IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT: MR. JUSTICE UMAR ATA BANDIAL
MR. JUSTICE IJAZ UL AHSAN

CIVIL PETITION NO.945 OF 2018
(Against the order dated 24.01.2018 passed by the Lahore High Court, Lahore in I.T.R. No.20/2017)

Farrukh Shahzad **... Petitioner**

Versus

Commissioner Inland Revenue (Legal) RTO, Rawalpindi and others **... Respondents**

For the Petitioner: Hafiz Muhammad Idrees, ASC.
Syed Rifaqat Hussain Shah, AOR.

For the Respondents: Dr. Farhat Zafar, ASC.
Mr. M.S. Khattak, AOR.

Date of Hearing: 10.04.2018

ORDER

IJAZ UL AHSAN, J. – Petitioner seeks leave to appeal against a judgment dated 24.01.2018 passed by a learned Division Bench of the Lahore High Court in Income Tax Reference No.20 of 2017.

2. The brief facts necessary for decision of this lis are that proceedings under Section 122(C) of the Income Tax Ordinance, 2001 ("the Ordinance") were initiated against the petitioner and a demand in the sum of Rs.3.3 million was created. The petitioner failed to deposit the said amount, in consequence whereof, notice under section 137(2) read with Section 138(1)/140 of the Ordinance was issued to him. He filed his income tax return, wealth statement, wealth reconciliation statement and written explanation. The documents filed by the petitioner were not found satisfactory by the department. Consequently, notice under Section 122(9) was issued to him. The petitioner filed a response which was again not found satisfactory by the department. On the basis of

material available with the department, it was held that the petitioner was engaged in the real estate business without having been registered as a taxpayer. The department proceeded to amend the assessment making an addition of Rs.60,360,912/- under Section 111(1)(b) for the subsequent tax year. Being aggrieved, the petitioner filed an appeal which did not find favour with the Appellate Authority and was dismissed. The appeal before the Appellate Tribunal Inland Revenue (ATIR) did not succeed either. The petitioner therefore, approached the High Court by way of a reference under the Ordinance. Vide order dated 24.01.2018 relief was denied to the petitioner. Hence, this petition for leave to appeal.

3. Although three questions were referred to the learned High Court for its opinion, the first question was not pressed. Therefore, no opinion was expressed by the learned High Court on the said question.

4. The learned High Court expressed its opinion on questions No.2 and 3 which for ease of reference are reproduced below: -

> "2. Whether under the facts and circumstances of the case the learned ATIR was justified to uphold an addition made under section 18 of the Income Tax Ordinance, 2001 against its every spirit as explained in the Income Tax Ordinance, 2001?
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> 3. Whether under the facts and circumstances of the case learned ATIR was justified in not considering the additions made under section 111(1)(b) of Income Tax Ordinance 2001 in the income of a Tax Year to which these are not related to therefore are in violation of section 111(1)(b) of the Income Tax Ordinance, 2001?"

5. The learned High Court answered question No.2 in the "negative", whereas question No.1 in the "affirmative".

6. Learned counsel for the petitioner submits that by virtue of Section 37(1)(A) of the Ordinance, the petitioner was not liable to pay Capital Gains Tax as the property was purchased in the year 2008 and sold in the year 2013. He maintains that the lower fora fell in error in

treating the sale consideration of the property as business income of the petitioner under Section 18 of the Ordinance.

7. With reference to question No.3 the learned counsel submits that by virtue of Section 111(1)(b) of the Ordinance there was no justification for adding Rs.60 million in the accumulative wealth of the petitioner for the year 2013. He maintains that Section 111(2) of the Ordinance only permits inclusion of the amounts mentioned in sub-section (1) of Section 111 in the person's income chargeable to tax, in the tax year to which such amount relates. He maintains that the petitioner filed his return for the first time in 2013. As such, the amount of wealth shown for the year 2012 amounting to Rs.60 million could not be taxed in terms of Section 111(2) of the Ordinance by treating it as an investment for the tax year 2013.

8. We have heard the learned counsel for the petitioner and examined the record. As far as inapplicability of Section 18 of the Ordinance is concerned, we find that the same deals with business income. However, Section 37(1)(A) read with Division VIII of Part 1 of the First Schedule provides that where holding period of immovable property is more than two years, the rate of capital gains shall be zero percent. The department however, found that the petitioner was engaged in the real estate business for a number of years before 2014 which is the year the petitioner claimed that he started his business of real estate. In this regard, the department relied upon the material (which was not rebutted) indicating that the petitioner had been engaged in the real estate business for many years before 2014. Consequently, it was correctly held that the benefit of zero percent capital gains tax was not available to the petitioner on the sale and purchase of property in the absence of reliable material necessary to avail the benefit of Section 37(1)(A) ibid.

9. We also notice that the addition of Rs.60 million was made in the taxable income of the petitioner under Section 111(1)(b) of the Ordinance on account of the petitioner's failure to furnish material in support of his defence during reconciliation proceedings. The said provisions stipulate that where a person fails to offer a satisfactory explanation about the nature and source of the investment, the value of the investment shall be included in the person's income chargeable to tax to the extent it is not adequately explained.

10. The learned counsel for the petitioner heavily relied upon Section 111(1)(2) to contend that only wealth for the year 2013 could be added to the income tax of the petitioner for the purposes of tax in view of the specific language of the said section. The record indicates that the petitioner had shown his net wealth as of 30.06.2013 to be Rs.64,346,112/-. However, the department was not satisfied with the veracity of the return and called upon him through show cause notice to explain net wealth amounting to Rs.60,360,912/- as on 30.06.2012 which had remained unexplained. Although he submitted his reply but the same was neither satisfactory nor did it substantiate his source of investment. It is also significant that the petitioner had all along taken the stance that he had started his real estate business in 2014 and as such he could not be assessed for the year 2013. We have specifically asked the learned counsel for the petitioner to explain the accretion of net wealth as on 30.06.2012. However, he has not been able to refer to any material that may even remotely explain such accretion. We are, therefore, satisfied that the findings of the subordinate fora that the said accretion was chargeable to tax for the year 2013 do not suffer from any error of interpretation or application of the afore-noted provisions of law. The learned counsel for the petitioner has not been able to convince us that the judgments of the High Court or the Appellate fora suffer from

any legal, procedural or jurisdictional error or flaw calling for interference by this Court in terms of Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973.

11. For reasons recorded above, we do not find any merit in this petition. It is accordingly dismissed. Leave to appeal is refused.

JUDGE

JUDGE

Islamabad, the
10th of April, 2018
*Naveed Ahmad/**

APPROVED FOR REPORTING