APPELLATE TRIBUNAL INLAND REVENUE, LAHORE
CAMP AT MULTAN

ITA No. 1884/MB/2015
(Tax Year 2012)

The CIR Special Zone, RTO Multan.

...Appellant

VERSUS

M/s. Servo Motor Oil (Pvt) Ltd., Multan.

......Respondent

Appellant by	:	Mr. Abdul Razzaq Khan, D.R.
Respondent by	:	Mr. Riaz Ahmad Raja, Advocate.
Date of hearing	:	18-03-2022
Date of Order	:	12-04-2022

ORDER

The captioned Income Tax Appeal has been filed by the appellant/department against the order dated 02-04-2015 passed by the learned Commissioner Inland Revenue (Appeals), Multan on the following grounds:

> "1. *That the order of learned CIR (Appeals) is bad in law and wrong in facts.*
>
> 2. *That the learned CIR (Appeals) was not justified to outrightly annul the order without appreciating and discussing in his order the additions made to the income of the taxpayer in the amendment order.*
>
> ***PRAYER***
>
> *It is humbly prayed that the order of the learned CIR (Appeals) Multan may kindly be vacated and that one of the assessing officer be restored."*

2. Brief facts of the case as gathered from the available record are that the taxpayer is a private limited company engaged in manufacturing of lubes/oil/greases and filed Return declaring income at Rs.5,880,248/- for tax year 2012, which was deemed to be an

assessment under section 120 of the Income Tax 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. The taxpayer was intimated accordingly and certain details/documents were called for to conduct the audit. The taxpayer responded to the notice by filing certain documents/record which could not convince the assessing officer, who concluded the proceedings by passing amendment order u/s 122(1) of the Ordinance, 2001 dated 30-01-2015 by making the following additions:-

1-	Addition on account of inflated valuation of purchase	Rs.510,000
2-	Addition of net profit worked out in Mr. Arif Iqbal's case on account of re-characterization u/s 108 & 109	Rs.3,513,363
3-	Addition on account of income u/s 39(3) of the Income	Rs.13,936,000

3. Being aggrieved with the action of the DCIR, the Appellant/taxpayer filed appeal before the Commissioner (Appeals), who vide his order dated 02-04-2015 annulled impugned order in the following words;

> *"Arguments of the AR have been taken into consideration. A perusal of impugned order reveals that show cause notice was issued on 20-01-2015 which was served on 22-01-2015 for 26-01-2015 giving four days for compliance. Therefore, the DCIR concluded the proceedings by passing order u/s 122(1) of the Income Tax Ordinance, 2001 on 30-01-2015. Obviously, reasonable opportunity of hearing was not extended to the appellant which is against the direction of FBR Circular* ***No.7(36)DT-14/94 dated 01-02-1994****.*
>
> *It is observed that any deficiency in record was not detected by the assessing officer. Obviously the declared version has been rejected without assigning any reason and the additions are not based on any deficiency in claim/definite information for amending the assessment u/s 122 of the Ordinance, 2001. The contention of the appellant that provisions of section 122(5) cannot be invoked without any definite information is forceful. In a judgement of Lahore High Court reported as Saitax Spinning Mills Ltd., V. Commissioner of Income Tax 2003 PTD 808 (Lah H.C) the honourable High Court disapproved amendment/reopening of a completed assessment for*

want of definite information. In another judgement cited as 2013 P.T.D (Trib) 1429 the Learned Tribunal dismissed departmental appeal holding that non-issuance of mandatory notice rendered the proceedings untenable in the eye of law and failure to comply with such a mandatory requirement of the statute renders the act void ab initio as being an act performed in disregard of the provisions of the statute.

*Respectfully following the aforementioned case law, the impugned amended order is **annulled.**"*

4. The appellant/department being dissatisfied with the order of the Commissioner (Appeals), has come before this Tribunal for redressal of its grievance.

5. On the date of hearing, Mr. Abdul Razzaq Khan, D.R appeared in the case proceedings on behalf of the appellant/department while Mr. Riaz Ahmad Raja, Advocate attended the case on behalf of the Respondent/taxpayer.

6. During the course of court proceedings, the learned D.R argued that the learned CIR (Appeals) was not justified to out-rightly annul the order without appreciating and discussing in his order the additions made to the income of the taxpayer in the amendment order. He humbly prayed that the order of the learned CIR (Appeals) Multan may kindly be vacated and that one of the assessing officer be restored.

7. On the other hand, the learned A.R of the taxpayer strongly opposed the contentions raised by the learned D.R also supported the order passed by the officer below. He argued that the order passed by the learned CIR (Appeals) is legal, lawful and in accordance with the relevant provisions of law. He prayed for dismissal of departmental appeal.

8. We have heard the arguments advanced by the learned representatives from both sides and perused the available record of the case including Orders of two authorities below. We have observed that the learned CIR(A) has rightly discussed the issue involved in the captioned appeal by observing that:

"A perusal of impugned reveals that show cause notice was issued on 20.01.2015 which was served on 22.01.2015 for 26.01.2015 giving four days for compliance. Therefore, the DCIR concluded the proceedings by passing order u/s 122(1) of the Income Tax Ordinance 2001 on 30.01.2015. Obviously, reasonable opportunity of hearing was not extended to the appellant which is against the direction of FBR Circular No. 7(36)DT-14/94 dated 01.02.1994.

"It is observed that any deficiency in record was not detected by the assessing officer. Obviously the declared version has been rejected without assigning any reason and the additions are not based on any deficiency in claim/definite information for amending the assessment u/s 122 of the Ordinance, 2001. The contention of the appellant that provisions of section 122(5) cannot be invoked without any definite information is forceful. In a judgment of Lahore High Court reported as Saitax Spinning Mills Ltd., V. Commissioner of Income Tax 2003 PTD 808 (Lah H.C) the honourable High Court disapproved amendment/reopening of a completed assessment for want of definite information. In another judgment cited as 2013 P.T.D (Trib) 1429 the Learned Tribunal dismissed departmental appeal holding that non-issuance of mandatory notice rendered the proceedings untenable in the eye of law and failure to comply with such a mandatory requirement of the statute renders the act void ab initio as being an act performed in disregard of the provisions of the statute".

Further, the DCIR concluded its proceedings only on one opportunity of hearing to the taxpayer which is against the direction of FBR Circular No.7(36)DT-14/94 dated 01-02-1994.

9. Keeping in view the above position, the order passed by the learned CIR(A) is legal, lawful and in accordance with the relevant provisions of law and his order requires no interference, hence the same is confirmed and the appeal filed by the department is dismissed accordingly.

10. The captioned appeal filed by the appellant/taxpayer is disposed of in the manner indicated supra.

Sd/-

(AMINA NAZEER ANSARI)
JUDICIAL MEMBER

Sd/-

(DR. MUHAMMAD NAEEM)
ACCOUNTANT MEMBER

Fayaz/APS*

Copy of the bench order forwarded to:
1. The Appellant......The CIR Special Zone RTO Multan
2.The DR ......"......"......
By Order
ASSISTANT REGISTRAR
Appellate Tribunal Inland Revenue
Multan
25/4/22