APPELATE TRIBUNAL INLAND REVENUE,
MULTAN BENCH, MULTAN

ITA No.2254/LB/2015
(Tax Year 2012)

Mr. Khalil Ahmad, Prop: New Shangrillah Bakers and General Store, Khanewal. — Appellant

Versus

CIR, RTO, Multan — Respondent

Appellant by: Sheikh M. Irfan Ayub, Adv.
Respondent by: Ms.Farzana Gohar, DR

Date of hearing: **14-09-2021** Date of order: **14-09-2021**

ORDER

MIAN ABDUL BASIT (Judicial Member): The titled appeal pertaining to Tax Year 2012 has been preferred by the taxpayer calling in question the impugned appellate order dated 06.05.2015, passed by the learned CIR(A), Multan.

2. Briefly stated, the relevant facts are that the taxpayer in this case is an individual deriving income from manufacturing and sale of bakery items. Return of income for tax year 2012 was filed declaring taxable income at Rs.190,000/- which was deemed to be taken as assessment in terms of section 120(1) of the Income Tax Ordinance, 2001 (**the Ordinance**). Later on, the case of the taxpayer was selected for audit by the FBR through random ballot by exercising powers conferred u/s 214C of the Ordinance. In order to finalize the audit proceedings, the assessing officer issued statutory notices. Allegedly, the taxpayer had failed to make response to these notices. Accordingly, the assessing officer issued show cause notice u/s 121(1)(d) read with section 177(10) of the Ordinance. In response, the taxpayer attended the proceedings and filed copy of return, trading P & L accounts, wealth statement along with wealth reconciliation statement, expenditure statement, bank statement, property documents and copy of electricity bill. Allegedly, the taxpayer has failed to file books of accounts and other allied record. Therefore, the assessing officer issued another show cause notice, however, allegedly, the taxpayer failed to attend the proceedings.

Consequently, it was inferred by the assessing officer that since the taxpayer has failed to produce any material evidence in support of declared results, therefore, reliance cannot be placed on the declared results. Accordingly, the assessing officer finalized the assessment in terms of section 121(1)(d) read with section 177(10) of the Ordinance and computed income as under: -

Sales adopted	*5,000,000*
Gross Profit @25%	*1,250,000*
Less: P & L expenses	*220,000*
Net income	*1,030,000*
Addition u/s 111(1)(c)	*400,000*
Income determined	*1,430,000*

3. Being aggrieved, the taxpayer filed first appeal before the learned CIR(A) on a number of legal and factual grounds. The learned CIR(A) disposed of the appeal vide impugned order appellate order whereby he reduced the sales to Rs.4,000,000/- as against Rs.5,000,000/- estimated by the assessing officer whereas the addition made u/s 111(1)(c) at Rs.400,000/- on account of household expenses was upheld by the learned CIR(A). Being dissatisfied with the order of the learned CIR(A), the taxpayer filed instant second appeal before this Tribunal on the grounds as set forth in the memo of appeal.

4. It is the submission of the learned AR for the appellant before us that there was no justification for the learned CIR(A) to upheld the action of the assessing officer to pass a best judgment assessment order in terms of section 121(1)(d) of the Ordinance. It is contended by the learned AR that requisite information / record and information was duly submitted at assessment stage and in the presence of such record there was no justification to pass best judgment assessment order. It is further submitted by the learned AR that the assessing officer illegally on estimate basis had assessed sales for the year at Rs.5,000,000/- whereas the learned CIR(A) only accorded partial relief by reducing the sales to Rs.4,000,000/-. It is further asserted by the learned AR that there was no justification for the assessing officer to invoke the provisions of section 111(1)(c) to make addition on

account of household expenses. It is contended by the learned AR that the assessing officer has failed to appreciate the fact that the taxpayer lived in a joint family system and total household expenses were shared by four family member, therefore, the household expenses declared by the taxpayer at Rs. 80,000/- is very reasonable. The learned DR, while countermanding the submissions of appellant, supported the order of the assessing officer and submitted that since the taxpayer had failed to submit the requisite books of accounts, therefore, the assessing officer was justified to pass a best judgment assessment order. The learned DR specifically contended by referring the assessment order, that the books of accounts were called for from the taxpayer which he failed to provide; hence there remained no option for the assessing officer except to proceed for finalization of proceedings in terms of section 121(1)(d) to make a best judgment assessment. The learned DR the argued that the sufficient relief has already be accorded to the taxpayer by the learned CIR(A) which needs to be upheld.

5. We have heard the rival parties and gone through the record made available with appeal file. The issues involved for redetermination in the instant case are that whether the assessing officer has properly invoked and exercised the jurisdiction of section 121(1)(d) of the Ordinance; and secondly, whether the enhancing of household expenses can be dealt u/s 111(1)(c) of the Ordinance for addition in the income of tax payer? We have scanned the assessment order, it is discernable from the order that the taxpayer had provided the record like as trading P & L accounts, wealth statement along with wealth reconciliation statement, expenditures statements and bank statements to the Audit Officer. The Audit Officer, however, could not find any discrepancy in the record nor have pointed out any inconsistency with respect to the wealth statement, expenditure statements and trading P & L accounts in the assessment order. The assessing officer instead of reporting the discrepancy in the record opted to proceed against the taxpayer in terms of section 121(1)(d) of the Ordinance, and finalized the

proceedings under the head 'best judgment assessment' based on non production of books of accounts. The assessing officer did not conduct any sort of investigation or enquiry and even did not refer any parallel case to ascertain the sale of the taxpayer.

6. The whole exercise was done under section 121(1)(d) of the Ordinance which in order to attend the issue under appeal properly, is reproduced hereunder:

> ***121 Best Judgment assessment*** *(1) Whereas person fails to:*
>
> *(a)------*
>
> *(aa)-----*
>
> *(b)------*
>
> *(c)------*
>
> *"(d) produce before the Commissioner, or a special audit panel appointed under sub-section (11) of section 177or any person employed by a firm of chartered accountants or a firm of cost and management accounts] under section 177, accounts, documents and records required to be maintained under section 174, or any other relevant document or evidence that may be required by him for the purpose for making assessment of income and determination of tax due thereon,*
>
> *The* ***Commissioner may, based on any available information or material and to the best of his judgment****, making an assessment of the taxable income [or income] of the person and the tax due thereon [and the assessment, if any, treated to have been made on the basis of return or revised return filed by the taxpayer shall be of no legal effect."*

From the perusal of above provisions it reveals that in case the assessee is failed to provide the record in pursuance with notice under section 177 of the Ordinance, the Commissioner may based on available information and material make an assessment of taxable income of the assessee. Whereas, the perusal of the order of the learned assessing officer shows that no material or information was available with the assessing officer which is a mandatory requirement to initiate proceedings under section 121(1)(d) of the Ordinance. It is a statutory requirements within the contemplation of section 121(1)(d) of the Ordinance that the commissioner should have some material or information to proceed against the taxpayer/assessee under section 121 (1)(d) of the Ordinance. It is also an admitted position that record in respect of supplies and expenses were provided to the assessing officer and the officer could not find any shortcoming in the order but proceeded to make best judgment assessment in an arbitrary manner

without any material to adopt the sales. The ultimate corollary of the above proposition is that if the assessing officer does not have any information or material for assessment and determination of the tax liability, in contrary to what has been declared by a taxpayer in its return for particularly tax year, he could have not opted to proceed under section 121(1)(d) of the Ordinance. The assessment order also shows that an addition of Rs, 400,000/- was made under section 111(1)(c) of the Ordinance in the head of household expenses which is also in defeat and against the mandate of the section 111 and 121 of the Ordinance because this very provision does not allow to reject the household expenses declared by the taxpayer in its returns that too without any evidence contrary to declaration made for expenses.

7. The Assessing officer, however, adopted sale at Rs. 5,000,000/- without referring any corroborative piece of evidence. This act of the assessing officer, in our view, squarely falls within the scope of assumption and presumption particularly without referring the parallel cases for adopting such a huge sales. The assessing officer also failed to point out any error and defect in the record obtained during the audit proceedings. It is well established principal of taxing statutes that the assessment order should be based on legally plausible and acceptable reasons and evidence and any finding without legal backing could not be allowed to hold field. It is also evolved through series of judgments that there is no room for any intendment as to create a tax liability. No presumption and assumption could be allowed for determination of tax liability against a taxpayer. Reference in this regard is placed on the following judgments: -

PT CL 2003 CL. 461), PT CL 2002 CL. 50), 2017 PLD (SC) 99,
2019 PTD 144, 2017 PTD 880, 2016 PLD (SC) 398,
2002 SCMR 356, 2018 PTD 1413, 2008 PTD 686/868
2019 PTD 776 (TRIB)

8. The assessing officer while disagreeing the household expenses declared at Rs.80,000/- adopted the same at Rs.480,000/- and so Rs.400,000/- was added to the income of the taxpayer in terms of section 111(1)(c) of the Ordinance. In order to address the

issue, whether the act of the assessing officer for adding such expenses in terms of section 111(1)(c) of the Ordinance, is legally permissible or not; we deem it appropriate to reproduce the relevant provision of section 111(1)(c): -

> *"111. Unexplained income or assets.—(1) Where –*
>
> *(a) any amount is credited in a person's books of accounts;*
> *(b) a person has made any investment or is the owner of any money or valuable article;*
> ***(c) a person has incurred any expenditure. ''***
> (d) ----------
>
> and the person offers no explanation about the nature and source of the amount credited or the investment, money, valuable article, or funds from which the expenditure was made suppression of any production, sales, any amount chargeable to tax and of any item of receipt liable to tax or the explanation offered by the person is not, in the Commissioner's opinion, satisfactory, **the amount credited, value of the investment, money, value of the article, or amount of expenditure suppressed amount of production, sales or any amount chargeable to tax or of any item of receipt liable to tax** shall be included in the person's income chargeable to tax under head "Income from Other Sources" to the extent it is not adequately explained"

From the perusal of above said provision, it is desirable that if it appears that any expense has been made by the taxpayer for which he was unable to justify sources of such expenditure then the provisions of section 111(1)(c) can be invoked. In the present case, the assessing officer has not referred to any expenses which the taxpayer has incurred to obtain some valuable articles and or to show any expenditure made with the unexplained amount. It is, therefore, held that the approach of the assessing officer for adding household expenses is against the mandate of section 111(1)(c) of the Ordinance. The order is silent as to what expenditure was done and what benefit was earned by the taxpayer by making expenses which qualifies to be added in the income of taxpayer terms of section 111(1)(c) of the Ordinance. We, therefore, hold that the provisions of section 111(1)(c) has illegally been invoked in the present case. The learned AR has filed explanation as is evident from the proceedings before both lower forums, to cope with the reasonable justification for the low household expenditure. It was explained in the arguments as evident from the orders that they are enjoying joint family set up for which the total household expenses were shared between four family

members. The learned assessing officer and the CIR(A) both could not dislodge this plea of the taxpayer with plausible reasoning. This also reached to the conclusion that finding of both authorities below are purely based on presumption and assumption which are not allowed in the taxing statute. Under the circumstances, the appeal of the taxpayer is accepted and both orders of the authorities below stand cancelled.

9. Appeal succeeds in the above manner.

(MIAN ABDUL BASIT)
Judicial Member

(RIZWAN AHMAD URFI)
Accountant Member

Copy of the bench order forwarded to
1. The Appellant Mr Khalid Ahmed Prop: New Shangrilla Bakers Khanewal
2. The CIR. RTO, Multan Order

ASSISTANT REGISTRAR
Appellate Tribunal Inland Revenue
Multan

17/09/2021