

06

Departmental appeal
dismissed & order
CIR(A) order
maintained

1/11
307/6
25

**APPELLATE TRIBUNAL INLAND REVENUE,
MULTAN BENCH, MULTAN.**

**ITA No.923/MB/2018
(Tax Year 2015)**

The CIR, RTO, Sahiwal.

... Appellant

Versus

Mr. Mazhar Hayyat Arifwala.
Reg No.3640109106637

... Respondent

Appellant by:

Mr. M. Akhtar Suraj, DR

Respondent by:

Mr. Naiz Ahmad Khan, Advocate a/w

Mr. Rehan Ahmad Khan, Advocate

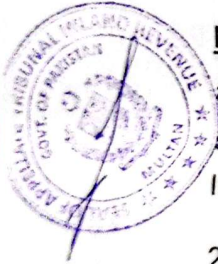
Date of Hearing:

05.06.2025

Date of Order:

24-06-2025

ORDER

**MUHAMMAD IJAZ ALI BHATTI (Member):** The titled departmental appeal pertaining to tax year 2015 has been directed against the appellate order dated 22.12.2017 passed by the learned CIR(Appels-III) Lahore. (Camp at Lahore)

2. Brief facts of the case emanating from record are that the taxpayer/respondent, an individual, filed income tax return for the tax year under consideration declaring income at Rs.973,647/-, which was deemed to be assessed in terms of Section 120(1) of the Income Tax Ordinance, 2001 (the Ordinance). Subsequently, the said deemed assessment was considered to erroneous in so far as prejudicial to the interest of revenue on the ground that the taxpayer/respondent had declared net assets at Rs.26,488,346/-, in the wealth statement as on 30.06.2015 which were not reconciled properly. Therefore, proceedings were initiated by way of issuance of show cause notice u/s 122(9) of the Ordinance on 02.05.2017 for compliance by 09.05.2017, in response to which the taxpayer/respondent provided following reconciliation.

Foreign remittances as on 06.03.2012	Rs.863,917/-
Foreign remittances as on 06.09.2013	Rs.1,999,999/-
Foreign remittances as on 28.10.2013	Rs.2,000,000/-
Foreign remittances as on 09.12.2013	Rs.3,000,000/-
Foreign remittances as on 25.09.2014	Rs.3,862,097/-
Gift from brother-in-law(Brother of wife) on 23.11.2010	Rs.50,00,000/-
Gift from brother-in-law(Brother of wife) on 19.01.2012	Rs.15,00,000/-
Gift from brother-in-law(Brother of wife) on 19.01.2012	Rs.10,00,000/-
Gift from brother-in-law(Brother of wife) on 19.01.2012	Rs.10,00,000/-
Gift from brother-in-law(Brother of wife) on 20.01.2012	Rs.15,00,000/-
Toal	
Less	Rs.2,98,72963/-
Expenditure from 2002-2003 to 2015	Rs.28,64,617/-
Gift to Son	Rs.5,20,000/-
Net wealth as on 30.06.2015	Rs.2,64,88,346/-

3. The above reconciliation filed by the taxpayer/respondent was partially accepted. Foreign remittances to the extent of Rs.863,917/- received by the taxpayer/respondent on 06.03.2012 were accepted. Whereas foreign remittances amounting to Rs.10,862,096/- was rejected. Resultantly, the proceedings culminated in passing of order u/s 122(5A) of the Ordinance dated 11.07.2017, by making addition u/s 111(1)(b) of the Ordinance amounting to Rs. 10,862,096/-. Feeling aggrieved with the said treatment, the taxpayer/respondent preferred appeal before the learned CIR(Appeals-III) Lahore, (Camp at Lahore) which was accepted leading to deletion of said addition as per findings given below:-

"Contentions of the appellant have been considered and facts perused. The learned Addl. CIR while rejecting appellant's contention had observed that the appellant had not submitted proper foreign remittance certificate. This was contested by the appellant on the ground that foreign remittances received through normal banking channel were immune from investigation u/s 111(4) of the Ordinance. It is further noted that addition of an huge amount of Rs.10,862,096/- was made to the income of the appellant u/s 111(1)(b) without giving any cogent reasons by the assessing officer. On the other hand, the AR of the appellant produced copy of encashment certificates which are legal documents issued by M/s United Bank Limited, Timber Market Branch, Arifwala and Habib Bank Ltd, Jinnah Chowk

Branch, Arifwala. I am, therefore, of the considered view that the assessing officer was not authorized to seek information about foreign remittance. Consequently, addition of Rs.10,862,096/- made by the assessing officer u/s 111(1)(b) is without any legal basis. In light of the evidence produced before this forum on account of foreign remittances, the addition made by the assessing officer is not maintainable and the impugned order passed u/s 122(5A) is, therefore, annulled."

4. Feeling aggrieved with the treatment meted out by the learned CIR(Appeals), the department has come up in appeal before this Tribunal on the strength of following grounds set forth as per memo of appeal:-

- i) That the order of the Learned CIR(A) is bad in law and against the facts of the case.
- ii) That Learned CIR(Appeals) was not justified to delete the addition made u/s 111(1)(b) amounting to Rs.10,862,096/- as the taxpayer failed to provide the proper foreign remittance evidence during the proceedings.
- iii) The onus to prove the sources through remittances was on the taxpayer but the taxpayer failed to prove this at the time of original amended assessment u/s 122(5A).
- iv) That the Hon'ble CIR(Appeals) was not justified to admit the Additional documents in view of sub-section (5) of Section 128 of the Income Tax Ordinance, 2001.

5. The learned DR, representing the department, contended that the order passed by the learned CIR(Appeals) is contrary to law and facts of the case. It was argued that the taxpayer failed to produce verifiable and cogent evidence of foreign remittances during the assessment proceedings conducted under section 122(5A) of the Ordinance. The assessing officer had rightly rejected the claim of foreign remittances, except for the remittance dated 06.03.2012, due to non-submission of foreign remittance certificates showing receipt of foreign remittance through proper banking channel. The learned DR stressed that the onus to substantiate the foreign remittance exemption under section 111(4) lies with the taxpayer, which he failed to discharge during the original proceedings. The learned DR argued that the learned CIR(Appeals) erred in admitting additional evidence in



violation of sub-section (5) of section 128 of the Ordinance, as no justification for non-submission before the assessing officer was provided by the taxpayer. Therefore, it was prayed that the impugned appellate order be reversed and the addition of Rs.10,862,096/- made under section 111(1)(b) be restored.

6. The learned AR appearing on behalf of the taxpayer vehemently opposed the arguments advanced by the learned DR and submitted that the contention of the department regarding non-furnishing of foreign remittance evidence at the assessment stage is factually incorrect and misconceived. It was categorically stated that during the course of assessment proceedings initiated under section 122(9) of the Ordinance, the taxpayer duly furnished reconciliation of net assets along with documentary evidence in the form of foreign remittance and encashment certificates issued by the concerned banks. The said documents clearly substantiated the inflow of foreign funds through recognized banking channels and were duly acknowledged by the assessing officer, who partially accepted the remittances to the extent of Rs.863,917/-. Therefore, the remaining remittances were not rejected for want of evidence, but merely due to non-appreciation of the legal immunity provided under section 111(4) of the Ordinance. The learned AR emphasized that the same documents, which were earlier placed on record before the assessing officer, were also produced before the learned CIR(A) and no new or additional evidence was introduced at the appellate stage. Consequently, the objection raised by the department under section 128(5) is legally unsustainable. It was further argued that the learned CIR(A) rightly appreciated the legal sanctity attached to foreign remittances received through proper banking channels and annulled the unwarranted addition, which had been made without lawful justification.

7. We have given due consideration to the arguments advanced by both sides and have carefully perused the available record. It is noted

that the addition made by the assessing officer under section 111(1)(b) of the Ordinance, amounting to Rs.10,862,096/-, was based on the ground that the taxpayer/respondent failed to furnish proper certificates of foreign remittances. However, during the appellate proceedings, the taxpayer/respondent duly submitted copies of encashment certificates issued by recognized banking institutions namely, United Bank Limited and Habib Bank Limited verifying the inflow of foreign funds through normal banking channels and bank statements. Furthermore, as per statement made at bar, the said documentary evidence was also submitted at assessment stage, but could not be considered by the assessing officer acting in an arbitrary manner. From order u/s 122(5A) it is clear that all record of foreign remittance were produced before the assessing officer. In view of the legal protection granted under section 111(4) of the Ordinance to bona fide foreign remittances received through official banking channels, no addition could be made under section 111(1)(b) of the Ordinance. It is well established that once a taxpayer produces bank-issued encashment certificates reflecting receipt of foreign remittances, alongwith bank statement, the onus shifts to the department to establish that such receipts were not genuine. No such evidence has been brought on record by the department to rebut the documentary evidence placed before the assessing officer, commissioner (Appeals) and even before this forum. Further, the contention of the learned DR that the learned CIR(Appeals) could not admit additional documents under section 128(5) is also devoid of merit, as the documents in question are not new evidence but form part of the taxpayer's banking record which could have been verified by the department at any stage and that the said documentary evidence was also furnished at assessment stage. The AR for taxpayer/respondent has also produced encashment certificates of foreign remittances and bank statements before us, which were confronted to the learned DR, who failed to point out any legal infirmity or deficiency in the said record of foreign



remittances. Even the DR has failed to point out any legal infirmity in the order of CIR(A).

8. In view of the foregoing discussion, the departmental appeal is found to be devoid of merit and is hereby dismissed. The order of the learned CIR(A) is upheld. We order accordingly.

This order consists of (06) pages and each page bears my signatures.

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MUHAMMAD IJAZ ALI BHATTI
 Member

sd-
CH. MUHAMMAD AZAM
 Member

Appeal No. ITA 923 /LB/18
 Date of Order. 24-6-25
 TRUE COPY OF ORDER FORWARDED TO
 1. APPELLANT. 11
 2. RESPONDENT. Mazhar Hayat
27-6-25
 ASSISTANT REGISTRAR
 APPELLATE TRIBUNAL INLAND REVENUE
 MULTAN