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APPELLATE TRIBUNAL INLAND REVENUE
LAHORE BENCH, LAHORE

ITA No.1416/LB/09
(Tax Year 2003)

M/s Sunrise Bottling Company (Pvt) Limited,
Lahore. [NTN 2110873]

... Appellant

Versus

Commissioner of Income Tax,
Appeals-I, Lahore.

... Respondent

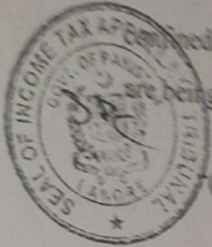
Appellant by : Mr. Muhammad Iqbal Kh., Advocate along
with Mr. Faisal Iqbal Kh., FCA/A.Rs.
Respondent by : Mr. Muhammad Tahir, D.R. (LTU).
Date of Hearing : 22-04-2010
Date of Order : 20-05-2010



ORDER

1. Through the titled appeal, the appellant-taxpayer calls in question first appellate order dated 25-09-2009 recorded by the learned CIT, Appeals-I, Lahore pertaining to the Tax Year 2003.
2. Relevant facts are that the appellant-taxpayer is a private limited company deriving income from manufacturing and sale of carbonated drink under the brand "7-up". Return for the tax year 2003 was filed on 31.12.2003 declaring loss at (Rs.3,050,015/-) and it was treated an assessment order in terms of Section 120(1) of the Income Tax Ordinance, 2001 (hereinafter referred to as the "Ordinance, 2001"). Later on, examination of assessment record revealed that the same was erroneous in so far as prejudicial to the interest of revenue for the reasons as spelled out in the show cause notice dated 18-11-2008 suggesting therein alterations/amendments in terms of Section 122 (1)/122 (5A) of the Ordinance, 2001 and after completion of proceedings, income was re-assessed at Rs.5,321,141/- on 04-12-2008.
3. Aggrieved with the treatment meted out by the Taxation Officer, the appellant-taxpayer preferred appeal before the learned CIT (A) who vide order dated 25-09-2009 partly accepted the appeal.

4. Feeling still dissatisfied with the first appellate order of the learned CIT (A), the appellant-taxpayer has preferred the titled appeal before this Appellate Tribunal on certain grounds/issues against the order of the learned CIT (A). However, the learned A.R. of the appellant-taxpayer has presented his arguments on the legal issues i.e. Ground Nos.(2) & (3) which are being reproduced below:



(2) That the order passed u/s 122 (5A) by the Additional Commissioner of Income Tax is without any lawful jurisdiction and Commissioner of Appeals has further erred under law in confirming the order on the score.

(3) That the Commissioner of Appeals has erred under law in not following direct order passed by Income Tax Appellate Tribunal on point of jurisdiction of Additional Commissioner u/s 122 (5A) and hence clearly acceded his jurisdiction while ignoring reported case (2007) PTD 1226 and ITAT vide MA (AG) No.22/09 and ITA No.1019/LB/09 for Tax Year 2006 dated 09-05-2009. Thus the Appeal order passed is further bad in law on fact of the case."

5. The learned A.R. of the appellant-taxpayer contended that Section 122 (5A) of the Income Tax Ordinance, 2001 was inserted on 01-07-2003 and the provisions of the said section are prospective and not retrospective. He cited case law reported as (2009) 100 Tax 41 (Trib.) and 2009 PTD 1 (Lahore High Court) in support of his contentions.

6. On the other side, the learned D.R. has vehemently supported the impugned order. He stated that the Return was filed by the appellant-taxpayer on 31-12-2003 and amended assessment order u/s 122(1)/122(5A) was passed by the Taxation Officer on 04-12-2008. Learned D.R., in this context, produced copies of the ITAT's Order dated 29-10-2001 in ITA No.833/KB of 2000-2001 for the assessment year 1999-2000 and Judgment of the apex court in Civil Appeal No.56 to 1958 decided on 19-01-1972 in the case titled "Commissioner of Income Tax, North Zone, West Pakistan, Lahore v. Mst. Wazirunnisa Begum".

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7. Relevant record has been perused and the arguments advanced by both the parties heard. The learned A.R. of the appellant has stated that Section 122 (5A) of the Income Tax Ordinance, 2001 was inserted on 01.07.2003 by Finance Act, 2003. The provisions of Section 122 (5A) of Income Tax Ordinance, 2001 were not specifically made retrospective, but same being substantive in nature could only apply prospectively. In this context, the learned A.R. has quoted an order of Full Bench of this Tribunal reported as (2009) 100 TAX 41. The relevant paragraph of this referred law reads as under:



"48. Action u/s 122 (5A) for tax year 2003: During the course of hearing learned AR argued that Section 122 (5A) was inserted through Finance Act, 2003. Earlier sub-section (5A) was inserted by S.R.O. 633(1)/2002, dated 14-9-2002 which stands rescinded by SRO 608(1)/2003, dated 24-06-2003 with effect from 1-7-2003. He also emphasized that this issue has been settled at higher appellate level that action u/s 122 (5A) could not be taken before 1-7-2003. His contention was focused on the legality of action u/s 122 (5A) for tax year 2003 and he claimed that such action could not be taken for the said year. This contention of learned AR was examined in the light of relevant record and it was noted that this issue has been settled in favour of taxpayer. It is, therefore, held that provisions of section 122 (5A) did not apply to tax year 2003. Impugned order u/s 122 (5A) for tax year 2003 was, therefore, illegal and a nullity and is hereby annulled."

8. In the light of the foregoing, the appeal of the appellant is accepted and is allowed in the light of the above case law.

Sdf

(Sardar Muhammad Anwar Ahmad Khan)
Judicial Member

[Empowered u/s 130(8)(a) of the Income Tax Ordinance, 2001 to exercise powers and functions of the Appellate Tribunal sitting singly].

*Sohail

Copy of the bench order forwarded to:

1. The Appellant.
2. THE CIT.

Assistant Registrar
Income Tax Appellate Tribunal
Lahore.

Sumaira Bottling Company
Bot. on ltr.

21-05-2010