THE APPELLATE TRIBUNAL INLAND REVENUE, MULTAN BENCH, MULTAN.

ITA No.56/MB/2021
[Tax Year 2014]

M/s. Liaqat Ali Khan, Layyah. Appellant.

Versus

The CIR, RTO-Multan. Respondent

Appellant by: Mr. Riaz Ahmad Raja, ITP.

Respondent by: Ms. Sadia Nadeem, DR.

Date of hearing: 08.03.2022. Date of Order: **14.04.2022**.

ORDER

RIZWAN AHMAD URFI (Accountant Member): The titled appeal preferred at the instance of the taxpayer is directed against the order dated 13.07.2021 passed by the learned CIR (Appeals-I), Multan.

2. Brief facts necessary for disposal of appeal are that case of the taxpayer was selected for audit by the Board. As a result of audit, original assessment for tax year 2014 in this case was annulled by CIR (Appeals-II), Lahore vide appellate order No.10704 dated 01.02.2018. Subsequently, the case was transferred to RTO Multan on point of jurisdiction. Eventually, re-assessment proceedings were finalized vide impugned order dated 30.06.2021 under section 121 of the Income Tax Ordinance, 2001 ('the Ordinance') at income of Rs.7,696,768 by making certain additions/disallowances.

3. The aggrieved taxpayer filed appeal before the CIR (Appeals-I) Multan who vide appellate order dated 13.07.2021 confirmed the impugned order but deleted addition of Rs.174,102 out of expenses. The taxpayer being dissatisfied has come up in further appeal before this forum on various legal and factual grounds.

4. Learned A.R of the appellant strongly agitated the treatment accorded by the lower fora on two main grounds. At the outset, it was contended that the order under section 121(1)(d) was hit by

limitation specified in law and was, therefore, void *ab initio*. It was further argued that the learned CIR (Appeals) was not justified to reject the appeal without adjudicating this ground which went to the root of the case. Learned AR further stated that impugned ex parte order was passed on the basis of single notice and that too by allowing five days only, which is contrary to the established principle "Audi Alteram Partem". It was added that hearing was fixed for 15.06.2021 whereas order was passed on 30.06.2021, which is not maintainable. On merits, it was contended that various additions/disallowances were made without any legal or factual basis and in complete disregard of facts available on record.

5. The learned D.R on her turn supported the orders of authorities below for the reasons recorded therein.

6. We have heard rival contentions and perused the record. At the outset, we are constrained to observe with dismay that both the orders of authorities below have been passed in slip shod, non-transparent and casual manner. The order passed by the OIR under section 121 impugned before us is so haphazard that despite our best efforts we could not gather facts from the contents thereof. The order appears to have been passed after original assessment was annulled by CIR (Appeals) vide order dated 01.02.2018. However, the entire discussion revolves around correspondence made in 2016 and 2017. There is no mention in the order of any notice issued under section 121 of the Ordinance. The impugned order is the best (and rare) example of an absurd, baseless and non-speaking order, which does not even require serious comments thereon.

7. So far as the appellate order dated 13.07.2021 is concerned, it is equally non-speaking, arbitrary and full of irrelevant discussion. The appeal before him was based on as many as 11 grounds. However, none of them appears to have been specifically adjudicated, which was the duty of CIR

(Appeals). The operative part on page 3 of his order reads as under:

> *"Therefore, by the own choice/deliberate act of the appellant its appeal soundly lacks even any semblance of legality hence liable to be dismissed.*
>
> *Therefore, since appellant knowingly and deliberately violated the explicit provisions of section 174 and Rules made there under, the framing of assessments u/s 121 for both tax years are hereby CONFIRMED.*
>
> *On the issue of additions made u/s 111 for both the years since appellant has failed to explain the source of investment/acquisition of assets, the same are also hereby CONFIRMED.*
>
> *For tax year 2014, the expenses have been curtailed to the extent of 40% that worked out to Rs.174,102 do not stand justified hence hereby deleted."*

8. The aforesaid vague and general observations can hardly be termed as valid reason for the appellate decision. The appellate order being arbitrary and non-speaking cannot be sustained.

9. It will be appropriate at this stage to examine the issue of limitation. Admittedly, impugned order was passed under section 121 of the Ordinance for which time limitation has been specified under sub-section (3) which for the sake of convenience sake is reproduced below:

> *"(3) An assessment order under this section shall only be issued <u>within five years after the end of the tax year</u> or the income year to which it relates:*
> *Provided that where notice for furnishing a return of income under sub-section (4) of section 114 is issued in respect of one or more of the last ten completed tax years in pursuance of proviso to sub-section (5) of section 114 an assessment order under this section shall only be issued within two years from the end of tax year in which such notice is issued."*
>
> [Emphasis supplied]

From the highlighted part above, it is clear that order under section 121 is required to be passed within five years from the end of relevant tax year.

10. "Tax year" has been defined in section 74(1) of the Ordinance as under:

> *"**74. Tax year.**— (1) For the purpose of this Ordinance and subject to this section, the tax year shall be a period of twelve months ending on the 30th day of June (hereinafter referred to as 'normal tax year') and shall, subject to sub-section (3), be denoted by the calendar year in which the said date falls."*

Applying the above definition to tax year 2015, which is the tax year under consideration in instant appeal, it transpires that said tax year ended on 30th June 2015. If five years' period is added, limitation to pass order under section 121 expired on 30.06.2020. On the other hand, impugned order under section 121(1)(d) in this case was passed on 30.06.2021, i.e. one year after expiry of limitation specified in law. It is thus clear beyond doubt that the impugned order is hopelessly barred by time and void *ab initio*. For holding so, we are fortified by a judgment of the Lahore High Court reported as 2015 PTD 1068, relevant extract whereof reads as under:

> *"It is a settled principle of interpretation that where time is essence to do a particular thing and on the basis whereof, a right has been claimed, the provisions would be of mandatory nature and if no right is claimed the provisions would be non-mandatory. Reliance is placed on Dr. Haq Nawaz v. Balochistan Public Service Commission etc (1996 CLC 58). The new adverse assessment order indeed creates liability against taxpayer. It is trite law that where the public functionaries are empowered to create liability against citizen only within the prescribed time, the said time becomes mandatory. This is all more so when the prescribed limit is beneficial for the citizen and restrict Executive power of the revenue."*

11. For the foregoing reasons, impugned assessment order under section 121 of the Ordinance as well as the appellate order

of CIR (Appeals) in this case are vacated being not maintainable and appeal of the taxpayer is accepted. Since the appeal has been decided on legal grounds, other grounds on facts of the case are not required to be adjudicated.

SEAL OF APPELLATE TRIBUNAL INLAND REVENUE GOVT. OF PAKISTAN MULTAN

Sd/-
(RIZWAN AHMED URFI)
ACCOUNTANT MEMBER

Sd/-
(SARFRAZ ALI KHAN)
JUDICIAL MEMBER

Copy of the bench order forwarded to
1. The Appellant M/s Liaqat Ali Khan Lahore
2. The Respondent ....
BY ORDER

ASSISTANT REGISTRAR
Appellate Tribunal Inland Revenue
Multan
28/4/2022