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JUDGMENT SHEET
IN THE LAHORE HIGH COURT, RAWALPINDI BENCH, RAWALPINDI
JUDICIAL DEPARTMENT

ITR No.10 of 2018

Commissioner Inland Revenue, District Zone, Regional Tax Office, Rawalpindi
Versus
Sh. Ikram Ellahi & others

J U D G M E N T

Date of hearing: 04.09.2024.
Applicant by: M/s. Sh. Anwar-ul-Haq and Sh. Ikram Elahi, Advocates.
Respondent by: Ch. Imran-ul-Haq, Advocate.

MUHAMMAD SAJID MEHMOOD SETHI, J.- Through instant Reference Application under Section 133 (1) of the Income Tax Ordinance, 2001 (**"the Ordinance of 2001"**), following questions of law, urged to have arisen out of impugned order dated 14.02.2018, passed by learned Appellate Tribunal Inland Revenue of Pakistan, (Division Bench-I) at Islamabad **("Appellate Tribunal")**, have been pressed and argued for our opinion**:-**

1. Whether on the facts and in the circumstances of the case, when it is admitted or determined that income has been concealed by suppressing the sales can the evaded tax be allowed to be kept as a gift by the taxpayer on the ground that wrong provision of law has been mentioned i.e. Section 111(1)(d)(i)?
2. Whether both the Appellate Tribunal was justified to vacate the order passed u/s 122(5) without appreciating that amount credited in the bank account of the taxpayer, which remained unexplained, and attracted the addition under Section 111(1)(b) of the Income Tax Ordinance, 2001, cannot be deleted merely for mentioning of Section 111(1)(d) in the order?

2. Brief facts of the case are that during desk audit, on account of certain discrepancies, found between the bank statement and statement of final taxation for the period in question, a show cause notice was issued to the respondent-taxpayer to explain the nature

and source of credit entries based on suppression of sales / tax evasion. Although respondent filed reply to the show cause notice, yet the same was found unsatisfactory which further led to amendment of the assessment and subsequent addition of Rs.228,092,419/- under Section 111(1)(d) of the Ordinance of 2001 and total income was assessed at Rs.233,077,419/- involving tax demand of Rs.57,023,104/-. Feeling disgruntled, respondent-taxpayer filed appeal before Commissioner Inland Revenue (Appeals-III) which was disposed of vide order dated 17.11.2016 by observing that Section 111(1)(d) as well as general rate of tax on the income of taxpayer without altering his status under the minimum tax regime u/s 113A declared u/s 115(4) of the Ordinance *ibid*, was wrongly applied by the assessing officer, thus, modified the assessment order with further direction to allow the credit of tax if any already paid by the taxpayer. Being dissatisfied, both the department as well as respondent-taxpayer preferred their respective appeals before learned Appellate Tribunal, which were disposed of vide consolidated order dated 14.02.2018 thereby vacating orders of both the authorities below and deleting the addition made by the assessing officer u/s 111(1)(d) of the Ordinance of 2001. Hence, instant Reference Application.

3. Learned Legal Advisor for applicant-department submits that despite the fact that income has been concealed by suppressing the sales, the appeal of respondent-taxpayer was allowed by learned Appellate Tribunal without any lawful justification, on the ground that the provision of law i.e. Section 111(1)(d)(i) of the Ordinance of 2001 was not attracted. He further contends that in fact show cause notice should have been issued under Section 111(1)(b) of the Ordinance of 2001, however, Section 111(1)(d) was erroneously quoted. In the end, he submits that impugned order is unsustainable in the eye of law. In support, he has referred to *Collector of Sales Tax and Central Excise, Lahore v. Zamindara Paper and Board Mills and others* **(2007 PTD 1804)**.

4. Conversely, learned counsel for respondent-taxpayer defends the impugned order by contending that the additions made under Section 111(1)(d) were rightly deleted and said provision of law operates prospectively not retrospectively as rightly held by learned Appellate Tribunal in the impugned order.

5. Arguments heard. Available record perused.

6. Before dilating upon the controversy involved in this Reference Application, it would be expedient to reproduce the provisions of Sections 111(1)(b) & 111(1)(d), which are as under:-

> "**111. Unexplained income or assets. — (1)** Where —
>
> (a) **.....**
> (b) a person has made any investment or is the owner of any money or valuable article;
> (c) **.....**
> (d) any person has concealed income or furnished inaccurate particulars of income including —
> (i) the suppression of any production, sales or any amount chargeable to tax; or
> **.....**"

7. Learned Legal Advisor for applicant-department, at the very outset, was confronted with the findings of learned Appellate Tribunal that retrospective effect cannot be given to the provision of clause (d) of Section 111(1) supra. The relevant part of Appellate Tribunal's findings is reproduced hereunder:-

> "6. **.....** We have considered all the aspects of this case in the light of record and arguments of both the rival parties. We feel no hesitation to hold that section 111(1)(d) was inserted through Finance Act 2011. In the light of ratio already settled by the superior courts referred in the above paras as relied upon by learned AR this amendment in law was prospectively applicable. Its retrospective application on the assessment for tax year 2010 was absolutely illegal. **.....** We have found that the learned CIR (A) was convinced in his mind that in this case provisions of section 111(1)(d) were wrongly applied because these provisions were inserted through Finance Act 2011 and were applicable prospectively from tax year 2012. **.....**"

Upon Court's query as to whether aforesaid findings of Appellate Tribunal were assailed through instant Reference Application by proposing any question on retrospective application of Section 111(1)(d) of the Ordinance of 2001, learned Legal Advisor could not show from available record that any such question was proposed. When certain observations on some issue / question are not challenged in a Reference Application before the High Court, it clearly signifies that these observations have attained finality. In this case, question regarding retrospective application of Section 111(1)(d) *ibid* is not available for adjudication. The finality of such decisions establishes vested rights, thereby reinforcing the need for diligence in addressing legal matters within the prescribed timelines. Reference is made to *Commissioner Inland Revenue v. Messrs Pak Arab Pipe Line Company Ltd.* **(2014 PTD 982)**, *Messrs Azad Kashmir Logging and SAW Mills Corporation (AKLASC), Muzaffarabad v. Commissioner Income Tax, Inland Revenue, Muzaffarabad* **(2017 PTD 1058)** and *The Commissioner of Income Tax v. Messrs Fauji Foundation* **(2021 PTD 1951)**.

8. Section 111(1)(d) was inserted through the Finance Act, 2011 with prospective effect and came into force w.e.f. 01.07.2011. Whereas the matter pertains to tax year 2010, thus, no retrospectivity can be given to it. As a basic principle of interpretation of statutes, tax statutes operative prospectively unless clearly indicated by the legislature, therefore, retrospectivity cannot be presumed. Reliance in this regard is placed upon *Commissioner Inland Revenue, Lahore v. Messrs Millat Tractors Limited, Lahore and others* **(2024 SCMR 700)**. It is well settled that a statute or any amendment thereto ordinarily operates prospectively unless, by express enactment or necessary intendment, retrospective operation has been given to it. Reliance is placed upon *Sardar Sher Bahadar Khan and others v. Election Commission of Pakistan through Secretary, Election Commission, Islamabad and others* **(PLD 2018 Supreme Court 97)**.

9. The argument of learned Legal Advisor for applicant-department that in fact show cause notice should have been issued under Section 111(1)(b) of the Ordinance of 2001 instead of Section 111(1)(d), is misconceived as the dispute in hand i.e. suppression of sales comes within the ambit of Section 111(1)(d). Clause (d) of Section 111(1) reproduced supra confers a power on the Commissioner to bring to tax unearthed income i.e. income which was concealed by either suppression of sales or production or any amount chargeable to tax. The words "chargeable to tax" apply to the entirety of sub-clause (i) i.e. also to the suppressed production and / or sales. If "any amount" can be brought within the scope of sub-clause (i) only if, and to the extent, that it is "chargeable to tax" (i.e. constitutes "income" properly so called), then production and sales must be given the same treatment. Thus, it is only production or sales chargeable to tax that can be brought within the ambit of clause (d) to Section 111(1) of the Ordinance. The taxpayer is exposed to the same tax liability in respect of the income that has escaped assessment, or been suppressed i.e. taxpayer is liable to tax on the "net" amount, or "income" properly so called. This issue has been settled by the Hon'ble Supreme Court in the judgment reported as *Commissioner Inland Revenue, Zone-II, Regional Tax Office, (RTO) Lahore v. Mian Liaqat Ali Proprietor, Liaqat Hospital, House No.6, Street No.6, Lal Pul, Panj Pir Road, Mughalpura, Lahore* **(2023 SCMR 534)**.

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

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

11. 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.

(Jawad Hassan)
Judge

(Muhammad Sajid Mehmood Sethi)
Judge

APPROVED FOR REPORTING

Judge

A.H.S.