APPELLATE TRIBUNAL INLAND REVENUE, LAHORE
SPECIAL SINGLE BENCH **(CAMP AT MULTAN)**

ITA NO. 888 (LB) 2015
(Tax Year –2012)

M/s Attiq-ur-Rehman Power Looms,
57-F, Shah Rukn E Alam, Colony, Multan.......... Appellant

Versus

CIR, RTO, Multan .... Respondent

Appellant by	:	Mr. Riaz Ahmed Raja, ITP
Respondent by	:	Mr. Muhammad Arshad, DR.
Date of Hearing	:	26.06.2020
Date of Order	:	26.06.2020

APPELLATE TRIBUNAL INLAND REVENUE GOVT. OF PAKISTAN

ORDER

MIAN ABDUL BAIST, JUDICIAL MEMBER: Through the instant appeal the Appellant/ Tax payer has assailed the order dated 05.03.2015 passed in appeal No.476 pertaining to tax year, 2012 by the Learned Commissioner Inland Revenue (Appeals), Multan under Section 129 of the income Tax Ordinance, 2001 on the grounds as set forth in the appeal memo.

2. Briefly stated the facts gathered from the appeal file reveals that the taxpayer is an individual deriving income from operating power looms. Return was filed declaring income at Rs. 490,000/- for the tax Year, 2012 which was deemed to be an assessment order under section 120(1) of the income Tax Ordinance, 2001 (The Ordinance 2001). The case was parametrically selected by FBR through computer random ballot under section 214C of income tax ordinance, 2001 for audit of its tax affairs under section 177 of the Ordinance, 2001 the taxpayer was intimated accordingly and certain details/ documents were called for to conduct audit. The taxpayer responded to the notice by filing certain documents. The DCIR issued a show cause notice for amendment of assessment conveying the intention to estimate receipts and disallowance of P&L expenses. The

taxpayer furnished the requisite details. The assessing officer amended the assessment u/s 122(1) of the Ordinance, 2001 vide amended assessment order dated 26.09.2014 by estimating gross receipts at Rs.6,600,000/- and disallowing P&L expenses at Rs.488,774/- to arrive at total amended income of Rs.2,978,774/- The appellant/ Tax payer being aggrieved by the order of the learned DCIR preferred an appeal under section 127 of the Ordinance, 2001 before the learned CIR (Appeals), Multan who modified the order of the DCIR and reduced gross receipts from 6,600,000/ to 6,000,000/. The tax payer/Appellant was not satisfied with the order CIR (Appeals) and thus filed the instant appeal.

3. In response to call notice Mr. Riaz Ahmed Raja, ITP appeared on behalf of the appellant/taxpayer and Mr. Muhammad Arshad, DR represented the respondent department.

4. The AR appearing on behalf of the appellant Tax payer argued that the deemed assessment order was amended by the assessing officer under section 122(1) of the Ordinance 2001 without adhering to the record, documents and law applicable in the instant matter. He further submitted that the no assessment can be amended without having definite information as per section 122(5) of the Ordinance 2001. He argued that the assessment order and the order in appeal were based on estimation that too was without any inquiry and taken into account the business volume and capital of the tax payer. The learned AR also maintained that the assessing officer enhanced the sales by estimation without any documentary evidence and likewise the CIR(A) also estimated the sale without any definite information and plausible reasoning.. He thus requested for the acceptance of the appeal. On the other hand the DR supported the order of the earned CIR (A) with the plea that the order under appeal was passed after considering the actual business volume and facts of the business and normal profit range earned by

the persons doing the alike business. The DR submitted that the tax payer did not bother to attend the audit proceedings initiated under section 177 read with section 214C of the Ordinance 2001 and produce the record so the assessing officer did not have any option, in absence of the documents and books of accounts, except to estimate the sale according to best of his knowledge.

5. I have gone through the record of appeal file and considered the arguments of the rival parties. I have noted that the deemed assessment was amended by the learned assessing officer on the basis of estimation of sales and too without conducting any inquiry and referring any business history of the tax payer. The context of the amended assessment order shows that the sales were estimated merely on assumption and conjuncture without establishing any defect and error in the declared sales of the tax payer. The legal and proper reasoning, as I examine, is also lacking in the amended assessment order. The finding of fact which was not based on material available on record was obviously declared as illegal because it is trite law that the findings should be based on reasons containing the justification for finding in the assessment order. The learned CIR(A) while deciding the appeal also did not refer any sort of material on the basis of which the receipts were estimated to Rs. 6,000,000/- he also did not conduct any sort of inquiry of the alike business. The learned CIR(A) also disallowed the P&L expenses without any cogent reasons and establishing the same from the record / documents purely according to his wishes and whims which is against the taxing statute. It has repeatedly been held by the Honorable Courts that the tax should have been charged and levied on a concrete and unambiguous stance and there is no room for intendment as to tax so charging without clear verdict and backing with documentary evidence is illegal and nullity in the eye of law. I have also observed that the taxpayer did not provide the record required by the assessing officer during the audit

proceedings initiated under section 177 read with section 214C of the Ordinance 2001. The Taxpayer is legally bound to present the record to the assessing officer in compliance of the audit proceedings. So far as the argument of AR regarding definite information in terms of section 122(5) is concerned, it is suffice to observe that the case in hand is the case of audit proceedings initiated as per section 177 for tax year 2012 after selection by the Federal Board of Revenue in terms of section 214C of the Ordinance 2001 and the taxpayer was legally bound to submit the record. It is therefore the question of definite information does not arise in the case in hand.

6. In the wake of above circumstances the assessment order and the appellate order are hereby set aside and case is remanded back to the assessing officer for proceedings a fresh. Needless to mention that the proceedings for fresh amendment, if permissible under the law, should be done exactly in accordance with the law and based on proper appreciation of facts, record and documents.

7. The appeal stands disposed of as indicated above. Case remanded

8. This order consists of 4 (Four) pages and each page bears my signature.

Sd/-
(MIAN ABDUL BASIT)
Judicial Member
(Empowered u/s 130 (8AA) of the Income Tax Ordinance, 2001 to exercise powers and functions of the Appellate Tribunal sitting singly).

Copy of the bench order forwarded to:
1. The Appellant M/s Attiq-ur-Rehman Power Looms Multan
2. THE CIR, ...

By order

Assistant Registrar
Appellate Tribunal Inland Revenue
Lahore.

ITA NO.888/LB/2015
Tax Year-2012
M/s Attiq Ur Rehman, Multan