

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
(Judicial Department)

“ITR No. 340 of 2010”

Commissioner Inland Revenue (Legal), RTO, Rawalpindi.

Versus

Appellant Tribunal Inland Revenue, Islamabad, etc.

Applicant by:	Sheikh Anwar-ul-Haq, Advocate.
Respondent No.3 by:	Mr. Riaz Ahmad Khan, Advocate.
Date of Decision:	21.09.2020.

Ghulam Azam Qambrani, J.:- This Tax Reference, has been filed against decision of the Appellate Tribunal, Inland Revenue, Islamabad, dated 30.03.2010, whereby the appeal filed by respondent No.3 was accepted and the departmental action has been declared as *ab-initio* void and of no legal effect.

2. The facts, in brief, are that respondent No.3, who derives income from a business under the name and style of M/s Al-SADAF TRADERS, filed Income Tax Return for the Tax Year, 2004 declaring net loss at Rs.11,546/-, as such, his case was selected for audit for which respondent No.3 was duly intimated and through the assessment order net income of respondent No.3 was assessed at Rs.23,07,482/-. Being aggrieved and dissatisfied with the treatment of Taxation Officer, respondent No.3 filed an appeal against the said order before learned CIR(A), which was disposed of vide order dated 22.12.2009. Thereafter, the department being aggrieved preferred an appeal before the Appellate Tribunal, Inland Revenue, Islamabad Bench, Islamabad, which was disposed of vide order dated 30.03.2010, hence this appeal.

3. Learned counsel for the applicant appearing on behalf of the department submits that the order of learned ATR is not justified and seeks framing of question of law arisen out of

decision/order dated 30.03.2010 passed by the learned Appellate Tribunal, Inland Revenue, Islamabad. In view of the same, the following questions were framed by this Court vide order dated 21.01.2016:-

- (a) *"Whether under the facts and in the circumstances of the case the Learned ATIR was justified to vacate the order of the CIR(A) and annul the assessment order on the ground that no definite information was in the hands of the Assessing Officer as a result of audit carried out despite the fact that the taxpayer had failed to produce any documentary evidence in support of his claim when he was obliged to follow the provisions of Section 174(2) of the Income Tax Ordinance, 2001 and thus becoming a definite basis i.e. non-verifiability of expenses, for action u/s 122(5)?"*
- (b) *"Whether during the audit proceedings non production of documentary evidence by the taxpayer, require to substantiate its claim for a deduction, does not constitute a definite information in terms of section 122(5) of the Income Tax Ordinance, 2001 attracting the provisions of Section 174(2) read with Section 122(5) of the Ordinance?"*
- (c) *"Whether the inability of the taxpayer to provide documentary evidence without reasonable cause does not constitute a definite information attracting the provisions of Section 174(2) read with Section 122(5) of the Income Tax Ordinance, 2001?"*
- (d) *"Whether under the facts and in the circumstances of the case the annulment of amendment order by the Tribunal has not made the provisions of Section 174(2) as redundant?"*

4. We have carefully perused the order passed by the learned Appellate Tribunal Inland Revenue. It reveals from the record that the Taxation Officer proceeded on presumption without disclosing as to under what law, he has passed the amended order whereas, under the law the proceeding under Section 122 (1) can only be undertaken if definite information is in possession of the Taxation Officer, whereas, mere assumption cannot be treated as definite information. Record shows that the amended order passed by Taxation Officer was based on presumption, therefore, the same was against the spirit of the definition given in sub-section (5) of Section 122 of the Income Tax Ordinance, 2001, as such, unless

any definite information comes in the hands of the assessing officer as a result of the audit carried out by him, no proceedings for the purpose of amendment of Order under Section 122 can be initiated, therefore, the amended assessment order dated 28.09.2009, passed by the Assessing Officer was tenable under the law, as the Taxation Officer while passing the order dated 28.09.2009 has not fulfilled the requirements of sub-section (5) of Section 122 of Income Tax Ordinance, 2001.

5. The learned Appellate Tribunal, Inland Revenue, while passing the order dated 30.03.2010, as held as under:-

"The amended assessment order passed by the assessing officer in this case for the tax year 2004 was ab-initio void which is not tenable in the eyes of law. Resultantly, the impugned assessment order is hereby annulled on this sole legal aspect. It would be in the fitness of things to mention here that concluding para of the impugned order reveals that amended assessment order dated 28.08 2009 passed by the Taxation Officer has been annulled on two legal grounds viz-

- i) Selection of case for audit;*
- ii) Passing of order under two separate sections.*

I do not in agreement with the findings of the CIR on the observation on ground (ii) mentioned above. In fact amended assessment order was not passed under two separate sections but the same was passed u/s 122 of the Income Tax Ordinance, 2001. CIR should have applied his mind judiciously, therefore, the impugned order stand vacated to that extent. Since the appeal in question has been disposed of alone on the above said legal ground mentioned in paras 6-7 of the order, therefore, I feel no need to discuss other issue."

6. Learned counsel for the department has failed to point out any misreading or non-reading of material on record while passing the impugned order dated 30.03.2010 by the learned Appellate Tribunal, Inland Revenue and the same does not suffer any legal infirmity nor has been found to be perverse.

7. In view of the above, this reference is misconceived and therefore, the questions proposed for our consideration are accordingly answered in the affirmative.

(AAMER FAROOQ)
JUDGE

(GHULAM AZAM QAMBRANI)
JUDGE

*Rana. M. Ift **