

ORDER SHEET
LAHORE HIGH COURT, LAHORE
(JUDICIAL DEPARTMENT)

ITR No. 2590/2023

Commissioner Inland Revenue. **Versus** M/S Pakistan Cricket Board
Lahore.

S.No. of order/ Proceeding	Date of order/ Proceeding	Order with signature of Judge and that of parties or counsel, where necessary.
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30.10.2023 M/s Jahanzaib Inam and Ahmad Jamal, Advocates for the
Applicant.

This and connected Income Tax Reference Application No. 2683/2023 are directed against consolidated order dated 02.12.2021 of learned Appellate Tribunal Inland Revenue, Lahore, whereby appeals preferred by Taxpayer, relating to Tax Years 2014 and 2015, were allowed. And appeal preferred by the department, bearing ITA No.3825/LB/2018, was dismissed.

2. Following questions of law, stately arising out of the judgment, with respect to allowance of appeals of the taxpayer, are proposed for our consideration.

(i). Whether charging of Minimum tax under Section 113 of the Ordinance at the prescribed rate absolves the taxpayer from being charged tax on Income from Property generated by the taxpayer, especially in the circumstances when the taxpayer meets the prescribed requirements laid down by Section 15 and 15A?

(ii). Whether the tax charged on Income From Property under Section 15 read with Section 15A is liable to be charged separately from Minimum Tax, since Minimum Tax regime as envisaged in Section 113, as well as the definition of "Turnover" therein, is restricted to the head "Income from Business" only?"

3. Questions framed are in form of narrative and need re-casting for the sake of clarity. Re-casted question of

law, arising out of the judgment of the Appellate Tribunal reads as,

Whether rental income from the property under section 15 of the Ordinance of 2001, subject to the fulfilment of the conditions prescribed for charging of Minimum tax under Section 113 of the Ordinance, qualifies as taxpayer's gross receipts for the purposes of turnover for computing Minimum tax for the tax year 2014 and 2015?

4. Learned counsel contends that Appellate Tribunal failed to distinguish amongst various heads of income, for the purposes of computation of minimum tax liability, which erroneously taxed Income from property under Section 113 of the Income Tax Ordinance, 2001. Adds that income from property, identified under section 15 Part-III of Chapter-III of the Ordinance, 2001, must be treated as separate head of income, and needed to be taxed independent of the minimum tax regime.

5. Learned counsel is confronted with the text of section 113 of the Ordinance, 2001, as applicable for the relevant tax years, and asked to explain how income from property is construed to have had been excluded, from being considered for the purposes of computation of minimum tax, provided the conditions prescribed under section 113 are met. Learned counsel states that rental income raised from the property does not form part of the turnover of taxpayer but comes within separate head of income.

6. Submissions are misconceived. Textual reading of section 113 of Ordinance, 2001 does not support the viewpoint advocated. Income from property may be

classified as income under one of the different heads of income but not otherwise specifically excluded for the purposes of computation of minimum tax; provided benchmarks under section 113 are otherwise met. Learned counsel failed to convince us that how income from property be brought within the exclusions provided through Explanation to sub-section (1) of section 113 of the Ordinance, 2001 - inserted through the Finance Act, 2012. It is expedient to reproduce the Explanation to section 113, which reads as,

Section 113(1) Explanation-1 [Before being substituted by the Finance Act, 2016]:

Explanation-For the purpose of this sub-section, the expression “tax payable or paid” does not include tax already paid or payable in respect of deemed income which is assessed as final discharge of the tax liability under section 169 or under any other provision of this Ordinance.”

[Emphasis supplied]

7. It is not the case of the department that income under reference was classifiable as *deemed income*, being otherwise assessed as final discharge of tax liability under section 169, or any other provision of the Ordinance, 2001. Appellate Tribunal, for the purposes of Tax Year 2014, deleted the liability of minimum tax charged, and applied tax on income, inclusive of income from property, which computation of tax was more than the benchmark set for triggering minimum tax regime. And for the Tax Year 2015, Appellate Tribunal deleted tax separately charged on income from property, upon finding that cumulative component of tax payable was

lesser than the benchmark provided for attracting minimum tax regime. Legislative intent cannot be defeated by effecting exclusion of income from property, otherwise calculable as part of gross receipts for the purposes of turnover under section 113 of the Ordinance, 2001. It is pertinent to mention that meaning of turnover, in sub-section (3) of section 113 of the Ordinance, 2001, underwent change, wherein addition of express ‘gross sales’ was made. Gross receipts needed to be read in conjunction with sub-section (1) of section 113, ‘.....*person’s turnover from all sources for that year:*’. Gross receipts include income from non-sales sources, and nor necessarily related to regular business activity. Expression ‘gross sales’ and ‘gross receipts’, employed in clause (a) of sub-section (3) of section 113 have had to be construed accordingly – to give effect to the changes made in the definition of turnover. Term ‘gross receipts’ cannot be confined to activity connected with sales of goods, when such activity of sale of goods is catered through expression ‘gross sales’ – added by Finance Act, 2011. It is expedient to reproduce clause (a) of sub-section (3) of section 113 of the Ordinance, 2001,

(3) -turnover means -

- a) the **gross sales or gross receipts**, exclusive of Sales Tax and Federal Excise duty or any trade discounts shown on invoices, or bills, derived from the sale of goods, and also excluding any amount taken as deemed income and is assessed as final discharge of the tax liability for which tax is already paid or payable;

[Emphasis supplied]

8. Addition of the expression ‘*gross sales*’ in definition of turnover through Finance Act 2011 renders the ratio settled in the case of 'COMMISSIONER OF INCOME TAX LEGAL DIVISION, LAHORE and others v. KHURSHID AHMAD and others' (**PLD 2016 Supreme Court 545**) inapplicable. Addition of expression ‘*gross sales*’ in fact, distinguishes and enlarges the scope and compass of ‘*gross receipts*’. Expression ‘*gross receipts*’ needs to be construed and read disjunctively, while distinguishing it from activity of sale of goods, simplicitor. Evidently, coupling of expression ‘*gross receipts*’ exclusively with activity of sale of goods would render the expression ‘*gross sales*’ redundant, superfluous and have an effect of narrowing down the base of income for the purposes of *Minimum tax regime*. In the case of *KHURSHID AHMAD and others*’ (supra) expression ‘*gross receipts*’ was interpreted when expression ‘*gross sales*’ was not added to the definition of *turnover*. [‘*gross sales*’ was added to definition of *turnover* through Finance Act, 2011]. Hence, in view of the above, rental income from property is not the deemed income and have had to be reckoned for the purposes of considering benchmark for *Minimum tax regime*. No illegality was committed by learned Appellate Tribunal, while allowing appeals preferred by the taxpayer.

9. Re-casted question of law is answered in the affirmative. Reference applications are decided against the applicant department.

10. Office shall send a copy of this order, under seal of the Court, to learned Appellate Tribunal, in terms of sub-section (5) of section 133 of the Ordinance.

(Shahid Karim)
Judge

(Asim Hafeez)
Judge

M. Nadeem/

Approved for reporting.

Judge

Judge