APPELLATE TRIBUNAL INLAND REVENUE,
MULTAN BENCH, MULTAN

ITA No.74/LB/2020
(Tax Year 2012)

The CIR, Multan Zone, RTO, Multan. Appellant

Versus

M/s Suncrop Pesticides, Industrial Estate, Multan. Respondent

Appellant by	:	Mr. Nadeem Ahmad, DR.
Respondent by	:	Mr. Imran Ghazi, Adv.
Date of hearing	:	03.08.2023
Date of Order	:	03.08.2023

ORDER

MIAN TAUQEER ASLAM (CHAIRMAN): The titled appeal preferred at the instance of department directed is against the appellate order No.309 dated 22.12.2018 passed by the learned CIR(Appeals), Multan, pertaining to tax year 2012.

2. Briefly stated, the relevant facts are that the taxpayer engaged in the business of pesticides and agrochemical products filed its return declaring taxable income at Rs.33,078,989/- for the Tax year 2012. Deemed assessment stood completed u/s 120 of the Income Tax Ordinance, 2001 ("the Ordinance").Later on, assessing officer received information from the office of Directorate Intelligence & Investigation that the taxpayer maintained twelve undeclared bank accounts for the year 2012 having total credit entries amounting to Rs.1,742,767,906/-whereas as per Annexure-B of return of income, appellant claimed tax deduction u/s 231A of the Ordinance out of only one bank account. Secondly, it was further observed by the assessing officer that taxpayer imported raw material at Rs.1,565,112,100/- but declared purchases amounting to Rs.1,192,190,511/- in return of income meaning thereby that taxpayer had concealed purchases to the tune of Rs.372,921,589/-. Thirdly, it was observed by the assessing officer that taxpayer being manufacturer declared total income for the tax year 2012 at Rs.33,078,989/- but failed to discharge tax liability according to sub

section 4 of WWF Ordinance 1971. On the basis of said discrepancies, the amendment proceedings were initiated by way of issuance of show cause notice against which explanation tendered by the taxpayer was treated unsatisfactory. Resultantly, the proceedings culminated in the passing of amended assessment order u/s 122(1) of the Ordinance dated 30.06.2018, wherein undisclosed credit entries were added towards income in terms of 111(1)(d) read with section 39 of the Ordinance and concealed purchases were added u/s 111(1)(b) read with section 39 of the Ordinance. As a result, the taxable income was assessed at Rs.2,148,768,484/- upon which assessing officer also charged WWF at Rs.42,975,370/-.

3. Being aggrieved, the taxpayer filed the first appeal before the learned CIR(A) which was decided vide impugned appellate order dated 14.06.2023, whereby the additions made were deleted by the learned CIR(A). Being aggrieved, the Revenue / Department filed the second appeal before this Tribunal on the following grounds of appeal: -

i) *That the order of the learned CIR (Appeals) Multan bearing No.309 dated 22.10.2019 is bad in law and against the facts of the case.*

ii) *That the CIR (Appeals) is not justified to annul order passed u/s 122(5) of the Income Tax Ordinance, 2001 ignoring the fact that the taxpayer was provided reasonable opportunity of being heard and the taxpayer availed the officer, but failed to support his declared version.*

iii) *That the CIR (Appeals) is not justified to annul order passed u/s 122(5) of the Income Tax Ordinance, 2001 ignoring the fact that there was concealment of banking transactions and withholding tax u/s 231A of the Income Tax Ordinance in respect of 12 banks accounts.*

iv) *That the CIR (Appeals) is not justified to annul order passed u/s 122(5) of the Income Tax Ordinance, 2001 ignoring the fact that there was non-charging of workers welfare fund as provided under sub section (4) of Section 3 of the Workers Welfare Fund Ordinance.*

v) *That the appellant craves permission to add, withdraw or amend any other ground of appeal at the time of hearing.*

4. The case was fixed for hearing. The learned DR appearing on behalf of the department has termed the action of learned CIR(Appeals) to be arbitrary simply by reiterating the above mentioned grounds. On the other hand, the learned AR appearing on behalf of the taxpayer has fully supported the impugned order passed by the learned CIR(A) by reiterating the basis evolved therein.

5. Arguments heard and record perused. Perusal of assessment order reveals that learned CIR(A) has allowed relief to the taxpayer on sound footing while passing the speaking order after going through the each aspect of the case. The first issue decided by the learned CIR(A) was related to addition of bank credit entries u/s 111(1)(d) of the Ordinance. The observations of learned CIR(A) on the issue reproduced hereunder: -

"The arguments of learned AR heard and it is observed that addition made u/s 111(1)(d) of credit bank entries is ill founded. The credit of already declared sales has not been given which should have been worked out as under.

Alleged undisclosed credit entries	*Rs.1,742,767,906*
Declared turnover	*Rs.1,443,370,328*
Difference	*Rs. 299,397,583*

At the most the question of addition u/s 111(1)(d) could have been arised if it really proved that difference was related to the sales of taxpayer.

Secondly no analysis has been done by the learned assessing officer to ascertain which credit entries are really the undisclosed sales because there as various types of entries in bank account and all that entries cannot be treated as undisclosed sales. The learned officer was required to discuss the source and nature of each credit entry in bank accounts but impugned order is silent about it. The addition u/s 111(1)(d) has been made on account of credit entries in bank accounts maintained by the taxpayer without establishing the nexus with the sales of appellant is unwarranted. The learned ATIR in its judgment reported as ***2016 PTD 2376****has categorically laid down that credit entries available in the bank account statement do not constitute a definite information for the purpose of Section 122(5) of the Ordinance, 2001. It is further held by the appellate courts that credit entries in the bank accounts are not sufficient proof of purchase and sales by the taxpayer.* ***The H'ble Sindh High Court in reported judgment cited as 90 TAX 130 (H.C.Karachi) 2004 PTCL 1*** *has held "It is apparent that except discovering certain cash credit entries in the books of appellant the Revenue Officer have not been able to produce any material to show that the said amounts are in anyway linked with the taxable supplies or with any taxable activities or represent an amount on account of any business activity".*

The crux of matter is that the addition u/s 111(1)(d) without developing nexus between bank credit entries and taxpayer's business turnover is unlawful and cannot be approved."

6. The CIR(A) has relied upon the judgment of Hon'ble Sindh High Court which cover the matter from all fours of the case. In addition to the above, the Hon'ble Sindh High Court also held in **2004 PTCL 1** that credit entries in the bank account could not be presumed to be sales without any nexus to supplies. The assessing officer assumed jurisdiction without the availability of pre-requisites for initiating the proceedings under section 122(5). The Hon'ble Supreme Court of Pakistan in a recent case reported as Commissioner Inland Revenue Zone-II Regional Tax Office vs Mian Liaqat Ali, Liaqat Hospita, Lahore (**2023 SCMR 534**) has articulated the principle that addition can only be made the amount of difference between purchase value and sales value because the denial of cost of sale is not justified. It is also observed that assessing officer also not issued separate notice of section 111 of Ordinance. The Hon'ble Lahore High Court in a case reported as ITR No.02 of 2018 title The Commissioner Inland Revenue, Multan Zone vs. Muhammad Iqbal Rind & Sons D.G.Khan (**2022 PTD 1411**) held that:

> *"11. The authority of the Commissioner to obtain statement of Bank account of a taxpayer under Section 176 of the Ordinance is not free from doubt inasmuch as no such power is clearly specified therein, as is the case with Section 38A of the Sales Tax Act, 1990. Be that as it may, before treating the total deposits made in the bank accounts of the respondent to be his total sales/receipts liable to tax under the Ordinance, issuance of a notice under Section 111(1) of the Ordinance was a mandatory prerequisite to seek explanation of the respondent against separation of alleged sales, any amount chargeable to tax or of any item of receipt liable to tax and where no such explanation was offered by the respondent, an order under Section 111(1) of the Ordinance could have been passed and on the basis thereof a notice under Section 122(5) of the Ordinance for the amendment of assessment could have been issued and decided. Reliance in this regard is placed on judgment of the Hon'ble Supreme Court of Pakistan in the case of Commissioner Inland Revenue Zone Bahawalpur, Regional Tax Office, Bahawalpur v. Messrs Bashir Ahmed (Deceased) through LRs (**2021 PTD 1182**). In the absence of any notice under Section 111(1) and an order passed therein, the Amended Assessment Order dated 27.07.2011 was unsustainable in law."*

7. The second issue in hand is taxation on difference between amount of import declared by taxpayer in return of income and data

available at FBR official software. The learned CIR(A) decided the issue in following manners:

> *"As explained by the learned AR that difference in imports was due to two main reasons (1) Declared value at cost by the taxpayer and assessed value by the custom authorities. (2) for bonded G.Ds, value is taken when goods arrive and value is taken again when release from custom ware houses resulting into double counting of same goods as is appearing in FBR software. But appellant accounted for those G.Ds which in-bond/ex-bond in same financial year and is taken as once. Therefore difference in declaration was inevitable but it does not mean that taxpayer has declared inaccurate particulars or concealed something. It is most unlikely that appellant is going to commit intentionally a glaring mistake by deflating the imports when import data is available just on one click. The learned officer failed to appreciate the accounting principles and methods of declarations. It is further observed that while responding to the show cause notice the appellant reconciled the alleged difference by submitting reconciliation statement but the Assessing Officer rejected the same without assigning any cogent reasons. It is however, observed that the Assessing Officer amended the assessment by placing credibility on a doubtful information which is not a definite information anyway. Reliance is placed on judgment reported as* ***2010 PTD (Trib) 1221****."*

Against the above mentioned valid basis evolved by the learned CIR(Appeals) in support of his action as mentioned supra. We find no plausible rebuttal from departmental side as per ground of appeal and from the arguments of learned DR. Therefore, no interference is called for.

8. The third issue diluted by the learned CIR(A) is legal sanctity of second order issued u/s 122(1) of the Income Tax Ordinance, 2001 in the presence and existence of earlier order of same section 122 in field. As per facts of the case, the deemed assessment order u/s 120 was initially selected for audit u/s 214C of the Ordinance and culminated on 28.06.2014 by the predecessor officer in shape of Order u/s 122(1) read with section 177 of the Income Tax Ordinance, 2001. The provisions of sub-section (1), (3) and (5A) of Section 122 differentiate the situations for amendment of assessment. Once a deemed assessment order amended u/s 122(1) of the Ordinance, the assessing officer may further amend, as many times as may be

necessary to follow the provisions of Section 122(4) of the Ordinance which were totally ignored by the Assessing Officer. The similar situation arose in past before the insertion of sub-section (10) of Section 177 of the Ordinance. The Hon'ble Lahore High Court vide I.T.R. No. 41 of 2011 title Commissioner Inland Revenue (Legal) vs. Commissioner Inland Revenue (Appeal), etc dated 12.11.2012 reported as **2013 PTD 837** annunciated the legal procedure of existence of multiple assessment orders in field at a time in following words:

> *"13. For the tax period under discussion i.e., 2004 to 2006 the legislative scheme does not provide for cancellation or annulment or amendment of the deemed assessment order passed under section 120 by an assessment order under section 121(1)(d). The amendments brought about in sections 121 and 177(10) of the Ordinance, whereby deemed assessment is declared to have no legal effect if an assessment order under section 121 is passed, establish that the un-amended version of these sections did not provide for cancellation or amendment of the deemed assessment order thereby identifying the lacuna in the law prior to the amendment. Reliance is placed on Glaxo Laboratories Ltd. v. Inspecting Assistant Commissioner of Income Tax and others* ***(1992 SCC 910)***.
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> *14. For the above reasons, we are of the view that prior to the amendment brought about in sections 121 and 177(10) through Finance Act, 2010, section 121(1)(d) did not apply to cases where return of total income had been filed and did not envisage a second assessment order."*

9. From the thorough perusal of available record, it reveals that this fact was brought into the notice of the assessing officer by the taxpayer while responding to the show cause notice that deemed assessment for the tax year 2012 had already been amended vide order u/s 122(1) of the Ordinance on 28.06.2014 by then Inland Revenue Officer. But the Assessing Officer did not consider the contention of the taxpayer and brushed aside the same with the remarks on page 10 of the impugned order *"deemed assessment order amended on the basis of audit has no bearing under the provisions of Section 122 as amendment can be made as many times as may be necessary"*. The remarks of Assessing Officer are correct to the extent that amendment can be made as many times as may be

necessary but he tend to forget that after amendment u/s 122(1) of the Ordinance, the deemed assessment order u/s 120 was not in field thereafter and hence further amendment of deemed assessment order u/s 120 means existence of two parallel orders u/s 122(1) in field. This approach adopted by the Assessing Officer is against the principle of law of merge. Once an order u/s 120 is merged u/s 122(1), it means that deemed assessment order u/s 120 is no more in field and hence subsequently issuance of another order u/s 122(1) while wrongly presumed that said order is still available for amendment of assessment means that second order u/s 122(1) is illegal. Respectfully following the law enunciated by the Hon'ble Lahore High Court in judgment reported as **2013 PTD 837**, the procedure carried out by the Assessing Officer is void ab initio and cannot be sustainable in the eyes of law and hence findings of CIR(A) are found as per law.

10. The last issue in hand is charging of Workers Welfare Fund on notional and deemed income worked out by fiction of law. From the perusal of return of income Tax Year 2022 and first order u/s 122(1) read with 177 dated 28.06.2014, it reveals that taxpayer has charged and paid WWF in the light of Section 4 of the Workers Welfare Fund Ordinance, 1971 on its declared income. But astonishingly, Assessing Officer again worked out WWF on the basis of deemed amended taxable income. The procedure adopted by the Assessing Officer is not only harsh but against the basic concept of chargeability of WWF as procedure laid down in Workers Welfare Fund Ordinance 1971 as well. Section 4 of WWF Ordinance 1971 clearly envisages that every industrial establishment having total income above of five lakh of rupees shall pay to the Fund in respect of that year a sum equal to two per cent of its total income. The word "total income" defined in Section 2(i) of the Workers Welfare Fund Ordinance 1971 in following words:

"total income" *means*

(i) Where Return of Income is required to be filed under the Ordinance, the profit (before taxation or provision for taxation) as per accounts or the declared income as per the return of income, whichever is higher; and

(ii) where Return of Income is not required to be filed, the profit (before taxation or provision for taxation) as per accounts or four percent of the receipt as per the statement filed under section 115 of the Ordinance, whichever is higher.

11. It is trite law that nobody could be made liable to pay tax on the basis of presumptions or intendment, except on the basis of explicit provisions of law. Reliance is placed on reported judgment of the ATIR reported as **2013 PTD 2268**. The definition of "total income" clearly envisages that WWF shall be calculated on **accounting profit** or the **declared income** as per return of income, whichever is higher. There is no room available to charge WWF on the basis of amended taxable income worked out by fiction of law. Taxpayer is liable to pay WWF on the basis of total income declared in return of income and once after discharge of its liability, subsequently the Assessing Officer have no jurisdiction to compute the same on the basis of amended income. It is a settled principle that in a fiscal statue, the provisions have to be strictly construed and no additions to or omissions there from permissible. Reliance is placed on judgment of Hon'ble High Court Karachi reported as **(1976) 34 TAX 151 (H.C. Kar)**. In another judgment of Hon'ble Lahore High Court reported as **1 ITC 189** title Sundar Das v. Collector of Gujrat, the Hon'ble Court has emphasized the said principle in these words:

> *"No tax can be imposed except by words which are clear and the benefit of the doubt is the right of the subject [per Lord Justice FitzGibbon in In re Finance Act, 1894 and Studderl [(1900) 2 Ir. R. 400], and the Court is not entitled to substitute for express words or an irresistible inference a process of guess-work, however subtle the reasoning or ingenious the marshalling of facts by which such a process is supported. If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be. In other words, if there be admissible, in any statute, what is called an equitable construction, certainly such a construction is not admissible in a taxing statute, where you can simply adhere to the words of the statute."*

12. In view of the above, we do not find ourselves in agreement with the line of arguments adopted by learned DR as per grounds of appeal. After bare perusal of the impugned order and available record, we are of the considered view that while allowing relief to the taxpayer, the learned CIR(Appeals) has fully justified his action as per finding given in the impugned order. We find that no exception can be taken to the treatment as accorded by the learned CIR(A) which is found to be fair and reasonable in the ambient circumstances of the taxpayer. The learned DR during the course of hearing has failed to put-forth any plausible reason which may persuade us to interfere the impugned orders. Therefore, the orders passed by the learned CIR(Appeals) being in accordance with law and facts of the case, is upheld and departmental appeal being devoid of merits is dismissed.

-Sd-

(MIAN TAUQEER ASLAM)
CHAIRMAN

-Sd-

(DR.MUHAMMAD NAEEM)
ACCOUNTANT MEMBER

Copy of the bench order forwarded to

1. The Appellant
2. The Respondent M/s. Suncrop Pesticides, Multan

BY ORDER

ASSISTANT REGISTRAR
Appellate Tribunal Inland Revenue
Multan

31.8.2021