Pakistan held, among others, that since the WWF is not a tax, the same could be introduced through the regular legislative procedure only and not through Money Bill, hence the changes made in WWF Ordinance, 1971 through Money Bill (Finance Acts 2006 and 2008) have not been lawfully made. Thus, the changes through Finance Acts 2006 and 2008 by including the income as per accounts and FTR income as the basis for charging WWF was declared as not lawful.



8. The principles settled by the Honorable Supreme Court in the above cited judgment as well as the Peshawar High Court in the case of M/s Latif Ghee Industries (Pvt) Ltd. are applicable squarely to the case in hand with the effect that changes in the WWF Ordinance, 1971 through Finance Acts 2006 and 2008 through Money Bills are *ultra vires*, and that WWF was leviable on the real or assessed and determined income and not leviable on the notional income such as that falling u/s 148(8), as it stood at the material time. The finding of the L/CIR(Appeals) on charging of the WWF for the year in the case is against the above settled principles, the impugned order is, therefore, vacated and the WWF charged is deleted.

9. With regard to the remand back of the additions made u/s 174(2)/21(l)/21(m) of the ordinance in the cost of sales and admin expenses, we are not persuaded by the arguments of the L/AR because complete details and documentary evidences in respect of expenses under these heads were neither provided to the Assessing Officer nor to the L/CIR(Appeals). Such details and evidence have not been provided to

this forum either. In these circumstances, we do not see any wrong in the treatment of the L/CIR(Appeals) and we confirm his finding in the matter.

10. The appeal stands disposed of in the manner indicated above.

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

Sd/-
(MONIM SULTAN)
JUDICIAL MEMBER

Sd/-
(DR. SHAH KHAN)
ACCOUNTANT MEMBER

Momin Khan/APS

Copy Forwarded to :

1. Appellant *M/S Utman Ghee Industry (Pvt) Ltd, Gadoon.*

2. Respondent

3. The L/CIR

4. _____

5. _____

(Signature)

Assistant Secretary
Accountant General
Revenue