

14/10

06/11/2024 Appellate order passed by CIR (A) maintained ✓

APPELLATE TRIBUNAL INLAND REVENUE
GOVERNMENT OF PAKISTAN, DIVISION BENCH, MULTAN

ITANo.2520/LB/2017

Tax Year: 2011

The CIR, RTO, Bahawalpur.

Versus

...Appellant

Mr. Al-Fazal Flour & Genaral Mills,
Khanpur Road, Rahim Yar Khan.
NTN No:1286516-8

...Respondent

Appellant by:

Mr. Ishfaq Ahmad, DR.

Respondent by:

Mr. Niaz Ahmad Khan, Adv.

Mr. Rehan Ahmad Khan, Adv.

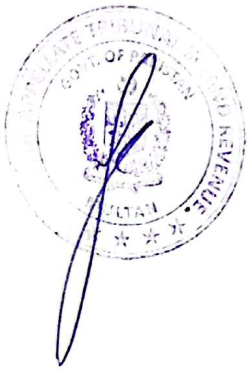
Date of Hearing:

15.10.2024

Date of Order:

15.10.2024

ORDER



DR. SHAH KHAN (MEMBER): By this order, we intend to dispose of above titled appeal filed by the appellant/Department against the impugned order dated 10.06.2017 passed by the learned Commissioner Inland Revenue (Appeals), Bahawalpur, on the grounds contained in the memorandum of appeal.

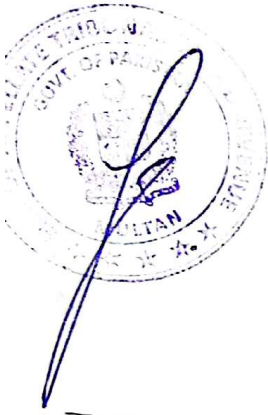
2. Brief facts of the case are that the taxpayer an AOP derives income by running a Flour Mills and filed return of total income declaring taxable income at Rs.3,153,947/-. The case of the taxpayer was selected for audit through parametric computer Random Ballot u/s 214C of the Income Tax Ordinance, 2001 resulting which the original /deemed assessment taken to have made an assessment u/s 120(1)(a) of the Ordinance was amended u/s 122(1) of the Income Tax Ordinance, 2001 on 25.06.2013 at net income of Rs.5,005,143/-. Feeling aggrieved by the said treatment, the taxpayer went in appeal before CIR (Appeals), Multan, who vide order dated 10.06.2017 annulled the impugned assessment order. Being dis-satisfied, the Department preferred 2nd appeal before this Tribunal.

3. The appeal was fixed for hearing today on 15.10.2024. Mr. Ishfaq Ahmad DR, attended on behalf of the department and argued their case as per grounds of appeal. On behalf of the respondent taxpayer. Mr. Niaz Ahmad Khan Advocate/ attended and defended the impugned order passed by the L/CIR(Appeals).

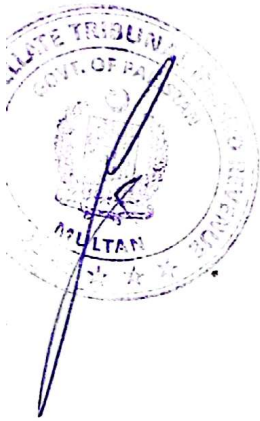
4. Reiterating the grounds of appeal, the L/DR contended that the impugned order passed by the L/CIR(Appeals) is against facts, law and settled principle in the matter because while vacating the order u/s 122(5A) the L/CIR(Appeals) has ignored the sectoral analysis of the Flour Mills which shows per unit grinding of the flour of 100 kgs per 5.25 units of electricity consumed, that based on the above rate, the total grinding should have been 236,673 quintals and the value of sales should have been Rs.757, 355, 077 than what has been declared by the respondent taxpayer. It was further asserted that the understatement of the sales resulting from consideration of the production formula adopted by the department fell within the scope of section 122(5A), hence the L/CIR (Appeals) was not justified to delete the addition made in gross profit suppressed by the respondent. Based on the above, the L/DR pleaded for vacation of the impugned order passed by the L/CIR(Appeals) and restoration of the order passed u/s 122(1) read with section 122(5A) of the Ordinance.

5. The L/AR, on the other hand, defended the impugned order passed by the L/CIR(Appeals) by contending that the impugned order passed u/s 122(5A) was barred by time limitation in terms of section 122(4)(b) because the same had been passed on 11.05.202017 while the same had to be passed till 30.06.2016 as the amendment order in the case u/s 122(1) was passed on 30.05.20215. He further contended that on the factual and legal planes also, the order u/s 122(5A) was not sustainable because the same was based on mere estimation, guesswork and presumption rather any definite information or any factual or legal error in the declaration of the respondent taxpayer. Based on the above, the L/AR pleaded for rejection of the appeal of the appellant department.

6. We have considered the above noted contentions of the L/DR. We have also gone through the relevant record besides consulting the related provisions of law. Upon consideration of the same, we have found that the departmental appeal does not contain any merits either on facts or in law as discussed below.



7. Record transpires that the original assessment was amended u/s 122(1) after processing the case for audit u/s 177 of the tax year 2011. Record further transpires that the basis of the proceedings and subsequent order u/s 122(5A) is the sectoral analysis of production of the flour mills sector and per unit grinding of the wheat into flour for arriving at the so called suppressed gross profit and not on any definite information about sales, purchases, gross profit and business expenses. Record further transpires that the basis of the proceedings u/s 122(5A) is not any discrepancy found in the books of accounts and record maintained by the respondent taxpayer or any third party information about sales, purchases etc. The proceedings and order u/s 122(5A) therefore evidently involve a clear element of presumption, estimation and guess work than any factual or legal error in the declaration of the respondent taxpayer within the meaning of section 122(5A) and principle settled in the matter. Settled principle in the matter of section 122(5A) suggests that the same can be invoked only when a factual or legal error is found in the declaration itself and the so called error or mistake cannot be not imported from outside the declaration through estimation or guess work. Besides, each business in a particular sector has its own dynamics and circumstances like the quantum of production, the type, quality and age machinery used for production, the quality of the raw material used, the process employed for production etc. Utilization of the ratios and production standards not doubt help in identifying the risk areas and trends of a particular business and becomes reason for selection of a case for audit u/s 177 of the Ordinance to further probe such risk areas. Such sectoral analysis, ratios and calculation however, cannot become alternative to the requirements of definite information under sub-section (5) of section 122 or error of facts or of law as envisioned in sub-section (5A) of section 122. We thus find that non-adherence of the declared sales to the sectoral ratios and standards evidently fell outside the scope and domain of section 122(5A). Settled principle in the matter of section 122(5A) also suggests that error of fact or law as envisioned in section 122(5A) should be definite, clear, certain and evident from the declaration and should not be based on estimation or guesswork no matter how much good that estimation may be. We, therefore, find that the order u/s 122(5A) was not sustainable on the above counts.

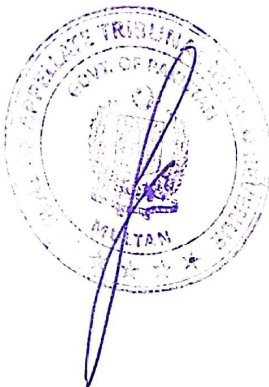


8. The observation of the Additional Commissioner IR that the declared ratio of net income to sales at 0.36% and that the declared gross profit at 3.26% makes the understatement of the gross profit evident is also based on mere presumption and not based on any evidence from the declaration or record of the respondent taxpayer or verification of sales or purchases from any third party. The above shows that the entire proceedings were based on estimation than definite factual or legal error or mistake within the meaning and scope of section 122(5A). The order u/s 122(5A) is not sustainable on this count also.

9. The Additional Commissioner IR, while determining the so called suppressed gross profit has applied the gross profit rate at 5%. The application of the above rate is questionable on two counts. First, that the same has been adopted on the basis of mere presumption than any information from record of the respondent taxpayer and secondly, the said rate was not confronted to the respondent taxpayer in the show cause notice u/s 122(5A) read with section 122(9). Settled principle suggests that any issue not confronted in the show cause notice or any defect not forming part of the show cause notice is not sustainable. On this count also, the order u/s 122(5A) is not sustainable in law.

10. From what has been discussed supra, we have found that the order u/s 122(5A) was not sustainable on facts and in law. The L/CIR(Appeals) has elaborately discussed these defects and infirmities in the said order. The L/DR has failed to point out any infirmity in the impugned order passed by the L/CIR (Appeals) and the grounds of the departmental appeal are found to be devoid of any merits both on facts and law. The departmental appeal is hereby dismissed having no merits.

11. Departmental appeal dismissed as above.



sd -
CH. MUHAMMAD AZAM
Member

sd -
DR. SHAH KHAN
Member

Date of Order: 05-10-2024

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TRUE COPY OF ORDER FORWARDED TO

1. APPELLANT: 4

RESPONDENT: Mr. Al-Faqal Flout
General mth R. y. Khan.

General Mills, R.T. Chan

AGG.
APPELLATE

APPELLATE

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