

Citation(s):2016 SLD 1072 (2016) 113 TAX 53

Income Tax Appellate Tribunal, Karachi

I. T.A. Nos. 181 to 185/KB of 2011, I.T.A. Nos. 893, 1051/KB of 2011, I.T.A. No. 1096/KB of 2015 (Tax years 2004 to 2010 & 2013) I.T.A. Nos. 237,148,377/KB of 2014 (Tax years 2007, 2008, 2011) I.T.A. No. 357/KB of 2014 (Tax year 2012), decided on 06.02.20

NAZIR AHMAD, MUHAMMAD WASEEM AND MRS. AMBREEN ASLAM, JUDICIAL MEMBERS AHMED SAEED AND DR. MANZOOR AHMAD, ACCOUNTANT MEMBERS

Mohammad Shabbar Zaidi, FCA, Asim Zulfiqar, FCA and Muhammad Arshad, FCA, for the Appellants. Amjad Javed Hashmi, D.R. and Dr. Farrukh Ansari, CIR, LTV; for Respondents.

Law: Income Tax Ordinance, 2001

Section: 20,21(c),21l,21(l),21(m),22,22(12),23,29

,29A,31,32,34(3),37,38(2),61,67,71,74(4) ,75,76,77,78,114,120,120(1)(a)(b),122,12 2(1) (5),122(5),122(5A),129,134,136,137,1 51,158(a),158(b),161,177,Clause(g) ofRule(1) ofSeven

Law: Income Tax Rules, 2002

Section: 13

Law: Income Tax Act, 1922

Section: 32

Law: Income Tax Ordinance, 1979

Section: 17(1)(a),23(1)(x),59,59

Income Tax Ordinance, 2001 (XLIX of 2001) - Section: 122(5A) - Income Tax Ord: 1979, section: 66A - Amendment of assessments - Show Cause Notice - Whether section 122(5A) of Ordinance 2001, allows Commissioner to make inquiries and seek information and details from taxpayer in a manner which is akin to audit proceedings u/s 177. Authorized representatives stated that there has to be order passed u/s 122 and thereafter section 122(5A) could be pressed - AR contended that there has to be some definite information with tax officer to proceed u/s 122(5A) - He stated that there should be apparent legal infirmity in finalized order along with apparent loss of revenue which are mandatory conditions to invoke section 122(5A) which are missing in notices - Advocate on behalf of LTU slated that department has power to conduct any sort of inquiry as it deems fit and proper and no restriction can be imposed on conduct of inquiry - Validity - (1) Whether perusal of section 122(5A) of Ordinance, 2001 and section 66A of Ordinance 1979 show that both are para materia to each other and there is hardly much difference between two sections - Held yes. (2) Whether tax officer can proceed on order passed u/s 120 or 122 of Income Tax Ordinance, 2001 u/s 122(5A), if two mandatory conditions i.e. error of law (illegality) or some loss of revenue are present for invoking this provision - Held yes.

(3) Whether it cannot be agreed with the view of authorized representatives that there has to be an order passed u/s 122 before proceedings can be taken up u/s 122(5A) - Held yes.

(4) Whether matter of inquiries and fishing and roving inquiries is to be seen in context of two mandatory prescribed conditions referred in the provision - Held yes. (5) Whether on issue of definite information, it is noted that this issue was decided in orders passed u/s 65 of repealed Ord. 1979 as well as in orders passed u/s 122(5) of Income Tax Ord. 2001 by superior appellate fora, therefore, it cannot be agreed that there has to be definite information for invoking section 122(5A) as it has no relevance to section 122(5A) - Held

yes. (6) Whether portion of show cause notices referred by authorized representatives show that these are just observations of tax officer - In some portions it appears that respondent/department has started calling for information from appellants which had nothing with regard to two mandatory conditions to invoke Section 122(5A) - Held yes. (7) Whether calling of information's and thereafter finalizing order u/s 122 (5A) without presence of twin mandatory conditions is not permissible - Held yes. (8) Whether some portions of show cause notices where information has been sought further inquiries were raised from taxpayer and still matter remained unclear and amounts were added in income - Held yes. (9) Whether some portions of notices show that amount appearing in computation sheet of amended assessment order was not confronted to appellant which cannot sustain test of appeal - Held yes. (10) Whether officer has confronted appellant again vide rejoinder notice dated 20-09-2013 and has again failed to confront appellant and chose sections 75, 76, 77 and 78 of Income Tax Ordinance, 2001 and confronted these sections in notices ~ Held yes. (11) Whether with regard to other condition i.e. loss of revenue, difference in amounts appearing in notices makes notices vague and unclear, therefore, such type of notices do not come under ambit of section 122(5A) and are not sustainable - Held yes. (12) Whether enquiries have been conducted properly and efficiently is a matter not being dealt with. These issues can be taken up by respective benches at the time of decision on merits of each case and notices - Held yes. (13) Whether in Section 177, tax officer can call for any record, information, books of accounts and conduct any sort of inquiries - Held yes. (14) Whether enquiries conducted without presence of twin mandatory conditions as provided are not permissible and come within ambit of fishing and roving enquiries which are dispelled and not approved - Held yes. (15) Whether if view of Advocate for respondent is accepted then there will be no difference between section 177 and section 122(5A) and it will mean conduct of audit in both sections, this definitely is not

intention of legislature - Held yes, (16) Whether example taken from portion of notices u/s 122(5A) from these cases show that some portions of notices are not in accordance with provisions and some portions are meeting requirement of provision, issue is therefore, to be decided on case to case basis and on facts of each case - Held Yes.

Cases referred to:

2015 PTD 2824 Lahore High Court; 2015 PTD 1639 Islamabad High Court; (2014) 109 TAX 85 (Mb.); 2014 110 Tax 242 (Trib.); 2014 PTD (Trib.) 1629; 2012 PTD (Trib.) 1739; (2012) 106 TAX 158 (Trib.); (2009) 100 TAX 390 (Trib.); (2004) 89 TAX 252 (H.C. Kar.) and ITA No.193 of 1998 Lahore High Court dated 31-01-2012; 1999 PTD (Trib.) 2851; 1999 PTD (Trib.) 7000; 1999 PTD (trib.) 3229 and ITA No.449/KB of 1999-2000 ITAT dated 24-12-1999; 2008 PTR 184; 1995 PTD 413; (1992) 65 TAX 254 (S.C. Pak.); 1985 PTD 413; (1998) 77 Tax 232 (Trib.); (2000) PTD (Trib.) 2628; Elahi Cotton Mills cited at (1997) 76 Tax 5 = 1997 PTD 1555; 2012 PTD 1055 (Trib.) and 2011 PTR 222 ITA No. 625/113/2010; 2012 PTE 124 (Trib.); M/s. EFU General Insurance Company cited at (2011) 104 TAX 313 (H.C. Ear.).

ORDER

The Order was passed by Ahmed Saeed, Accountant Member - The larger Bench was constituted to hear and decide the common issue communicated by Authorised Representatives namely A.F. Ferguson & Co., Ernst & Young Ford Rhodes Sidat Hyder and KPMG Taseer Hadi & Co. Chartered Accountants to this Tribunal vide letter bearing number AT 1397 dated 17-11- 2015 in the above referred appeals. The contents of the letter are as under:

"The Chairman,

Appellate Tribunal Inland Revenue Shaheed-e-Millat Secretariat,
2nd Floor, China Chowk
Islamabad

November 17, 2015
At 1397

Dear Sir,

APPEALS PENDING BEFORE HONOURABLE APPELLATE TRIBUNAL INLAND REVENUE
REGARDING SECTION 122(5A) OF THE INCOME TAX ORDINANCE, 2001 [ORDINANCE]

This is with reference to the meeting Syed Shahhar Zaidi, Senior Partner M/s. A.F. Ferguson & Co., had with your goodself on November 2, 2015. Mr. Zaidi, requested to constitute a larger bench on the matter of circumstances under which provisions of section 122 (5A) of the Ordinance can be invoked.

During the meeting, you had very kindly assented to constitute a larger bench for examining the issue relating to amendment of assessment under section 122(5A) of the Ordinance as if amendment proceedings under section 122(5A) is similar to action /proceeding to be undertaken under section 177 of the Ordinance. This issue is a subject matter of many appeals pending before the Tribunal.

The matter has jointly been discussed by the senior tax partners of M/s. A.F. Ferguson & Co. M/s. KPMG Taseer Hadi & Co. and M/s. Ernst & Young Ford Rhodes Sidat Hyder. We have jointly agree to represent our clients before the larger bench, if constituted, to argue this common ground taken in appeals.

We therefore request that a full bench may kindly be constituted.
Yours sincerely

Sd/-

A.F. Ferguson & Co.

Sd/-

Ernst & Young Ford Rhodes Sidat Hyder

Sd/-

KPMG Taseer Hadi & Co."

02. The appellants were represented by Syed Mohammad Shabbar Zaidi, FCA, Mr. Asim Zulfiqar F.C.A., Mr. Muhammad Arshad FCA and the department was represented by Mr. Amjad Jawed Hashmi Advocate and Dr. Farrukh Ansari, Commissioner Inland Revenue, LTU, Karachi.

03. The bench observed that there was no question in the above referred letter framed by the appellants. The respondent department was also not holding any question in the above referred matter. In view of this bench asked the parties to frame questions after mutual consultation and submit it for decision. The tribunal however asked the parties to argue the case on the issue.

04. The A/R M/s. A.F. Ferguson & Co. Chartered Accountants submitted following question

of law on 25.01.2016.

"Whether section 122(5A) of the Income Tax Ordinance, 2001 allows the Commissioner /Additional Commissioner to make enquires and seek information and details from the taxpayer in the manner which is akin to the audit proceedings under section 177 of Income Tax Ordinance, 2001 so as to establish that an order (including deemed order) is erroneous in so far as prejudicial to the interest 'of revenue? "

The A/R also filed copy of letter bearing No.BT 1009 dated 25-01- 2016 addressed to Chief Commissioner, LTU, Karachi whereby it had requested to give concurrence to the above question or otherwise, the respondent department may submit its own rephrased question. The Chief Commissioner, LTU, Karachi informed vide letter dated 18-01-2016 that following questions have been submitted to FBR for approval.

1 Whether the object, purpose and spirit of section 122(5A), as amended through Finance Act, 2012 is materially different than the objective, purpose and spirit of section 122(1)(5) ".

2. Whether the provisions of section 122(5A), prior to the amendment brought about through the Finance Act, 2012, prevented the Commissioner from calling for any record or documents, once he considered that the order sought to be amended was erroneous in so far as it was prejudicial to the interest of revenue?

3. Whether the use of the word " considers" in sub-section (5A) of section 122, as opposed to the use of the words "is satisfied" in sub-section (5) shows the intention of the legislature to authorize the Commissioner to initiate action under sub-section (5A) on the basis of only a prima facie case, which can be further confirmed or rejected, as the case may be, on the basis of further enquiry, and after allowing the taxpayers an opportunity of being heard?

4. Whether the amendment brought about sub-section (5A) of section 122 through Finance Act, 2012 is only a declaratory provision, and the provision before amendment impliedly required action under the sub-section (5A) on the basis of an enquiry by the Commissioner, after prima facie considering an order to be erroneous in so far as it was prejudicial to the interest of revenue?

5. Whether the word "enquiry" as used in the amended sub-section (5A) can be assigned any restricted meaning under the law?"

It is evident from above that there was no mutual consensus on the question put up by appellant.

05. The proposed questions submitted by Chief Commissioner to FBR for approval to the our mind are not relevant to the issue. The issue was whether unlimited enquiries are permissible under section 122(5A) of the Income Tax Ordinance, 2001 as interpreted by respondent department, then what will be the difference between 122 (5A) of the Income Tax Ordinance, 2001 and section 177 of the Income Tax Ordinance 2001 (hereinafter called the Ordinance 2001) wherein officer is empowered to call books of account, record, information, evidences, explanations probe the matter indepth and conduct unlimited enquires. In view of this we approve the question put up by representatives of the appellant for answer by this forum.

6. Syed Mohammad Shabbar Zaidi, FCA informed that in this matter, issue was as to what extent inquiry is permissible under section 122(5A). It was emphasized that respondent

department has started fishing and roving enquiries by interpreting that unlimited powers are provided in the provision of law. The Authorised Representative was of the view that if the unlimited inquiry is allowed to what the respondent, department is understanding, then there is no difference between section 177 and section 122(5A).

7. Pressing the issue the learned authorized representative stated that there has to be an order passed u/s. 122 of the Income Tax Ordinance, 2001 and thereafter section 122(5A) could be pressed. The respondent department is taking up proceeding u/s 122(5A) on the order deemed to have been passed u/s 120 of the of the Income Tax Ordinance, 2001 i.e. soon after the receipt of return of income filed u/s. 114 of the of the Income Tax Ordinance, 2001. The learned authorized representative stated that on the issue of fishing and roving inquiries the superior legal fora has decided the issue in favour of taxpayers while taking up proceedings u/s 66A of the repealed Income Tax Ordinance, 1979 (hereinafter called the repealed Ordinance, 1979) which is para materia to section 122(5A) of the Income Tax Ordinance, 2001.

8. The learned AR drew attention to issue of definite information and towards section 65 of the repealed Income Tax Ordinance, 1979 and current para materia section 122(5) of the Income Tax Ordinance, 2001, emphasizing that there has to be some definite information so that tax officer can proceed u/s. 122(5A).

9. The scheme of self assessment as per repealed Income Tax Ordinance, 1979 was also highlighted along with sections 59 and 59-A of the repealed Income Tax Ordinance, 1979.

10. It was further pointed out that respondent department is asking for information in the notice u/s 122(5A) and thereafter proceeding to create tax demands. He vehemently argued that the two mandatory conditions to invoke section 122(5A) were missing in the notices issued. He stated that in order to invoke section 122(5A) there should be apparent legal infirmity in the finalized order along with apparent loss of revenue. The respondent department is issuing notices u/s 122(5A) without meeting the mandatory requirements as envisaged in relevant section. He further highlighted that there is plethora of case law on the two prescribed mandatory conditions for invoking of section 122(5A).

11. He emphasized that in some notices there are just observations of the tax officer and there is no substance and basis. The twin mandatory conditions are not apparent from the notice u/s 122(5A).

12. The same views were expressed by Mr. Asim Zulfiqar F.C.A. on the issue. He stated that words "after making or causing to be made, such inquiries as he deems necessary," have restricted sense and it does not give power to the tax officer to seek information from taxpayers and thereafter proceed to pass order u/s 122(5A). He was of the view that inquiry does not mean to ask for information from the taxpayer. The two mandatory requirements i.e. there should be some illegality in the existing order and there should be apparent loss of revenue must be before the tax officer to proceed further u/s. 122(5A). The inquiry should be on the apparent two conditions and sense of inquiry should not be in respect of calling of information. The both learned authorized representatives emphasized that if the interpretation of respondent department is accepted that there is no restriction on inquiry whatsoever then what is the difference between section 177 and section 122(5A) . They argued that in section 177 tax officer has all the powers to call any information, record, documents, books of account, vouchers etc. for the purpose of audit and if the inquiry as interpreted by the respondent department is taken to be correct then any information, details, documents, books of account and vouchers could be called u/s. 122(5A) and there will be no difference between the two provisions.

13. Mr. Muhammad Arshad, FCA representing Ernst & Young Ford Rhodes Sidat Hyder Chartered Accountants in the case of M/s. Jaffer Brothers (Pvt) Ltd. drew attention to the portion of notices u/s 122(5A) and stated that notices are just observations or means of calling of information and nothing else. He further stated that he adopts all the arguments taken up by Syed Mohammad Shabbar Zaidi, FCA and Mr. Asim Zulfiqar F.C.A.

14. The learned Advocate Mr. Amjad Jawed Hashmi Advocate appearing on behalf of LTU stated that section 122(5A) and section 177 are two entirely different sections with distinct purposes. He stated that section 122(5A) is curative in nature and is to be invoked when there is some illegality or error of law in the existing order and there is some loss of revenue. Whereas section 177 is for selection of few taxpayers who have filed their returns under Universal Self Assessment Scheme in order to create deterrence of audit. The purpose is to inform the taxpayers to declare correct particulars of income voluntarily in their returns and there is a check mechanism in the form of audit u/s 177 available with the respondent department.

15. The learned advocate with regard to inquiry was of the view that there is no restriction imposed by legislature in section 122(5A) and that the respondent department has power to conduct any sort of inquiry as it deems fit and proper. No restriction can be imposed on conduct of inquiry and law is very clear on this issue. The same views were also expressed by DR Farrukh Ansari Commissioner Inland Revenue, LTU Karachi.

16. We have heard the parties in detail, arguments put forward were considered. We are of the firm view that the issue is a settled issue and has been taken up by superior appellate fora at length and there are many case laws which support this settled issue. The case laws 2015 PTD 2824 Lahore' High Court, 2015 PTD 1639 Islamabad High Court, (2014) 109 TAX 85 (Trib.) = 2014 PTD (Trib.) 2085, 2014 110 Tax 242 (Trib.), 2014 PTD (Trib.) 1629. 2012 PTD (Trib.) 1739, (2012) 106 TAX 158 (Trib.) = 2012 PTD (Trib.) 1593, (2009) 100 TAX 390 (Trib.) = 2010 PTD (Trib.) 111, (2004) 89 TAX 252 (H.C. Kar.) = 2004 PTD 330 Karachi High Court, ITA No. 193 of 1998 Lahore High Court dated 31-01-2012. 1999 PTD (Trib.) 2851, 1999 PTD (Trib.) 7000, 1999 PTD (Trib.) 3229 and ITA No.449/KB of 1999-2000 ITAT dated 24-12-1999, support our view.

17. Before proceeding further it is worthwhile to reproduce section 122(5A) and section 66A of the repealed Income Tax Ordinance, 1979.

"1[(5A) Subject to sub-section (9), the Commissioner may 2[, after making, or causing to be made, such enquiries as he deems necessary, amend, or further amend, an assessment order, if he considers that the assessment order is erroneous insofar it is prejudicial to the interest of revenue.] "

1[66A. Powers of Inspecting Additional Commissioner to revise Deputy Commissioner's order.-(1) The Inspecting Additional Commissioner may call for and examine the record of any proceedings under this Ordinance, and if he considers that any order passed therein by the Deputy Commissioner is erroneous in so far as it is prejudicial to the interests of revenue, he may, after giving the assessee an opportunity of being heard and after making or causing to be made, such enquiry as he deems necessary, pass such order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or cancelling the assessment and directing a fresh assessment to be made, 2[1-A The provisions of sub-section (1) shall, in like manner, apply,

(a) Where an appeal has been filed under section 129, 134 and 137, or a reference has been

made under section 136, against an order passed by the Deputy Commissioner; and

(b) Where an appeal or reference referred to in clause (a) has been decided, in respect of any point or issue which was not the subject matter of such appeal or reference.]

(2) No order under sub-section (1) shall be made after the expiry of four years from the date of the order sought to be revised]

3[Explanation.-For the purpose of this section, an order prejudicial to the interests of revenue shall include an order passed without lawful jurisdiction.]

The perusal of these show that both are para materia to each other and there is hardly much of difference between the two sections.

18. The first point raised by the authorized representative was that there should be an order u/s 122 of the Income Tax Ordinance, 2001 prior to taking up of proceedings u/s. 122(5A). We do not agree to this proposition for the reasons that prior to passing of any order u/s 122 of the Income Tax Ordinance, 2001 there is a deemed order u/s 120 of the Income Tax Ordinance, 2001 in the field. This deemed order is as a result of filing of complete return of income u/s. 114 of the Income Tax Ordinance, 2001 and as per section 120(1)(a)(b) the Commissioner shall be taken to have made an assessment of taxable income for a tax year and return filed shall be taken for all purposes of the Ordinance to be an assessment order issued to the taxpayer by Commissioner B on the day the return was furnished. We are of the view that tax officer can proceed on an order passed u/s 120 or 122 of the Income Tax Ordinance, 2001 u/s 122(5A) if the two mandatory conditions for invoking this provision are available apparently. The two conditions are that there should be an error of law or in simple words illegality on face and there should be some loss of revenue evident in some form in the order u/s 120 or 122 of the Income Tax Ordinance, 2001 under consideration. So we disagree with the view of learned authorized representatives that there has to be an order passed u/s 122 of the Income Tax Ordinance, 2001 before proceedings can be taken up u/s 122(5A).

19. The next issue pointed out was of fishing and roving inquiry. On this issue we agree to the contention raised by learned authorized representatives that superior legal fora has already decided this in the proceeding u/s 66A of the repealed Income Tax Ordinance, 1979 and also in proceedings taken up u/s 122(5A) as well. In this regard we strongly believe that the issue is connected to the two mandatory conditions for invoking section 122(5A) discussed in above paras. We also agree that section 122(5A) is para materia to the section 66A of the repealed Income Tax Ordinance, 1979 and matter of enquiries and fishing and roving inquiries is to be seen in the context of two mandatory prescribed conditions referred in the provision. What we are trying to highlight is that inquiry is to be in conformity with the twin conditions and should not be outside the scope of the prescribed conditions.

20. The issue of definite information was taken up by the learned authorized representatives. We are of the view that matter of definite information is related to section 122(5) of the Income Tax Ordinance, 2001 which is para materia to section 65 of the repealed Income Tax Ordinance, 1979. It does not have any nexus to section 122(5A). On the issue of definite information we have noted that this issue was decided in orders passed u/s 65 of the repealed Income Tax Ordinance, 1979 as well in the orders passed u/s 122(5) of the Income Tax Ordinance, 2001 by superior appellate fora. Probably learned authorized representatives have mixed up the twin mandatory conditions for invoking of section 122(5A) with definite information issue. We therefore do not agree with the view of the learned authorized representatives that there has to be definite information for invoking

section 122(5A) as it has no relevance to section 122(5A).

21. We now come to the main issue taken up by the learned authorized representatives in paras supra. The portion of show cause notices referred by authorized representatives show that these are just observations of the tax officer. In some portions there is no substance and basis to invoke section 122(5 A). In some of the portions of show cause notices it appears that respondent/department has started calling for information from the appellants. Some of the portions of notices u/s 122(5A) appearing in the case of M/s. Meezan Bank Ltd. are reproduced below;

TAX YEAR 2004

"7) consumer loan u/s. 29A

7.1) The issue was confronted as under:

"As per computation of income you have claimed deduction in respect of consumer loan u/s.29, in terms of section you have allowed a deduction not exceeding three per cent of the income for the tax year arising out of consumer loan. Please identify the income arising from consumers loans. "

7.2) Gist of the reply/rebuttal:

The taxpayer identified the taxable income from Car Ijarah Financing amounting to Rs.53,422,000/- on which 3% provision Rs. 1,603,000/- is allowable u/s. 29A of the Income Tax Ordinance, 2001."

"8) TAX DEPRECIATION SCHEDULE:

8.1 Issue confronted:

The issue was confronted as under:

"As per tax depreciation schedule you have acquired following assets Rs. 1,291,990 (M):

S. No.	Nature of assets claimed	Amount	Initial allowance charged
1	Operating owned assets (including improvement of rented premises	91,162	7,080,770
2	Owned and leased out assets	1,484,856	498,283
3	Intangible assets	5,295,446	226,066
	Total	6,871,464	7,805,119

You have shown the above assets in the depreciation schedule and claimed initial depreciation as shown above In this regard the following discrepancies are apparent from record:

i) As per cash flow statement the investment in operating fixed assets is appearing at Rs. Nil which is un-reconciled with the addition in assets, the un-reconciled amounts represent out of balance sheet items and are therefore required to be considered as concealed income.

ii) Further, the tax depreciation schedule indicates that the additions disclosed in this year's depreciation schedule in respect of owned and leased assets are shown as "additions during the tax year 2006 (cost) ". Meaning thereby the consequent initial allowance and depreciation claimed thereon does not pertain to this year at least. Whereas the audited

financial statement of the last year also do not support the declared version. The entire claim is thus inadmissible at Rs. 25.065 (M).

Further claim of depreciation of earlier year is not allowable under the law."

8.3) Findings/Inference:

The reconciliation provided by' the taxpayer has been examined and found in order.

In respect of prior years depreciation amounting to Rs.25,065,777/- the AR of the taxpayer M/s. A.F. Ferguson & Co. vide letter No. DT 2493 dated 21-03-2009 (para3) contested that the prior year's depreciation is not the expense of the prior year which is not allowable u/s.20 but the said amount is the depreciation claimed on assets purchased during the prior years and the depreciation on the carried forwarded WDV is being claimed. The said treatment has been given only for the purpose of disclosure.

The contention of the taxpayer examined in the light of write up and facts provided by the taxpayer. The depreciation on the WDV of leased assets carried forwarded from the prior year (2003) is allowable deduction till the time the assets are not transferred to lessee. No adverse inference is drawn."

"10) ISSUANCE OF BONUS SHARES:

10.1) Issue confronted:

The issue was confronted as under:

"Your share Capital during the t last year was Rs. 1,001,454,000/- (100,145,245 share issue of share capital). Please refer to note No. 17, During the year you have issued the bonus shares of Rs.62,570,890/- (6 259,089 shares). No amount of cash has been received as cash flow statement. Please identify the receivables. "

10.2). Gist of the reply/findings:

The reply of the taxpayer has been examined audit is admitted that the bonus shares issue is not the cash flow item. Hence, no adverse inference is drawn."

TAX YEAR 2006

7. Unrealized Gain on Held Trading Investment Rs. 5 7.792 (M)

7.1) Taxpayer was confronted as under:

"As per computation of income, you have deducted amount of RS. 57.792(m) on account of unrealized gain on held for trading investments. Please furnish computation in terms of section 37 of the Income Tax Ordinance, 2001. This is not allowable deduction u/s. 20 of the Income Tax Ordinance, 2001."

7.2) Gist of reply of the taxpayer is as under:

This is unrealized gain on the investment. The unrealized gain/loss are non taxing events.

7.3 Findings;

In the light of above reply and the legal provisions, no adverse inference is drawn."

TAX YEAR 2007

"4) REVERSAL OF PROVISION FOR BAD DEBTS:

4.1 Taxpayer was confronted as under:

"As per computation of income, you have deducted Reversal of provision for bad debts amounting to Rs. 1.537 (m) on the basis that the provision had already been disallowed in the prior years. This is not allowable under the law."

4.2 Gist of reply of the taxpayer is as under:

The reversal of Rs. 1.537(M) has been claimed out of the provisions of tax year 2006. The order of the tax year 2006 has not been passed u/s. 122(5A). The break up is given as under:-

Mujahid Hussain Zaki 120,000/-
MNZ Corporation (Pvt.) Ltd. 821,000/-
Abdul Hameed Timber Mart 157,000/-
FaizullahKhan 038,000/-
Sultan Ahmad 207,000/-
Tariq Mehmood 193,000/-
Total = 1,537,000/-

4.3) Findings/ Inference:

The provisions during the tax year 2006 has been added to the income entirely hence, the reversal is allowable deduction."

"10) DIMINUTION FOR VALVE OF INVESTMENT

10.1 Taxpayer was confronted as under:

"Diminution for value of investment amounting to RS. 1.297(M) is not allowable under the law."

10.2) Gist of reply of the taxpayer/findings is as under:

The amount has already been added to the income. No adverse inference is drawn."

TAX YEAR 2010

"6 DONATION:

6.1) Taxpayer was confronted as under:

"As per Note No. 28, the donation of Rs. 24.166 (M) has been claimed as deduction. It is not allowable as direct deduction under the Seventh Schedule read with section 61 of the Income Tax Ordinance, 2001. Further, the credit on donation is allowable in the cases where the institutions are approved within the meanings of section 61 to the Income Tax Ordinance, 2001. Hence, it will be added to your income."

6.2) Reply of the taxpayer is as under:

"It has been stated at point No. 7 that as per note 28 of the financial statements, donations amounting to Rs.24.166 million have been claimed as deduction. However, the said note relates to other charges representing penalties imposed by the State Bank of Pakistan amounting to Rs. 1,747,000/-. This amount has been offered for toxin the return of income.

It is pertinent to point out here that similar issue was also included in the show cause notice for the year 2009 and no adverse action was then taken as discussed on page 18 of the order dated March, 31, 2010 for that year."

6.3) Findings/Inference:

In view of above reply, no further enquiry can be made u/s. 122(5A). No adverse inference is thus drawn."

TAX YEAR 2013

"15) DEPRECIATION ON CERTAIN LEASED ASSETS

15.1 Taxpayer was confronted as under:

"The depreciation on certain leased assets is not allowable as the dates of dispatches are not given."

15.2) Gist of reply of the taxpayer is as under:

The taxpayer company provided the details regarding 2671 cars leased out during the year on which normal depreciation has been claimed at Rs. 264,600 (M) on the total cost (WDV) of equipments total in number 200 have been provided in which dispatches have been made up to 1st December, 2006 and only one dispatch of Rs. 480,000/- have been made on 26th December 2006. The total claim of addition in assets is Rs. 1,500.148 (M) on which initial depreciation is Rs. 739.820 (M) and normal depreciation @ 15% amounting to Rs. 110.973 (M).

15.3) Findings/Inference:

The details and documents have been examined and placed on file. The depreciation is as per law on the claimed/stated additions during the year. No adverse inference is drawn."

"10) LOAN TO EMPLOYEES AND DIRECTORS

10.1 The taxpayer was confronted as under:

Confronted through Point No. 13 of the notice.

"As per note 11.14 you have given loans to employees and directors at Rs. 1,064,004,000/- No interest has been charged against this loan. This transaction requires examination in terms of section 108/109 of the Income Tax Ordinance