

**JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT**

ITR No.73773 of 2022

**Commissioner Inland Revenue, Legal Zone, Corporate Tax
Office, Lahore**
Versus
LF Logistics Pakistan (Pvt.) Ltd., Lahore & another

J U D G M E N T

Date of hearing: 11.10.2023.

Applicant by: Malik Abdullah Raza, Advocate.

Respondent(s) by: Mr. Shoaib Rashid, Advocate.

MUHAMMAD SAJID MEHMOOD SETHI, J.- Through instant Reference Application under Section 133 of the Income Tax Ordinance, 2001 (“**the Ordinance of 2001**”), following question of law, urged to have arisen out of impugned order dated 22.02.2022, passed by learned Appellate Tribunal Inland Revenue, Lahore Bench, Lahore (“**Appellate Tribunal**”), has been pressed for our opinion:-

“Whether on the facts and circumstances of the case, the learned Appellate Tribunal Inland Revenue (“Appellate Tribunal”) has erred in law by failing to consider the definition of ‘turnover’ under the provisions of Section 113(3) of the Income Tax Ordinance, 2001 (“the Ordinance”) which includes the freight charges, terminal charges, shipment handling charges, payment of duties and other taxes under the term gross turnover?”

2. Brief facts of the case are that respondent-taxpayer, a private limited company, filed return for the tax year 2018 declaring taxable income of Rs.6,994,058/-, which was treated as an assessment order in terms of Section 120 of the Ordinance of 2001, however, it was found to be erroneous insofar as prejudicial to the interest of revenue. Consequently, the assessment was amended vide order dated 17.12.2021, levying turnover tax @ 1.25%, which was endorsed by CIR (Appeals) vide order dated 10.02.2022. In second appeal, Appellate Tribunal vacated both the aforesaid orders. Hence, instant Reference Application.

3. Learned Legal Advisor for applicant-department submits that freight charges, terminal charges, shipment handling charges, duties and taxes were part of invoiced amount(s), hence construable as gross receipts, and said amounts cannot be excluded from the ambit of turnover as defined in clause (a) sub-section (3) of section 113 of the Ordinance of 2001. He adds that there was no legal justification available with learned Appellate Tribunal to hold that only the fee, claimable as service charges could be recognized as taxable for the purposes of minimum tax liability. Lastly, he submits that impugned order is illegal and liable to be set aside.

4. Contrarily, learned counsel for respondent-taxpayer defends the impugned order by contending that learned Legal Advisor for applicant-department has failed to point out any illegality or legal infirmity therein. Adds that case of the taxpayer falls within clause (b) of sub-section (3) of section 113 of Ordinance of 2001 since taxpayer is a service provider and charges fees for rendering services, and all other amounts, erroneously treated as part of the turnover, are otherwise reimbursable expense, incurred at the behest of the recipient of service.

5. Arguments heard. Available record perused.

6. Perusal of record reveals that respondent-taxpayer was engaged in the business of freight forwarding by air and sea to and from Pakistan (also customs house brokerage, road freight, fleet management, overland export, warehousing and related services). The controversy involves charge of minimum tax on the turnover of respondent-taxpayer. Section 113 of the Ordinance of 2001 provides mechanism for computation of minimum tax which is determinable in terms of the volume of turnover and the limits whereof are prescribed therein, which is reproduced hereunder for ease of reference:-

“113. Minimum tax on the income of certain persons.- (1)

(2)

(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;

(b) the gross fees for the rendering of services for giving benefits including commissions; except covered by final discharge of tax liability for which tax is separately paid or payable;

(c) the gross receipts from the execution of contracts; except covered by final discharge of tax liability for which tax is separately paid or payable; and

(d) the company's share of the amounts stated above of any association of persons of which the company is a member."

(emphasis supplied)

7. The turnover, in terms of clause (b) of subsection (3) of section 113 of the Ordinance, means the gross fees paid for rendering of services other than those covered by final discharge of tax liability, for which tax is separately paid or payable. Fundamental question is whether the amounts, comprising of freight charges, terminal charges, shipment handling charges payment of duties and other taxes ('other amounts'), otherwise distinguishable from the fees paid in lieu of rendering of services in terms of clause (b) of sub-section (3) of section 113 of the Ordinance of 2001, could be treated as gross receipts. Factually, the claim of reimbursement of other amounts is not disputed. If construction proposed by learned counsel for the department is acknowledged – to treat other amounts and the service fees as part of gross receipts -, it would not only render clause (b) of sub-section (3) of section 113, *ibid*, redundant but conspicuously distort the meaning and effect of sub-clause (b) of clause (v) of sub-section (7) of section 153 of the Ordinance of 2001, and violates the ratio settled through various judicial pronouncements, wherein the term "gross fee" was elucidated. There is no cavil that the term "gross fee", in the context of *rendering of or providing of services*, would exclude reimbursable expenses for the purposes of ascertaining the volume of the "turnover". Accordingly, it is the gross fee and not the gross receipts, which shall be treated as part of turnover for the purposes of commuting the minimum tax liability in terms of

clause (b) of sub-section (3) of section 113, *ibid*, and amounts comprising of freight charges, terminal charges, shipment handling charges payment of duties and other taxes have had to be excluded for the purposes of turnover in terms of clause (b) of sub-section (3) of section 113 of the Ordinance of 2001. It is not the case of the department that amounts consisting of freight charges, terminal charges, shipment handling charges payment of duties and other taxes were treated as part of gross receipts for the purposes of deduction of withholding tax in terms of sub-section (1) of section 153 of the Ordinance of 2001.

8. We endorse the determination by Appellate Tribunal, which rightly differed with the determinations by the CIR (Appeals) and Commissioner, which had erroneously treated the amounts, comprising of freight charges, terminal charges, shipment handling charges payment of duties and other taxes, in addition to the gross fee for rendering services, as part of gross receipts. Learned Legal Advisor for applicant-department has failed to point out any illegality or legal infirmity in the order passed by learned Appellate Tribunal, which even otherwise is unexceptionable, thus, needs no interference.

9. In view of the above, our answer to the purposed questions is in **negative** i.e., against applicant-department and in favour of respondent-taxpayer.

This Reference Application is **decided** against applicant-department.

10. Office shall send a copy of this judgment under seal of the Court to learned Appellate Tribunal as per Section 133 (5) of the Ordinance of 2001.

(Asim Hafeez)
Judge

(Muhammad Sajid Mehmood Sethi)
Judge

APPROVED FOR REPORTING

Judge