

APPELLATE TRIBUNAL INLAND REVENUE, LAHORE BENCH,
LAHORE

ITA No.2216/LB/2021
(Tax Year 2016)

M/s. JDW Sugar Mills, Lahore.
NTN:0711003

437
6739
...Appellant

Versus

The CIR, LTO, Lahore.

...Respondent

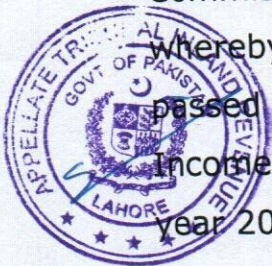
Appellant by: Mr. Fawad Mir, ITP.
Respondent by: Mr. Usman Azam Bhatti, DR.

Date of hearing: 15.04.2026
Date of order: 20.04.2026

SCIAN

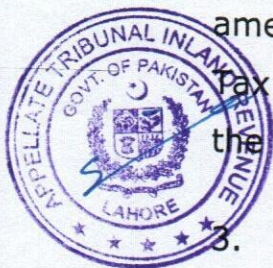
ORDER

IMRAN MUNIR (MEMBER): The instant income tax appeal has been preferred by the appellant-taxpayer against the impugned appellate order dated 08.04.2021 passed by the learned Commissioner Inland Revenue (Appeals-V), Lahore ("**CIR(A)**"), whereby the amended assessment order dated 29.03.2019 passed by the Officer Inland Revenue ("**OIR**") u/s 122(4) of the Income Tax Ordinance, 2001 ("**the Ordinance**") for the tax year 2016 was modified.



2. Brief facts emanating from record are that the appellant, JDW Sugar Mills Limited is engaged in the business of production and sale of sugar and generation of electricity. The taxpayer electronically filed its return of income for the Tax Year 2016 on 15.11.2016, declaring a loss of (Rs.115,316,865/-), which was deemed to have been assessed under the provisions of section 120 of the Ordinance. Subsequently, the taxpayer revised its return on 13.01.2017, declaring an enhanced loss of (Rs.480,563,737/-), which was also deemed to be an assessment u/s 122(3) of the Ordinance. Later, the income tax affairs of the taxpayer for the said tax year were selected for detailed audit by the Federal Board of Revenue u/s 214C of the Ordinance. In pursuance thereof, audit proceedings were initiated u/s 177, and after examination of the record and documents furnished by the taxpayer, certain discrepancies and

defects were observed by the department. These audit observations were communicated to the taxpayer through an audit report issued u/s 177(6) on the Ordinance dated 31.12.2018. However, despite issuance of reminders from time to time, the taxpayer did not furnish satisfactory compliance to the audit observations. Consequently, considering that the discrepancies pointed out during audit warranted amendment of the deemed assessment, show cause notice u/s 122(9) of the Ordinance was issued on 16.01.2019, followed by another notice dated 11.02.2019 seeking further clarification. In response, the taxpayer, after availing several adjournments, submitted written replies on 31.12.2018 and 27.02.2019 along with certain supporting documents. The explanations and record furnished by the taxpayer were duly examined; however, the same were found insufficient to rebut the audit observations. Accordingly, the assessment proceedings were finalized by the OIR through amendment u/s 122(4) read with section 122(5) of the Income Tax Ordinance, 2001, making various additions/disallowances to the declared loss of the taxpayer.

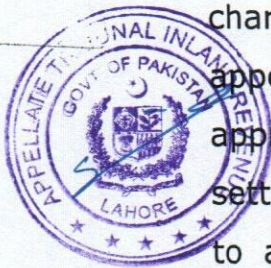


3. Feeling aggrieved by the said treatment, the taxpayer filed first appeal before the learned CIR(A), who vide appellate order dated 08.04.2021 decided the appeal in the following manner:-

- i) Confirmed the issue on account of allocation of 'Finance Cost'
- ii) Upheld the issue on account of allocation of 'Exchange Gain'
- iii) Deleted the issue on account of 'Rental Income (Agricultural Income)'
- iv) Deleted the issue on account of 'Exchange Gain'
- v) Confirmed the issue on account of 'Office, Rent and Renovation Expense'
- vi) Confirmed the addition u/s 21(c) of the Ordinance
- vii) Upheld the additions u/s 21(h)/20(l) of the Ordinance

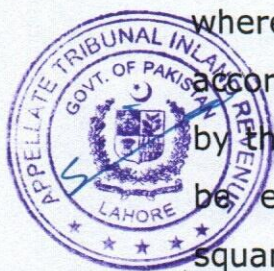
4. Still discontented, the taxpayer has come up in further appeal before this Tribunal on the strength of various grounds taken as per memo of appeal.

5. Learned AR for the appellant submitted that the impugned appellate order passed by the learned CIR(A) is both legally infirm and factually misconceived, as the same has been passed without proper appreciation of the record, past history of the case, and the settled legal position governing the issues involved. He contended that the learned CIR(A) fell in serious error while confirming various additions/disallowances made by the OIR merely on presumptions and surmises, without confronting any tangible material or rebutting the documentary evidence produced by the appellant. On the first issue, he submitted that the learned CIR(A) was not justified in confirming the allocation of gross finance cost amounting to Rs.2,355,296,404/- between Normal Tax Regime (NTR) and Final Tax Regime (FTR), and further in treating the interest income of Rs.113,499,861/- received from associates as income chargeable under the NTR in a manner detrimental to the appellant. He argued that the authorities below failed to appreciate the true nature of the transaction and ignored the settled history of the taxpayer's own case. He argued that loan to associate was given at the average borrowing rate of the taxpayer, therefore, interest expense incurred to earn interest income is exactly the same and taxpayer was justified in netting off the expense with income. He submitted that this very issue had already been adjudicated in the appellant's favour in the earlier proceedings for tax year 2014, wherein the learned CIR(A), vide order dated 07.03.2018, had categorically held that where loans had been advanced to related parties at a minimum rate and the corresponding interest income had been treated under normal law, then the directly relatable mark-up expenditure was required to be adjusted accordingly, and any contrary allocation made by the OIR was not in accordance with law and facts.



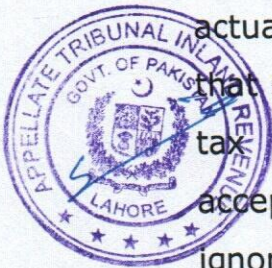
6. He stressed that the principle settled in the appellant's own case could not be departed from without distinguishing the facts or bringing any fresh material on record. According to him, the

treatment accorded by the department in the impugned year was in clear deviation from the consistent past practice and the earlier accepted position, which itself rendered the impugned action arbitrary and discriminatory. He maintained that the department had ignored the cardinal rule that consistency should be maintained where the facts and circumstances remain unchanged. He further argued that the OIR as well as the learned CIR(A) wrongly proceeded on generalized assumptions without identifying any legal basis for reallocating the finance cost in the manner adopted by them. He contended that once the interest recovered from associated undertakings had been separately identified and brought to tax under the NTR, the directly related mark-up expenditure could not be reallocated in an arbitrary manner so as to inflate the taxable income. He further submitted that the earlier finding of the learned CIR(A), wherein it was held that the officer's conclusion was not in accordance with law and facts and that the mark-up recovered by the taxpayer on advances to related parties was required to be excluded while recalculating the allocation of mark-up, squarely supported the appellant's case. Therefore, he argued that the impugned confirmation by the learned CIR(A) was unsustainable and liable to be annulled.



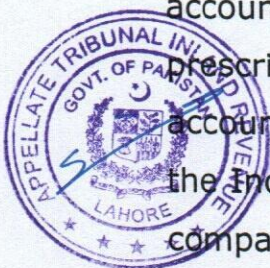
7. On the second issue, he submitted that the learned CIR(A) gravely erred in confirming the allocation of exchange gain amounting to Rs.24,338,748/- to normal income by holding that the same was over and above export sales. He argued that the conclusion drawn by the authorities below was erroneous, contrary to the accounting treatment consistently adopted by the appellant, and against the settled history of the taxpayer's own case. He submitted that this issue too had already been examined in audit proceedings for tax year 2014, and the OIR, vide order dated 30.10.2017, had accepted the appellant's stance. Therefore, according to the AR, there was no justification for deviating from the settled position in the absence of any distinguishable fact or fresh adverse material. He contended that

the exchange gain arose directly from export business transactions and was intrinsically linked with export sales, hence it could not be isolated and treated as independent income under the NTR merely to create an artificial tax burden. According to him, exchange fluctuation is only an incident of export realization and partake the same character as the underlying export proceeds. He argued that the authorities below failed to appreciate the commercial and accounting reality that exchange gain is not a separate stream of income but merely an adjustment arising from realization of export receivables. Consequently, it had to follow the same treatment as the export sales to which it related. He emphasized that the allocation made by the department was not based on any cogent rationale, working, or evidence, but rather on a mechanical assumption that exchange gain was an income over and above export turnover. Such assumption, he argued, had no nexus with the actual business operations of the appellant. He further submitted that settled history is a relevant and persuasive consideration in tax matters, particularly where the department itself had accepted the position in earlier years. The learned CIR(A), by ignoring the appellant's past accepted treatment and the prior order of the officer, had failed to exercise jurisdiction judiciously. Therefore, the allocation of exchange gain to NTR income, according to him, deserved to be deleted in toto.



8. On the issue relating to addition of Rs.3,109,886/-u/s 21(n) on account of office rent and renovation expenses, he submitted that both the authorities below had wrongly treated routine revenue expenditure as capital in nature, without examining the actual details of the expenses. He argued that the total amount claimed by the taxpayer under this head was Rs.30,674,618/-, out of which Rs.27,015,928/- represented office rent, on which due tax had duly been deducted and deposited into the government treasury, whereas the remaining amount of Rs.3,658,690/- pertained to routine repair and maintenance expenses incurred for upkeep of the office

premises. He submitted that these expenses were claimed in accordance with the appellant's consistently followed accounting policy and were duly reflected in the books of account. He argued that the authorities below failed to distinguish between capital outlay resulting in the creation of a new asset or enduring benefit, and ordinary repair/maintenance expenditure incurred to preserve and maintain an existing office facility. He maintained that the amount disallowed was of a minor and recurring nature, and the ledger accounts placed on record clearly demonstrated that the expenditure did not result in any new capital asset, structural improvement, or enduring advantage so as to attract disallowance as capital expenditure. He submitted that the impugned addition had been made on conjectural grounds only, without discussing the specific entries in the ledger or pointing out as to which particular item constituted capital expenditure. He further contended that the appellant-company prepares its accounts in accordance with the law, namely the requirements prescribed under the Income Tax Rules, 2002, and applicable accounting standards. In this regard, he referred to Rule 32 of the Income Tax Rules, 2002, submitting that the accounts of the company are required to be prepared in accordance with International Accounting Standards and the relevant corporate law. He also invoked section 32(1) of the Income Tax Ordinance, 2001, arguing that a person's income is to be computed in accordance with the method of accounting regularly employed by such person. Since the appellant had consistently treated such expenses as revenue expenditure in the normal course of business, and such treatment was supported by the books of account, there was no legal basis for the department to arbitrarily re-characterize the same as capital expenditure. He submitted that neither the OIR nor the learned CIR(A) had rebutted the documentary evidence furnished by the appellant, including ledger accounts and expense details. Instead, the addition was sustained on the basis of generalized observations. He argued that such treatment was contrary to law and facts, and therefore the addition u/s 21(n) was liable to be annulled.



9. Addressing the addition of Rs.30,400,439/-u/s 21(h) on account of jet allied expenses, he submitted that the same had wrongly been treated as expenditure incurred for non-business purposes, whereas the record clearly established that the aircraft was acquired, owned, and used by the company for business purposes. He submitted that the breakup of the impugned disallowance included fuel expenses of Rs.12,075,986/- and repair and maintenance expenses of Rs.18,324,453/-, all of which were wholly and exclusively incurred for business operations of the appellant-company. At the outset, he strongly objected to the very foundation of the disallowance and argued that the allegation of personal use was based on mere suspicion and conjecture. He submitted that despite examining the books of account and the supporting record of the taxpayer, the OIR failed to point out any concrete evidence showing that the aircraft was ever used for personal or non-business purposes. He contended that under the law, no disallowance could be sustained merely on the basis of assumptions; rather, the department was required to establish, through definite material, that the expenditure was personal in nature. Since no such material had been brought on record, the disallowance was liable to fail on this ground alone. Without prejudice to the above objection, he further submitted that the aircraft was essential for the business needs of the appellant. He explained that the taxpayer is engaged in the business of manufacturing and sale of sugar and electricity, and has three industrial units located at Rahim Yar Khan, Jamal Din Wali, and Ghotki, whereas the head office is situated at Lahore and sales are made all across the Pakistan. He submitted that the top management stationed at Lahore is required to frequently visit the factory units and other areas for supervision, control, coordination, and operational decision-making. Considering the long distances, lack of effective alternate travelling arrangements, and the need for urgent and repeated movement of management personnel, the aircraft was acquired as a practical and efficient business tool. He argued



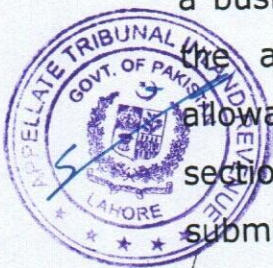
that no industrial concern of such magnitude could be effectively run without continuous monitoring and supervision by senior management, and therefore the use of aircraft was directly connected with the business exigencies of the company.

10. He further submitted that the aircraft stood in the ownership of the company and that the Civil Aviation Authority had granted NOC for purchase of the aircraft specifically for use by the management of the company. According to him, this official approval itself substantiated the appellant's claim that the aircraft was meant for business purposes and not for personal enjoyment or luxury. He also referred to the log book produced on record, which, according to him, evidenced the details of visits and demonstrated that the aircraft was used for business-related travel. He argued that neither the OIR nor the learned CIR(A) had properly examined this crucial evidence. Instead of disproving the contents of the log book or the official NOC, the authorities below resorted to bare presumptions. He submitted that in the absence of any contrary evidence, the aircraft-related fuel and maintenance expenses could not be treated as personal in nature. He emphasized that section 21(h) contemplates disallowance only where the expenditure is personal or non-business in nature, whereas in the present case the expenditure had a direct nexus with the business operations of the appellant. Therefore, the impugned disallowance of jet allied expenses, according to him, was patently illegal and liable to be deleted.



11. On the last issue, he assailed the disallowance of depreciation amounting to Rs.23,085,683/- on the aircraft. He submitted that the authorities below had wrongly held that the aircraft pertained to non-business use and, on that basis, disallowed the depreciation. He argued that this finding was inseparably linked with the earlier erroneous assumption that the aircraft was used for personal purposes. Since the very basis of such assumption was unfounded, the consequential disallowance of depreciation was equally unsustainable. He submitted that the aircraft is admittedly owned by the company and forms part of

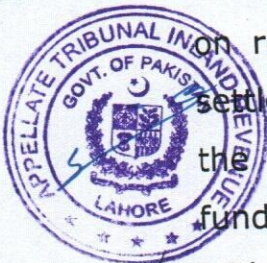
its fixed assets. It has been used for the purposes of the business, namely transportation of management for supervision and oversight of far-flung factory units. Therefore, all statutory conditions for allowance of depreciation stood fully satisfied. He reiterated that the Civil Aviation Authority's NOC, the ownership documents, and the aircraft log book were sufficient to establish business user of the asset. The department, on the other hand, had failed to bring any evidence on record showing personal use or diversion of the asset for non-business purposes. He argued that the OIR had disallowed depreciation simply by drawing an inference from the nature of the asset, i.e., an aircraft, without appreciating the scale and geographical spread of the appellant's business. He submitted that a luxury perception attached to an aircraft could not legally substitute evidence of personal use. In modern commercial operations involving multiple industrial units spread across distant locations, such an asset may very well be a business necessity. He maintained that once business use of the aircraft was established, the depreciation thereon was allowable in accordance with law, and its disallowance under section 20(1) or otherwise had no lawful basis. He concluded by submitting that all the impugned additions and disallowances had been sustained by the learned CIR(A) without proper appreciation of facts, applicable law, the taxpayer's own past history, and documentary evidence available on record. He, therefore, prayed that the impugned order to the extent of the issues under appeal be vacated and the additions/disallowances be deleted accordingly.



12. On the other hand, the learned Departmental Representative supported the impugned orders of the authorities below and submitted that the OIR as well as the learned CIR(A) had rightly appreciated the facts of the case and law applicable thereto. It was contended that the allocation of finance cost and exchange gain to NTR was made in accordance with the nature of income and applicable provisions, as the appellant failed to establish a direct nexus warranting exclusion or different

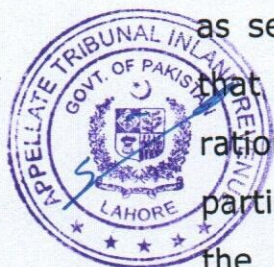
treatment. The DR argued that past history is not binding where facts differ and each tax year is a separate assessment unit. Regarding the disallowance u/s 21(n), it was submitted that the nature of renovation expenses indicated capital outlay, therefore rightly disallowed. As for aircraft-related expenses and depreciation, the DR maintained that the appellant failed to conclusively prove exclusive business use through verifiable evidence; hence, the disallowance u/s 21(h) and related depreciation adjustment were justified. Accordingly, it was prayed that the appeal of the taxpayer be dismissed.

13. We have heard the learned representatives of both sides at considerable length, carefully examined the material available on record, and have also gone through the impugned orders passed by the authorities below. The controversy involved in the present appeal revolves around multiple additions/disallowances, each of which has been examined independently in the light of the facts on record, applicable statutory provisions of the Law and the settled judicial principles. At the very outset, we observed that the impugned order of the learned CIR(A) suffers from a fundamental defect inasmuch as the same has been passed without properly appreciating the factual matrix, documentary evidence, and more importantly, the settled history of the appellant's own case. It is a well-established principle that where a particular issue has been decided in favour of the taxpayer in earlier years and the facts remain identical, consistency must be maintained unless the department brings on record cogent material to justify deviation. In the present case, no such distinguishing feature has been pointed out.



14. On the first issue, we find that the learned CIR(A) has upheld the allocation of gross finance cost between NTR and FTR without addressing the core contention of the appellant that the mark-up income earned from advances to associated undertakings is at the average borrowing rate to the company, therefore, mark up expense incurred to earn interest income from associates is the same as markup income which results in

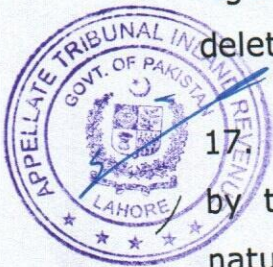
NIL income. Therefore, set off of interest income against mark up expense was justified. Alternatively, if mark up income is to be treated separately under normal law, then mark up expense incurred exclusively to earn such income should also be allocated under normal law. The record reveals that in the appellant's own case for tax year 2014, the learned CIR(A), vide order dated 07.03.2018, had categorically held that the allocation made by the OIR was not in accordance with law and directed exclusion of mark-up recovered from related parties while recalculating the allocation. This finding has attained finality and has not been shown to have been reversed or modified by any higher forum. The authorities below, in the year under consideration, have failed to distinguish the facts or bring on record any fresh material warranting a departure from the settled position. Instead, the reallocation has been carried out on generalized assumptions, without establishing any legal or factual basis. Such approach is contrary to the doctrine of consistency as well as settled principles of tax jurisprudence. We further observed that allocation of finance cost must necessarily be based on a rational and nexus-driven approach. Where income from a particular source is identified and taxed under a specific regime, the corresponding expenditure must be matched accordingly. The failure of the department to establish such nexus renders the impugned allocation arbitrary and unsustainable.



15. In view of the above, we hold that the allocation of gross finance cost as sustained by the learned CIR(A) is legally flawed and the resultant addition is hereby deleted.

16. The next issue pertains to allocation of exchange gain amounting to Rs.24,338,748/- to normal income. We observed that the learned CIR(A) has upheld the action of the OIR on the premise that such gain is over and above export sales. We are unable to agree with the said conclusion. It is an admitted position that the exchange gain has arisen from realization of export proceeds. Exchange fluctuation is merely an incidental and consequential adjustment arising from the timing difference

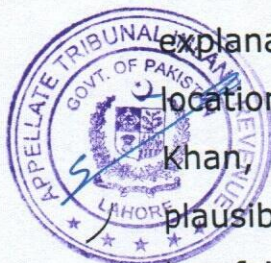
between invoicing and realization of export receivables. Therefore, such gain partake the same character as the underlying export sales and cannot be treated as an independent stream of income. We also note that in the appellant's own case for tax year 2014, the competent authority had accepted this position during audit proceedings vide order dated 30.10.2017. The learned CIR(A), while deciding the present appeal, has neither discussed nor distinguished the said order. Such omission reflects non-application of mind and renders the impugned finding unsustainable. Furthermore, no working, reasoning, or evidence has been provided by the department to justify the separate allocation of exchange gain. The entire treatment appears to be based on a mechanical assumption, which has no nexus with the commercial realities of the appellant's business. Accordingly, we hold that the allocation of exchange gain to NTR income is misconceived and devoid of legal basis. The addition made on this account is therefore deleted.



17. On this issue, we find that the disallowance has been made by treating office rent and renovation expenses as capital in nature. However, a careful perusal of the record shows that out of the total expense claimed, the major portion pertains to office rent, on which due tax has been deducted and deposited, while the remaining portion relates to routine repair and maintenance. The authorities below have not identified any specific item of expenditure which resulted in the creation of a capital asset or provided an enduring benefit to the appellant. Instead, the disallowance has been made on general observations without examining the nature and details of individual expenses. It is settled law that routine repair and maintenance expenses, incurred for the upkeep of existing business premises, are allowable as revenue expenditure. Moreover, in terms of section 32(1) of the Ordinance, income is to be computed in accordance with the method of accounting regularly employed by the taxpayer. The appellant has consistently followed a recognized

accounting policy in this regard as reflected in its accounting policy note 4.1.1 of audited accounts, which has not been shown to be defective. We further note that the appellant had produced ledger accounts and supporting documents to substantiate its claim, which have not been rebutted by the department. In absence of any cogent evidence to the contrary, the recharacterization of such expenses as capital expenditure is not justified. Consequently, the addition made u/s 21(n) is held to be unsustainable and is hereby deleted.

18. The disallowance of jet allied expenses has been made by invoking section 21(h) on the assumption that the aircraft was used for non-business purposes. However, we find that this conclusion is not supported by any concrete evidence. On the contrary, the appellant has placed on record substantial material including ownership documents, NOC issued by Civil Aviation Authority, and log book detailing the usage of the aircraft. The explanation furnished regarding business necessity owing to the location of factory units at distant places such as Rahim Yar Khan, Jamal Din Wali, and Ghotki appears reasonable and plausible. The department, despite having examined the record, has failed to point out any instance of personal use or diversion of the aircraft for non-business purposes. It is a settled principle that disallowances u/s 21(h) must be based on definite evidence and not on mere suspicion or conjecture. We also take cognizance of the fact that modern business operations, particularly those involving multiple industrial units spread over vast geographical areas, may legitimately require use of specialized means of transportation, including aircraft, for efficient management and supervision. We have also observed that the taxpayer company has only charged the jet allied expenses related to business and any non-business use has not been claimed as expense as reflected in Note 43.1 and 43.2 of the audited accounts which also establishes the business use of the Jet. In absence of any contrary material, we are of the considered view that the aircraft-related expenses have been



incurred wholly and exclusively for the purposes of business. The disallowance made by the authorities below is therefore unjustified and is hereby deleted.

19. The disallowance of depreciation is consequential to the earlier assumption that the aircraft was used for non-business purposes. Since we have already held that the aircraft was used for business purposes, the claim of depreciation is fully admissible. The asset is admittedly owned by the appellant and forms part of its business assets. The department has not pointed out any defect in the computation of depreciation or its eligibility under the law. The disallowance is thus based solely on

an erroneous presumption, which cannot be sustained. Accordingly, the disallowance of depreciation amounting to Rs 23,085,683/- is hereby deleted.



20. In view of the foregoing detailed discussion, all the issues raised by the appellant are decided in its favour in the above manner and the appeal is allowed. We order accordingly.

Sd/
(NASIR MAHMUD)
MEMBER

Sd/
(IMRAN MUNIR)
MEMBER

Appeal No. ITA-2216/LB/2021
 Date of Order. 20-4-26
 TRUE COPY OF ORDER FORWARDED TO
 1. APPELLANT. X
 2. RESPONDENT: MR LTO
 ASSISTANT REGISTRAR
 Appellate Tribunal Inland Revenue
 Lahore