IN THE APPELLATE TRIBUNAL INLAND REVENUE, MULTAN BENCH, MULTAN

ITA No.57/MB/2021
(Tax Year 2015)

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

Versus

The CIR, RTO, Multan ...Respondent

Appellant by : Mr.Riaz Ahmad Raja, ITP
Respondent by : Mr.Sadia Nadeem, D.R.

Date of hearing : 08.03.2022
Date of order : 09.05.2022

ORDER

RIZWAN AHMAD URFI (Accountant Member): This appeal has been filed at the instance of the taxpayer calling in question the order dated 13.07.2021 passed by the learned Commissioner Inland Revenue(Appeals-I), Multan.

2. Brief facts necessary for disposal of appeal are that case of the taxpayer, an individual, deriving income from Marriage Club, agriculture income & rental income, filed return for the year under consideration, which was deemed to be an assessment order in terms of section 120 of the Income Tax Ordinance, 2001 (hereinafter called 'the Ordinance)'. Subsequently IRO passed ex-partee order u/s 121 read with section 111(1) without mentioning sub section of 121/111 of the Income Tax Ordinance, 2001 computing income of Rs.2,875,318/- by making addition of Rs.1,949,000/- on the basis of information that one motor vehicle was not declared in the wealth statement. That the appellant does not belong any vehicle #588W in its own name as mentioned to

RTO, Lahore notice & without any definite information. Being aggrieved that the tax payer approached the learned first appellate authority who vide an order dated 13.07.2021 rejected the appeal of the taxpayer for the reason that the taxpayer failed to explain his position. Subsequently, the case was transferred to RTO, Multan on point of jurisdiction. The taxpayer being dissatisfied has come up in further appeal before this forum on various legal and factual grounds as following:-

1. That the IRO passed ex-parte order u/s. 121 read with section 111(1) without mentioning sub section of 121/111 of the Income Tax Ordinance, 2001 as well as confirm by CIR (Appeals), Multan is illegal, arbitrary and against the facts of the case.

2. That the taxpayer is an Individual who e-filed return on IRIS for the tax year 2015, declaring income from marriage club & rental income, which was deemed to be an assessment order U/S 120 of the Income Tax Ordinance, 2001.

3. That the notice issued under section 111(1) of the Income Tax Ordinance, 2001 from RTO, Corporate Zone, to amend u/s 122 of the Income Tax Ordinance, 2001 for purchase & non declaration of Toyota altis vehicle # 588W on 15.03.2015 of Rs.1,949,000 whereas without issuance of notice from author of this order u/s 111, passed order u/s 121 without any legal frame work of the statutes. That CIR(Appeals), Multan without discussing all grounds, confirm the order which is illegal.

4. That the IRO undersigned illegally amend the assessment u/s 121 without mentioning sub section, which is against the law.

5. That framing of impugned order by the RTO, Multan (Layyah officer) is without any valid basis and liable to be knocked down.

6. That proper opportunity of hearing was not provided to the appellant as well as without issuance of any notice, were given to reply/documents which is against AUDI ALTERAM PARTEM, in which clear fifteen days should be given. Hence the appellant condemned unheard which is against the maxim of audi alterm partem, which is also against the fundamental rules of natural justice since no

one can be condemned unheard as held in the reported judgement cited as 1994 SCMR 2232 *** Principle of " no taxation without representation" embodied in Article 77 read with Article 162 of the Constitution is violated by the Respondent (tax department) & (IRAT) 2013 PTD 1186, Abdul Rasheed Vs. CIR, RTO, Multan (Representative Riaz Ahmad Raja).

7. That proper legal recourse available with the Assessing Officer u/s 177(10) ibid was to finalize best judgment assessment under section 121(1)(d) ibid. However, the said provisions of law contained in section 121 without sub section ibid were not invoked by the Assessing Officer properly & finalized without availability of "definite information" as defined in section 122(8) ibid and as interpreted by the Superior courts in plethora of judgements.

8. First & Final date of hearing was *31.08.2018* (RTO, Lahore) and the date of order passed u/s 121 was *30.06.2021 (RTO, Multan).* That the amended order passed by the Assessing Officer ex-parte on the date i.e. 30.06.2021 when the case was not adjourned or fixed for hearing as the last date of hearing was 31.08.2018. Unreported judgement vide ITA No.1850/2014 dated 10.12.2014 in the case of M/S Mediflair Pharmaceuticals Vs.CIR RTO, Multan (Representative Riaz Ahmad Raja).

9. *That the case is time barred and hit by limitation as section 121(3) describe that as 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. That framing of impugned order are without any valid basis and liable to be knocked down.*

10. That burden of proof rests on shoulders of the department to prove that any wrong done. It is noted that dismay that the said burden has not been properly been discharged by the department. It is a basic rule in a democratic form of Govt, that no tax can be levied or collected except under the constitutional authority of Islamic Republic of Pakistan, 1973. We are of the view that a number of mistakes have been made by the Assessing Officer while amending the already finalized assessment of the taxpayer.

3. Both the parties have been heard and relevant orders are perused. It was argued that the Learned CIR (Appeals) was not justified to reject the appeal without adjudicating these grounds

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",** in which clear fifteen days should be given as held in 1994 SCMR 2232. The learned A.R. of the taxpayer contended that first & final notice for addition under section 111(1) of the Income Tax Ordinance, 2001 issued on 31.08.2018 for 07.09.2018 (RTO, Lahore), but ex-parte order passed on 30.06.2021, RTO, Multan, without any further notice. When the case was not adjourned or fixed for hearing as the last date of hearing was fixed on 07.09.2018 which is clearly mentioned on the First page of order u/s 121, which is contrary to the norms of natural justice. In support of his contention, the learned AR has relied on the judgement of this tribunal: -**ITA NO.1850/LB/2014 dated 10.12.2014**. The case relied upon by the learned AR cited supra squarely falls on all fours of the instant case.

4. Learned AR further argued that the application of section 121 of the Ordinance in the presence of a valid return will amount to two assessments in field, simultaneously one i.e. deemed assessment u/s 120, second ex-parte assessment u/s 121, which is not warranted under law. Further case law relied vide **ATIR, Multan Bench in ITA NO.527/LB/2021 dated 06.02.2022** ***"we reiterate that issuance of Audit Report was mandatory and the impugned order under section 122 made without confronting the audit observations through Audit Report is without jurisdiction and hence of no legal consequences. It is a trite law that when a statute had prescribed a method of doing a thing in a particular manner, such provision of law is to be followed in letter and spirit and achieving or attaining an objective of performing or doing of a thing in a manner other than provided by law would not be permitted".***

5. After hearing both the parties and going through the relevant orders, we are of the view that a number of mistakes have been made by the IRO while amending the already finalized assessment of the taxpayer.

6. So far as the CIR(A) order dated 13.07.2021 is concerned, it is equally non-speaking, arbitrary and full of irrelevant discussion. It is

settled law that if the basic order is void, then any superstructure built thereon is also liable to fall. On merit also the arguments advanced by the learned council are weighty. 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 4 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 explicitly 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".*

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

7. 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 is vacated being not maintainable, suffer from legal and factual infirmities and flaws which render it null and void ab initio and appeal of the taxpayer is accepted.

Sd/-
(RIZWAN AHMED URFI)
ACCOUNTANT MEMBER

Sd/-
(SARFRAZ ALI KHAN)
JUDICIAL MEMBER

mazahmed 11/08/22