**IN THE SUPREME COURT OF PAKISTAN**
**(APPELLATE JURISDICTION)**

**PRESENT**
**MR. JUSTICE UMAR ATA BANDIAL**
**MR. JUSTICE SAJJAD ALI SHAH**
**MR. JUSTICE MUNIB AKHTAR**

**Civil Appeals No.457 & 458 of 2010**
**(**On appeal from the order dated 9.3.2010 passed by the High Court of Sindh, Karachi in ITC Nos.200 & 201 of 2003 )

**Dewan Khalid Textile Mills Ltd.**
(in both cases) **… Appellant (s)**

**Vs**

**Commissioner of Income Tax (Legal Division,)**
**Large Taxpayers Unit, Karachi.** (in both cases) **…Respondent (s)**

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| For the Appellant (s)<br>(in both cases) | : | Mr. Salman Pasha, ASC.<br>Mr. K.A. Wahab, AOR (Absent). |
| For the Respondent (s) | : | Dr. Farhat Zafar, ASC.<br>Raja Abdul Ghafoor, AOR.<br>Mr. Abdul Hameed, Secretary Legal, FBR. |
| Date of hearing | : | 07.12.2018 |

**ORDER**

**Munib Akhtar, J.-**These two appeals, relating to the same assessee, arise out of the Income Tax Ordinance, 1979 ("1979 Ordinance"). The appellant succeeded before the learned Appellate Tribunal, but that decision was reversed by the learned High Court by the impugned judgment, on tax references filed by the Department. Leave was granted vide order dated 01.07.2010 to consider whether, in the facts and circumstances of the case, there was any "definite information" within the meaning of s. 65 of the 1979 Ordinance to warrant proceedings in terms thereof. We may note that the impugned judgment is reported as *Commissioner of Income Tax v. Dewan Khalid Textile Mills Ltd.* 2010 PTD 1397.

2. Briefly stated the facts are that the appellant filed its return for the relevant assessment year but thereafter (before the assessment was framed) filed a revised return. The reason for the revised return was that the appellant claimed that in respect of certain amounts accruing to it, it was liable to be taxed in terms of s. 80B of the 1979 Ordinance. That section applied, as provided in its subsection (1), to "an individual, unregistered firm, association of persons, Hindu undivided family or artificial juridical person referred to in clause (32) of s.2". The section went on to provide that the amounts referred to in subsection (2) were to be treated as a separate block of income, on the whole of which tax was payable at the special rates set out in the First Schedule. One category given in subsection (2) (in clause (b) thereof) was "interest or profit on which the tax is deductible under sub-section (2-A) of section 50". The appellant claimed that during the relevant income year amounts falling in this category had accrued to it and were therefore liable to tax in terms of s. 80B. In the assessment framed by order dated 28.12.1995 the Income Tax Officer accepted this contention, and the said amounts were taxed accordingly. However, subsequently, by notice dated 10.06.1998 issued under s. 65, the ITO sought to reopen the assessment on the ground that the appellant was not so entitled. A revised assessment order, adverse to the appellant, was made on 25.06.1998. The appellant's appeal against the same failed before the CIT (Appeals). The appellant took the matter further before the learned Appellate Tribunal where, by order dated 06.03.2002, its appeal was allowed. As presently relevant, the ground throughout taken by the appellant was that action under s. 65 could only be taken if there existed any "definite information" for reopening the assessment, and that no such information existed in the facts and circumstances of the case. This plea was accepted by the learned Appellate Tribunal. However, the Department took the matter further in tax references and the learned High Court, by means of the impugned judgment, found against the appellant. This led to the filing of the appeals in this Court.

3. Learned counsel for the appellant submitted that the learned High Court had erred in rejecting the appellant's plea that no definite information existed in the facts and circumstances of the case. Learned counsel submitted that the learned High Court had relied on a judgment of this Court reported as *Genertech Pakistan Ltd. and others vs. Income Tax Appellate Tribunal of Pakistan and others* 2004 SCMR 1319 ("*Genertech*") in which certain observations have been made with regard to s. 80B. Learned counsel submitted that while judgments of the Superior Courts could constitute definite information, in the present case the judgment relied upon was

rendered many years after the initiation of proceedings under s. 65. The *Genertech* judgment could not therefore constitute definite information in the facts and circumstances of the present case. Learned counsel submitted that it was also well settled that if the ITO or even the Central Board of Revenue (as it then was) subsequently took a different view of the relevant statutory provisions, that was merely a change of opinion and did not constitute "definite information" within the meaning of law. Referring to the order made under s. 65, learned counsel submitted that that was all that happened in the present case. The ITO took one view as regards the applicability of s. 80B when the assessment was originally framed, but thereafter appear to have changed his mined as to its correct interpretation when making the order under s. 65. This was a mere change of opinion, which was irrelevant and impermissible for purposes of s. 65. Learned counsel submitted that the learned High Court had reached the wrong conclusion and prayed that the appeals be allowed.

4. Learned counsel for the Department, ably assisted by the learned Secretary Legal FBR, defended the impugned judgment. It was submitted that the proper meaning of "definite information" had recently been considered by this Court in *Commissioner Inland Revenue Zone-I vs. Khan CNG filling Station and others* 2017 SCMR 1414. Although this judgment was rendered in relation to the Income Tax Ordinance, 2001, learned submitted that it applied equally to the expression as used in s. 65 of the 1979 Ordinance. Learned counsel submitted that the facts and circumstances at hand disclosed "definite information", and the action taken by the ITO, ultimately upheld by the learned High Court, was correct and unexceptionable. It was prayed that the appeals be dismissed.

5. After having considered the matter, the case law cited and the record we concluded, with respect, that the impugned judgment could not be sustained and therefore allowed the appeals by means of a short order announced in Court. It is now well settled that the judgment of a Superior Court can, in appropriate circumstances, constitute "definite information" in relation to the facts of the relevant case. It is also well settled that a mere change of opinion by the tax authorities does not constitute definite information. In particular, if the concerned authority such as an ITO, acting on his own or under instructions from superior officers, subsequently comes to a different conclusion with regard to the proper applicability or interpretation of a statutory provision that is a mere change of opinion. Reference in this regard be may made to *EFU General Insurance Company vs. Federation of Pakistan and others* PLD 1997 SC 700 where, referring to *Central*

*Insurance Co. vs. Central Board of Revenue* 1993 SCMR 1232, it was held as follows (pp. 719-20; emphasis supplied):

> "10. …It was observed that the words "definite information" are the keywords for the purposes of justifying action under subsection (1) and, as the said words had not been defined in the Ordinance, they will carry their literary meanings. It was observed that every information cannot be treated as the basis for reopening of the assessment but the information should be of the nature which should qualify as "definite information" and that the expression "definite information" could not be given a universal meaning but it will have to be construed in each case. It was further observed that where an assessee discloses all the material facts without any concealment and the assessment had been consciously completed by the Income Tax Officer, in such a case, in the absence of the discovery of any new facts which can be treated as "definite information", there cannot be any scope for reopening of the assessment under section 65. *It was further observed that any change of opinion on the basis of the same material by the Income Tax Officer will not warrant pressing into service the said provision. It was observed that a Circular from the Board of Revenue interpreting any provision of a law was not a "definite information" for reopening of assessment by an Income Tax Officer. It was then observed that expression "definite information" will include factual information as well as information about the existence of a binding judgment of a competent Court of law/forum for the purposes of section 65 of the Ordinance, but any interpretation of a provision of law by a functionary which has not been entrusted with the function to interpret such provision judicially cannot be treated as a "definite information"*.
>
> An interpretation by a functionary of the Revenue Department or a change in the interpretation of any provision by any functionary of the department including the Central Board of Revenue is not "definite information" for being made a lawful basis for reopening an assessment already made".

6. In the present case the learned High Court correctly noted (in para 8) that "the main controversy in the present case is that whether definite information was available with the AO to reopen an already completed assessment or not". However, with respect, the learned High Court then erroneously proceeded to rely on *Genertech,* without appreciating that that judgment was rendered many years after the initiation of action under s. 65 in the case at hand. Since the judgment did not exist at the relevant time it could not *ipso facto* constitute "definite information" in the facts and circumstances of the present case. Therefore, with respect, the reliance placed thereon was misconceived and misplaced. In our view it is only a judgment of a Superior Court as available at the relevant time that can constitute "definite information". We may also note that the reference to "forum" in the passages cited above can, in the hierarchy of authorities/remedies under income tax legislation, mean only the Income Tax Appellate Tribunal (now the Appellate Tribunal Inland Revenue). (The reference may possibly also include a decision of the Appellate

Tribunal set up for purposes of other fiscal legislation, but this is a point that we leave open to be considered in some appropriate future case.) Be that as it may, no such judgment existed when proceedings were initiated under s. 65 and hence there was no "definite information" within the meaning of law that would have made it permissible for the ITO to reopen the assessment. In our view, the learned Appellate Tribunal was correct in its decision and, with respect, the learned High Court erred materially in coming to a different conclusion. The reference by learned counsel for the Department to the recent judgment of this Court noted above (from which a passage was read out) is, with respect, not apposite since the facts and circumstances in the cited case were materially different from those at hand.

7. While the foregoing is dispositive of the appeals, there is one further point that should be adverted to, and that is as regards the observations made in *Genertech* in relation to s. 80B. The relevant passage (which is reproduced in the impugned judgment) is as follows:

> "13. In this behalf it may be noted that under section 80-B such concession is not available to Public Limited Companies as its subsection (1) in categorical terms has extended its benefits to an individual, unregistered firm, association of person, Hindu undivided family or artificial juridical person, therefore, the contention of learned counsel is accordingly repelled."

8. The actual statutory language used in s.80B, with reference to the assessees to whom the said provision was applicable, has already been reproduced herein above. Five categories of assessees came within the scope of the section, of which the last was "artificial juridical persons referred to in clause (32) of s. 2". Clearly, in order to properly appreciate the scope of this category it was necessary to refer back to s. 2(32). This was in fact the definition of the term "person". As presently relevant, it provided that "a company, a local authority and every other artificial juridical person" was included in the definition. The term "company" was itself defined in clause (16) of s. 2 and, as was to be expected, a company registered under companies' legislation found express mention therein. It therefore seems to us, prima facie, that when all the relevant statutory provisions are taken into account a company did come within the scope of s. 80B. It appears that the specific clauses of s. 2 just referred to were not brought to the attention of the Court in *Genertech* and thus all of the material statutory provisions were not taken into account. To the extent that s. 80B was considered therein it therefore appears to us, with respect, that the observations made in *Genertech* may be open to doubt. However, we need not

take this point any further here as the appeals can be, and have been, disposed off on another basis. The aspect just mentioned is therefore left open to be considered in such appropriate case, if any, as may arise in the future.

9. For the foregoing reasons the appeals were allowed, with the result that the impugned judgment was set aside and the decision of the learned Appellate Tribunal stood restored.

Judge

Judge

Judge

Islamabad
December 7, 2018
Saeed Aslam/-

Approved for reporting