

Citation(s): 2026 SLD 2878

Appellate Tribunal Inland Revenue, Lahore

ITA No. 7219/LB/2023 (Tax Year 2017). Date of Hearing: 23.11.2023. Date of Order: 12.02.2024

AUTHOR(S): MUHAMMAD MOHSIN, JUDICIAL MEMBER AND DR. SHAHID SIDDIQ, ACCOUNTANT MEMBER

**M/S. OPP (PVT) LTD, LAHORE APPLICANT
VS
CIR, ETO, LAHORE RESPONDENT**

**Mr. Shahid Jamil, ITP
Ms. Suman Gulzar, D.R**

Law: Income Tax Ordinance, 2001

Section: 120(1),120(3),153(1)(b),170(3),122(1),221,221(1)

In this appeal, the taxpayer challenged the order passed under section 221(1) of the Income Tax Ordinance, 2001, which disallowed its adjustment of a prior-year refund of Rs. 3,432,335/- against its tax liability for Tax Year 2017 on the ground that the refund was unverified. The Commissioner Inland Revenue (Appeals) confirmed the disallowance, observing that the taxpayer had failed to substantiate its refund claims, particularly regarding deductions that were part of the Final Tax Regime. However, the Appellate Tribunal Inland Revenue, after hearing both parties and reviewing the record, held that the adjustment of prior-year refunds as reflected in the return acknowledgment is in accordance with the law and prescribed rules, and that invoking section 221 in case of a deemed assessment under section 120 is illegal. Relying on established judicial precedents, including the principle that longstanding departmental practice has the force of law, the Tribunal annulled the orders of the authorities below and accepted the taxpayer's appeal.

ORDER:

MUHAMMAD MOHSIN VIRK, JUDICIAL MEMBER:---,---

This appeal has been preferred at the instant of the taxpayer and is directed against the appellate order dated 31.10.2023 passed by the Commissioner Inland Revenue (Appeals), Lahore under section 122(1) of the Income Tax Ordinance, 2001.

2. Brief fact of the case that the taxpayer, Private Limited Company, has filed an appeal against the order date 30-05-2023 passed under section 221(1) of the Income Tax Ordinance, 2001 for Tax Year 2017 and the taxpayer adjusted a refund of Rs.3,432,1335/-. The learned taxation officer inferred that without proper verification and determination, such adjustment of refund was inadmissible and constituted a mistake apparent from record Proceedings u/s 221 was initiated and taxpayer's compliance was found to be unsatisfactory. Resultantly order 221(1) of the Ordinance was passed on 30-05-2023 creating a tax demand of Rs.3,432,335/.

3. Being dissatisfied with the orders of authorities below the appellant has filed instant appeal before the Tribunal on the following grounds:-

i. That the order passed by the worthy CIR, (Appeals VIII), Lahore is unjustified, unreasonable and contrary to the provisions of law as well as facts of the case.

ii. That the Commissioner Inland Revenue, (Appeals) was not justified to uphold the ex-parte order under section 221(1), as framed by the assessing officer on mere assumptions, without applying an independent and judicious mind and hence the order is contrary to the provisions of law as well as facts of the case, which is not sustainable in the eyes of law.

iii. That the assessing officer was not justified to frame the order under section 221(1) on mere assumption, without providing proper opportunity of being heard which is contrary to the provisions of Circular no. 7(2) of 1994 dated 01.02.1994 and hence the order is contrary to the provisions of law.

It is pertinent to mention that alleged notice under section 221(1) dated 01.01.2022 was duly complied with by the taxpayer, vide letter bar code no. 100000125408796 dated 08.06.2022, which is duly evident from the body of order. Reliance is also placed on a judgment of the Honorable Lahore High Court, Lahore reported as [(2012 PTD 964 (H.C)).

iv. That the ACIR committed a glaring mistake, while disallowing the adjustment of refund amounting Rs.3,432,335/- on mere assumption, as provisions of section 221 cannot be invoked in case of deemed assessment under section 120(1) of the Ordinance 2001 and hence the action of the assessing officer is capricious and contrary to the norms of justice. Reliance is also placed on a judgment of the Honourable Lahore High Court, Lahore in case of Commissioner Inland Revenue, Sialkot Vs Chaudhary Steel Mills S.I.E., Daska in PTR No. 335 of 2013 dated 15.03.2022, whereby reference filed by the income tax department has been rejected.

v. Moreover, short payment of tax / wrong application of tax rate does not come under the ambit of mistake under section 221 as per the provisions of sub-Section (3) of section 120 of the Income Tax Ordinance 2001.

Reliance is also placed on a judgment of the Honourable Lahore ATIR, Lahore. reported as [(2020 PTD 2163)].

vi. That the adjustment of refund is as per "return of total income" prescribed under the Income Tax Rules 2002 and that the disallowance of adjustment without first proving its inadmissibility in the relevant tax year, is patent illegal and contrary to the provisions of law, which cannot be sustainable in the eyes of law.

Reliance is also placed on a judgment of the Honourable Lahore High Court, Lahore reported as [(2015 LHC 2276)].

Reliance is also placed on a judgment of the Honourable ATIR Multan In ITA No. 200/MB/2022 dated 13.04.2022, wherein it has been held that :-

"We are the considered view that before disallowing refund adjustment in the case in hand, the OIR should have made attempt to verify refund claim of the taxpayer for the relevant year and if, after the verification, tax paid in excess not verified, only then he could issue notice for disallowing adjustment of the same against tax payable for subsequent year. In the absence of any finding on record, the observation that the taxpayer had adjusted "unverified" refund is not sustainable."

vi. Without prejudice to the grounds no 2 to 6 above, the assessing officer was not justified to disallow the adjustment of "refund" of preceding year amounting to Rs.3,432,335/- on mere assumption, as the same has been adjusted in accordance with the provisions of

section 170(3) of the Ordinance 2001, which cannot be rejected on assumption and hence the order is contrary to the provisions of law, which is not sustainable in the eyes of law.

4. Being aggrieved, the taxpayer preferred appeal before the CIR(A) who disposed of the case and confirmed the impugned order of the assessing officer as per below finding:-

"The only issue involved is the appellant's claim of prior years' refunds aggregating Rs.3,432,335/- against the admitted tax liability for the instant tax year. During the rectification proceedings, the taxpayer produced copies of returns from Tax Year 2013 to Tax Year 2015 as evidence of refund claims. The same was not substantiated through documentary evidence. Perusal of the grounds also reveals that the taxpayer has claimed refunds on the basis of deductions under section 153(1)(b), 235 and 236 of the Ordinance. In the past, deductions u/s 153(1)(b) of the Ordinance have remained either part of Final Tax Regime or discharge of minimum tax liability and therefore cannot be part of the refundable regime. Hence onus was on the taxpayer to assist the learned AO regarding legality and genuineness of the refund claims pertaining to prior years. Keeping in view the above-stated facts, Order framed by the learned AO u/s 221 of the Ordinance is found to be in order and is, hereby, confirmed.

5. On the other hand, the learned DR has opposed the contention of the learned AR and supported the orders of the authorities below.

6. The learned A.R has contended that the ACIR was not justified to disallow the adjustment of refund on mere assumption, as provision of section 221 cannot be invoked in the case of deemed assessment under section 120(1) of the Ordinance 2001. He stated that the short payment/wrong application of tax rate does not come under the ambit of mistake under section 221 in view of section 120(3), as short payment of tax and incorrect tax rate have specifically been excluded from the preview of deficiencies for the purpose of section 120(3). He further argued that the adjustment of refund is as per "return of total income" prescribed by the "Federal Board of Revenue" under the Income Tax Rules 2002 as well as established past practice. The disallowance of adjustment, without first proving its inadmissibility in the relevant tax year, is patently illegal and contrary to the provisions of law and hence the order is not sustainable in the eyes of law and is contrary to the ratio settled by the Lahore High Court, Lahore, in 2015 LHC 2276 in PTR 15/2012 titled CIR vs. Chicago Metal Works and PLD 1998 SC 64. Reliance is also placed on various other judgments, such as the Honorable Lahore High Court, Lahore in the case of Commissioner Inland Revenue, Sialkot Vs Chaudhary Steel Mills S.I.E., Daska in PTR No. 335 of 2013 dated 15.03.2022, Honorable ATIR reported as 2020 PTD 2163, ITA No. 200/MB/2022 dated 13.04.2022 and ITA No. 5812/LB/2022 dated 08.02.2023. Further reliance was also placed on judgments reported as 2012 SCMR 371, 2018 SCMR 1131, 2006 PTD 2854 and 2021 PTD 913.

7. In our view that the format of income tax return is prescribed under the Rules 2002. Moreover, neither there is any change in section 170 nor in the column of adjustment of refund. As per principle of law pronounced by the Apex Court, an established past practice has the force of law. Reliance in this regard is made on the judgment of the Supreme Court of Pakistan reported as 1989 SCMR 353 titled "Radaka Corporation Others vs. Collector of Customs", wherein it has been held that:-

"7... Now it is settled law that where departmental practice has followed a particular course in the implementation of some rule, whether right or wrong, it will be extremely unfair to make a departure from it after elapse of many years and thereby disturb rights that have been established by a long and consistent course of practice."

8. We have heard the arguments of the parties and perused available record and reference cases presented, case laws relied upon and by taking the strength from the judgment of the Honourable Lahore High Court, Lahore, as stated above, as well as other judgments of this Tribunal i.e. 2020 PTD. 2163, ITA No. 5812/LB/2202 dated 08.02.2023.

9. For the reasons recorded above, we come to the conclusion that the proceedings initiated under section 221(1) the Ordinance and we hold that the adjustment of prior years refunds appearing in the acknowledgment as "refundable income tax" is in accordance with law, rules and that the disallowance of adjustment of refund by invoking provisions of section 221 in case of deemed assessment under section 120 is illegal and unlawful. Therefore the orders passed by the authorities below are not sustainable in the eyes of law and hence are hereby annulled.

10. Appeal preferred at the instance of the taxpayer is hereby accepted in the mode and manner indicated above. Order Accordingly.

Sd/-
(MUHAMMAD MOHSIN VIRK)
Judicial Member

Sd/-
(DR. SHAHID SIDDIQ)
Accountant Member