

IN THE APPELLATE TRIBUNAL INLAND REVENUE
LAHORE BENCH, LAHORE

ITA No.1731/LB/2021
Tax Year 2013

433
6672

The CIR, Zone-IV, LTO, Lahore.

...Appellant

Versus

M/s. Remington Pharmaceutical Industries Pvt. Ltd.,
Lahore. NTN: 1772367

...Respondent

Appellant by : Mr. M. Suleman, DR
Respondent by : Mr. Suhail Mutee Babri, ITP
Mirza Amir Baig, Advocate

SCIAN

Date of Hearing : 06.04.2026
Date of Order : 20.04.2026

ORDER

Mian Abdul Bari Rashid (Member):

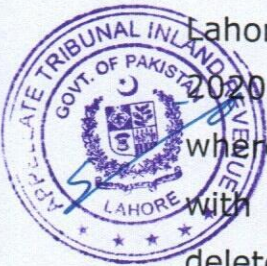
1. This is a departmental appeal directed against appellate order dated 22.02.2021 passed by the learned Commissioner Inland Revenue (Appeals-V), Lahore, under section 129 of the Income Tax Ordinance, 2001, (the Ordinance) whereby relief was granted to the respondent taxpayer against assessment order dated 05.07.2018 passed under section 122(5A) of the Ordinance.
2. Briefly stated, through show cause notice issued under section 122(9) read with section 122(5A) of the Ordinance, the Assessing Officer had confronted the respondent taxpayer on various issues. However, while finalizing the proceedings, only two issues were decided against the taxpayer. One of such issues pertained to an addition of Rs.1,084,861/- in terms of section 34(3) of the Ordinance in respect of Workers' Profit Participation Fund (WPPF), on the allegation that the said amount had been claimed on accrual basis rather than on actual payment basis in terms of section 60B of the Ordinance.
3. Feeling aggrieved, the taxpayer preferred an appeal before the learned Commissioner (Appeals), who deleted the said addition by placing reliance upon FBR Circular No.1 of 2004 as well as an earlier decision of this Tribunal.



4. We have heard the learned representatives, examined the record, and considered the applicable legal position. We are of the firm view that this is a settled issue. The learned Commissioner (Appeals) referred to Circular No. 01 of 2004 issued by the Federal Board of Revenue, which directly addresses the allowability of WPPF. The clarification issued by the FBR is categorical in stating that under section 32 of the Ordinance, income is to be computed in accordance with the method of accounting regularly employed by the taxpayer. As it is mandatory for a company to maintain accounts on the accrual basis, deductible expenses such as WPPF are to be allowed on accrual, irrespective of actual payment. The relevant portion of the FBR circular reads:

"It is, therefore, clarified that the allowability of Worker Welfare Fund as a deductible allowance would depend on the method of accounting being employed by the taxpayers in accordance with the provisions of income tax law."

5. This position is further fortified by the judgment of the Hon'ble Lahore High Court in *CIR vs. Ashraf Sugar Mills Ltd.* reported as 2020 PTD 962, wherein the Court upheld the allowability of WPPF where payment was made in the subsequent year, in accordance with the WPPF Act. The Court confirmed the Tribunal's decision to delete the addition on account of WPPF after noting that the payment was substantiated through the audited financial statements of the following year as under:

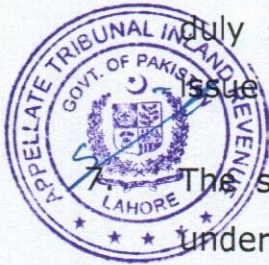


"5. Perusal of record reveals that learned Appellate Tribunal, after appreciating the available record, recorded findings of facts that addition on account of WPPF was wrongly made as provided in section 60A of the Ordinance of 2001 which is allowable as the taxpayer has made the payment of WPPF in next year. The addition on account of purchases and additions on account of profit and loss expenses were not confronted in show-cause notice as taxpayer has filed complete books of accounts which is also mentioned in the assessment order and both the additions have rightly been deleted by the learned CIR (Appeals). Learned Appellate Tribunal has also issued direction to Taxation Officer to give credit to respondent-taxpayer after verification of record. The relevant part of impugned finding is reproduced hereunder: -

8. We have heard representatives of both the parties, perused the impugned orders of the officers below and available relevant record of the case. After considering the facts, perusing the record and case law's referred by the learned AR's, we are of the opinion that addition on account of Tax Ordinance, 2001 which is allowable as the taxpayer has made

the payment of WPPF in next year according to the WPPF Act which is evident to the Note No. 13.1 of the audited accounts provided by the learned AR's for the next year i.e. Tax Year 2012 therefore addition has been wrongly been made and confirmed by the CIR (Appeals) which is hereby ordered to be deleted."

6. In light of the authoritative guidance contained in the FBR Circular No. 01 of 2004, the binding precedent of the Hon'ble Lahore High Court in the case of *Ashraf Sugar Mills Ltd.*, we find no substance in the departmental appeal. It is now well settled that corporate taxpayers maintaining books on accrual basis are entitled to deduct WPPF as a provision in the year of accrual, regardless of the timing of actual disbursement. The assessing officer's decision to disallow the provision solely on the ground of non-payment within the same year reflects an incorrect and overly restrictive reading of sections 34(3) and 60B of the Ordinance, particularly when the substance of the expense is not in dispute and the eventual payment has been duly substantiated. Accordingly, the departmental appeal on this issue is without any merit and is dismissed.

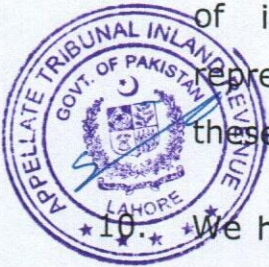


7. The second issue pertains to an addition of Rs.7.95 million made under section 111(1)(b) of the Ordinance on account of alleged inflated cost of imports. While exercising revisional jurisdiction under section 122(5A) of the Ordinance, the Assessing Officer observed that, according to the respondent taxpayer's declared version, imports for the relevant period stood at Rs.94.99 million, whereas, as per ITMS customs data, the corresponding figure was Rs.87.9 million. On the basis of this difference, the Assessing Officer inferred that the excess amount represented inflated import cost allegedly met from undeclared sources, and consequently made addition under section 111(1)(b) of the Ordinance, primarily on the ground that documentary evidence in support of the difference had not been furnished.

8. In response, the respondent taxpayer submitted complete LC-wise details of imports for the relevant period and explained that the customs data did not capture several ancillary and incidental expenses forming part of the total import cost. These included miscellaneous clearing expenses, aviation charges, shipping guarantee expenses, sales tax on services, delivery order expenses, service charges, processing charges, LC amendment charges,

SWIFT/courier charges, and bank commission, among others. According to the taxpayer, once such components were taken into account, the difference stood duly reconciled and the observation of the Assessing Officer stood adequately rebutted. Nevertheless, the Assessing Officer proceeded with the addition on the premise that supporting vouchers/documents for such expenses had not been provided.

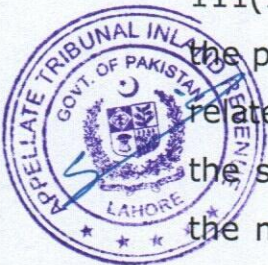
9. In appeal, the learned Commissioner (Appeals) deleted the addition after appreciating the respondent taxpayer's explanation and recognizing that customs data, by its very nature, did not encompass various ancillary costs associated with imports. The learned Commissioner (Appeals) further observed that the primary import data was already available with the Department through customs records and that an addition under section 111 could not be sustained merely on conjectural inference, particularly in the absence of irrefutable evidence showing that the alleged difference represented unexplained investment from undisclosed sources. On these findings, the addition was deleted.



10. We have heard the learned DR, perused the impugned orders, and examined the material available on record. Upon due consideration, we are not persuaded to interfere with the relief granted by the learned Commissioner (Appeals).
11. It is by now a settled principle that jurisdiction under section 122(5A) of the Ordinance is not intended to be exercised for fishing and roving inquiries. Before validly invoking such jurisdiction, the twin statutory conditions must co-exist, namely, the earlier order must be shown to be both erroneous and prejudicial to the interest of revenue. These conditions are conjunctive and not disjunctive. Mere suspicion, possibility of further verification, or desire to conduct a deeper probe does not satisfy the statutory threshold. The provision does not confer an open-ended authority to revisit concluded matters merely because the officer wishes to undertake further inquiry or collect additional material.
12. In the present case, the very basis adopted by the Assessing Officer in relation to the alleged inflated cost of imports was that, according to customs data, imports were reflected at one figure, whereas the

taxpayer had declared a higher figure, and therefore the difference was presumed to have been met from undisclosed sources. However, the respondent taxpayer furnished an explanation that the customs data did not capture several ancillary and incidental import-related expenses such as clearing charges, bank charges, LC-related expenses, courier/SWIFT charges, service charges and other connected costs. Thus, what confronted the Assessing Officer was, at best, a matter requiring inquiry, verification and reconciliation of accounts and supporting material. Such an exercise may possibly fall within a regular assessment or properly structured proceedings under the law, but it plainly falls outside the narrow compass of section 122(5A), which is not meant to be used as a gateway for embarking upon a fresh fact-finding mission¹.

14. We further note that the addition was ultimately made under section 111(1)(b) of the Ordinance. Invocation of section 111 in the facts of the present case itself required inquiry into the nature of the import-related expenses, their nexus with the declared import value, and the source from which such payments were made. In other words, the matter was not self-evident from the existing record and could not be resolved without entering into an investigative exercise. That is precisely what is not permitted while exercising revisional jurisdiction under section 122(5A). Where the alleged error is not apparent on the face of the record and can only be built up through further inquiry, reconciliation and verification, the order cannot be branded as erroneous within the contemplation of section 122(5A).



15. In our considered view, the facts of the present case did not furnish the twin conditions required for lawful assumption of jurisdiction under section 122(5A). Firstly, no patent error in the original assessment order was identified from the record as it stood. Secondly, prejudice to the revenue was merely presumed on the basis of a difference which itself called for detailed examination and reconciliation. Thus, the jurisdictional foundation of the impugned revisional action was lacking. The Assessing Officer, in substance, used section 122(5A) as a tool to launch a fishing and roving inquiry

¹ *Commissioner Inland Revenue vs. Muhammad Iqbal Rin Sons* reported as 2022 PTD 1411; *M/s National Highway Authority vs. The CIR* in ITA No.323-350.IB/2022; 2014 PTD (Trib.) 2085; *Multinet Pakistan (Pvt) Limited vs CIR* reported as 2019 PTD (Trib) 2162. *Bestway Cement Limited Vs. Additional Commissioner* reported as 2018 PTD 9777

and then, on the strength of such inquiry, proceeded to make an addition under section 111(1)(b). Such exercise is not sustainable in law.

16. The learned Commissioner (Appeals), therefore, rightly appreciated that the matter essentially related to inquiry and verification which was beyond the permissible scope of section 122(5A), and further rightly held that an addition under section 111 could not be sustained in the absence of clear and irrefutable material. We find no illegality, misreading, or non-reading in the findings recorded by the learned Commissioner (Appeals) warranting interference by this Tribunal.



17. Accordingly, the departmental appeal, being devoid of merit, is hereby dismissed.

SdL

(Muhammad Ijaz Ali Bhatti)
Member

SdL

(Mian Abdul Bari Rashid)
Member

Appeal No.	ITA No 1731 / LB / 2021
Date of Order.	20-4-26
TRUE COPY OF ORDER FORWARDED TO	
1. APPELLANT	CIR LTO KAR
2. RESPONDENT	X
 29/04/26 ASSISTANT REGISTRAR Appellate Tribunal Inland Revenue Lahore	