

**APPELLATE TRIBUNAL INLAND REVENUE, MULTAN BENCH,
MULTAN.**

**MA (Cond.) No.02/MB/2023
ITA No.626/MB/2022
(Tax Year 2016)**

**All Pakistan Bed Sheets & Upholstery
Association, Multan.**

...Applicant

Versus

The CIR, Multan-Zone, RTO, Multan.

...Respondent



Applicant by:

**Mr. Muhammad Imran Ghazi, Advocate a/w
Ms. Mehwish Moeed, ITP.**

Respondent by:

Mr. Muhammad Shahjehan Durrani, DR.

Date of Hearing:

06.01.2023

Date of Order:

06.01.2023

ORDER

DR. MUHAMMAD NAEEM (Accountant Member): Through the titled appeal pertaining to tax year 2016 filed at the instance of the taxpayer against the appellate order dated 29.04.2022 passed by CIR(Appeals-I), Multan. The taxpayer also filed miscellaneous application seeking condonation of delay in filing appeal before this Tribunal. The representatives of both the parties are present and heard at length, therefore, the above titled miscellaneous application as well as appeal is disposed of as under.

2. Brief facts of the case are that the taxpayer, a private limited company, derives income from upholstery under the name and style of M/s. All Pakistan Bed Sheets and Upholstery (Pvt.) Ltd., filed return for the tax year under consideration declaring following results:-

| DESCRIPTION | TOTAL (RS.) |
|----------------------------------|--------------------|
| Other Revenue | 5,674,544 |
| Management/Admin/Selling Expense | 6,758,928 |
| Total Business Loss | -1,084,384 |

--- which was treated to be an assessment order in terms of Section 120(1)(b) of the Income Tax Ordinance, 2001

(hereinafter called 'the Ordinance'). Subsequently, the case was selected for audit u/s 214C of the Ordinance and the taxpayer was intimated accordingly. Audit proceedings were initiated by issuing statutory notices, requiring the taxpayer to submit books of accounts and other allied documents for conducting of audit proceedings. As per assessment order dated 31.01.2022 no response was made despite service of notices and reminders; hence as per information available on record i.e. return of income the taxpayer was confronted with the certain discrepancies, seeking explanation supported with documentary evidence but no compliance was made. Finally, the OIR amended the assessment u/s 122(1) of the Ordinance vide order dated 31.01.2022 creating tax demand at Rs.228,197/-.



3. The taxpayer being aggrieved with order of OIR, filed appeal before the CIR (Appeals-I), Multan who vide order dated 29.04.2022 modified the amended assessment order as per findings given below:-

"It is noted with concern that meager amount has been enhanced while determining the taxable income at Rs.400,616/- against loss declared at Rs.-1,084,348/-. Therefore, all additions insignificant in-significant are confirmed. In view of the above the impugned order is modified by enhancing the assessed income to the tune of Rs.5,674,544/- and resultant net income is determined at Rs.6,075,160/- by making addition u/s 111(1)(b) of the Ordinance after providing appellant opportunity to defend and the appellant shall also be liable to penalty for concealment of income and filing in accurate particulars. The AO shall give effect to this order in accordance with above determinations and also initiate and complete penalty proceedings at the earliest possible occasion."

4. Being dissatisfied, the taxpayer filed the instant appeal before this Tribunal.

5. Firstly, we take up the miscellaneous application of the taxpayer seeking condonation of delay in filing the appeal before this Tribunal. It is submitted by the learned counsel that against

the Impugned appellate order dated 29.04.2022, the taxpayer filed appeal before this Tribunal on 06.09.2022. The learned counsel contended that the Impugned order dated 29.04.2022 was never served upon the taxpayer. The taxpayer received certified copy of impugned order from the office of FBR on 29.08.2022 and thereafter filed the appeal on 06.09.2022, which is well within 60-days' time period as prescribed under the law. It is prayed by the learned counsel that delay, if any, in filing appeal before this Tribunal be condoned and appeal of the taxpayer be decided on merits of the case. The ground urged in the miscellaneous application seems to be plausible, which were also supported by duly sworn affidavit of the applicant. Therefore, in the interest of justice and fair play, the miscellaneous application of the applicant is accepted and appeal is admitted for adjudication on merits of the case.



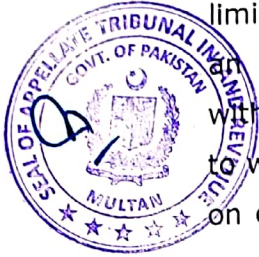
6. While arguing his case on merits, it is submitted by the learned counsel that the action of both the authorities below to be arbitrary and contrary to facts of the case. The learned counsel averred that no audit report u/s 177(6) of the Ordinance was ever confronted to the taxpayer and the taxpayer was issued show cause notice directly, which were never received by or served upon the taxpayer, which constitutes clear violation of law. He contended that the additions have been made on assumptions and surmises. He further averred that the taxpayer has provided complete documentary evidence but the learned CIR(Appeals) has not appreciated the same and confirmed the order passed u/s 122(1) of the Ordinance. He has further contended that the learned CIR(Appeals) has erred in confirming the order passed by the learned OIR without providing a fair opportunity of personal hearing, is negation to the principle of natural justice. On the strength of these assertions, he seeks vacation of the orders passed by both the authorities below on the issues under consideration. On the other hand, the learned DR appearing on behalf of the department has fully supported the impugned order and pleaded for dismissal of appeal.

7. We have given our due consideration to the rival arguments of the parties and have perused the record available before us. We have observed that the stance of the taxpayer is that he had provided all the documentary evidence to the learned CIR(Appeals) whereas the department stance is that the taxpayer has failed to furnish any documentary evidence in support of his version. It is admitted fact that the case of the taxpayer was selected for audit and it is apparent from sequence of facts that after initiation of audit proceedings and on its completion, no audit report u/s 177(6) of the Ordinance was issued/confronted to the taxpayer. The Honourable High Court in its judgment reported as 2017 PTD 686 has laid down requirements to be fulfilled during audit proceedings but the Revenue in the instant case have failed to follow the dictum laid down by the Honourable High Court, in supra judgment. The dictum was further upheld by the August Supreme Court in the case titled "CIR vs. Allah Din Steel & Re-Rolling Mills" (2018 PTD 1444). It is quite obvious from the above judgments that the Revenue is under legal and statutory obligation that prior to further proceeding for amendment to obtain explanation/clarifications from the taxpayer on all the issues raised during audit which exercise has not been done in the instant case. The failures on the part of Revenue to confront the taxpayer with audit report u/s 177(6) of the Ordinance is fatal and renders the whole proceedings as not legally sustainable.

8. Although we have decided appeal in above manner but one very important issue which is to be adjudicated here is that when the OIR is alleging that no compliance was made during the audit proceedings and the exparte proceedings were completed u/s 122(1) of the Ordinance, now here a question arose when the OIR himself is admitting that he is completing exparte proceedings u/s 122(1) of the Ordinance, which is not permissible as in this eventuality, the OIR is to resort from audit proceedings u/s 177 to Section 121(1)(d) of the Ordinance instead of finalization of proceedings u/s 122(1) of the



Ordinance. So, the OIR in ex parte proceedings cannot invoke the provision of Section 122(1) of the Ordinance resultantly whole proceedings taken up and concluded by OIR is without legal sanctity. We have further observed that if the OIR passed the order u/s 121 of the Ordinance, which is also hit by time limitation as per provision of subsection (3) of section 121 that an assessment order under this section shall only be issued within five years after the end of the tax year or the income year to which it relates. But the OIR has to pass an assessment order on or before 30.06.2021 u/s 121(1)(d) but assessment order is passed on 31.01.2022. Hence, then the assessment order is time barred.



9. Calculus of the above is that we are inclined to allow the appeal filed by the taxpayer and the orders passed by the learned CIR(Appeals) and the OIR are annulled. We order accordingly.

Sd/-

(CH. MUHAMMAD AZAM)
Judicial Member

Sd/-

(DR. MUHAMMAD NAEEM)
Accountant Member

Copy of the bench order forwarded to

- ✓ 1. The Appellant *M/s All Pakistan Bed Sheets & Upholstery*
- ✓ 2. The Respondent *Association Mulla*

BY ORDER

ASS. MEMBER
Appellate Tribunal Income Tax
Revenue

[Handwritten signature]

14.2.2023