

JUDGMENT SHEET.
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD.

Income Tax Reference No.216 of 2011

Commissioner Inland Revenue (Zone-I), Large Taxpayers Unit, Islamabad.

Versus

M/s Zarai Taraqiati Bank Limited.

Applicant's by : Dr. Farhat Zafar, Advocate.

Respondent's by : Mr. Muhammad Abu Bakar, Advocate

Date of decision : 04.03.2020.

LUBNA SALEEM PERVEZ, J. The applicant department has assailed the (consolidated) order dated 01.03.2011 passed by the Appellate Tribunal Inland Revenue Islamabad, (*hereinafter referred to "the ATIR"*) in ITA No. 647/IB/10, relating to tax year 2004, and has filed the present reference application u/s 133(1) of the Income Tax Ordinance, 2001, (*hereinafter referred to "the Ordinance, 2001"*) whereby, the administrative expenses and other expenses claimed by the respondent taxpayer was ordered to be deleted.

2. Brief facts of the case are that the Respondent, a banking company derives income from lending money to the Agriculturist and from other receipts. During the year 2004 it was transformed from Agricultural Development Bank to Zarai Tarqiati Bank Ltd.

3. Income tax return for the year 2004 was selected for audit under section 177(4)(b)(d) of the Ordinance, 2001 by the Commissioner (Audit), LTU, Islamabad. After conducting audit, the deemed assessment order /return was amended by the Taxation Officer Audit-I, LTU, Islamabad (*hereinafter referred to as the "Assessing Officer"*) under section 122 (1)/122(5) of the Ordinance, 2001 vide order dated 29.04.2009 by assessing income at Rs. 4,901,510,804/- as against declared income of Rs. 837,890,040/- The assessed income amongst other additions also included the following heads of expenses. The reason for disallowance of the expenses is also reproduced as under:-

“Administrative Expenses**Rs. 3,479,2000/-**

“on account of repairs and maintenance and stationary it is established that the taxpayer has not withheld tax against payments of repair and maintenance and stationary. Consequently, provisions of section 21(C) of the Ordinance are attracted and expenses under these head is disallowed.

Expenses under the head others**Rs. 1,365,326/-**

“since it is established that the tax paid on investment is part of expenses claimed under the head “others” is disallowed under section 20(a) of the Income Tax Ordinance 2001 at Rs. 1,365,326/- is added back in income for the tax year 2004”.

Against this order the respondent bank filed appeal before the Commissioner Inland Revenue Appeals-I, Islamabad (*hereinafter referred to as the CIRA*) who vide order No. 728/2010 dated 06.04.2010 deleted the additions in the following manner:-

“Administrative expenses

After considering the explanations/submissions made at the bar by the authorized representatives of the appellant, it has been noted that addition of administrative expenses amount to Rs. 34,792,000/- u/s 21 (c) on account of repair and maintenance and printing and stationary has wrongly been made. Hence the addition on account of Administrative Expenses is ordered to be deleted.

Other Expenses

The Authorized Representative contended that addition on account of other expenses amounting to Rs. 1,365,326/- has wrongly been made and is liable to be deleted. He further contended that originally expense of Rs. 1,365,326/- was claimed on account of tax on investment. Subsequently revised details were submitted which were ignored by the Taxation Officer, in the revised details it was explained that no expense of Rs. 1,365,326/- has been claimed.

After considering the explanation/submissions made at the bar by the authorized representative of the appellant, it has been noted that addition on account of other expenses amounting to Rs. 1,365,326/- has wrongly been made as the taxpayer has not claimed the above mentioned expenditure. Hence the addition on account of other expenses is ordered to be deleted.”.

The applicant department being aggrieved with the said order filed appeal bearing ITA No. 647/IB/2010 before the ATIR who vide consolidated order dated 01.03.2011 dismissed the appeal of the applicant by observing

as under:-

“Perusal of the order of CIR (A) reveals that he deleted both the additions with the observation that additions were wrongly made as the taxpayer has not claimed said expenditure. It has been elaborated in the order that taxpayer submitted revised details wherein the said expenses were not claimed but the Assessing officer did not consider the said details and proceed to make illegal addition. After perusal of the records, we are of the view that CIR (A) has lawfully deleted the addition under the heads administrative expenses and other expenses, so we are not inclined to interfere with the order of the CIR (A)”.

Being dissatisfied with the above finding the applicant department filed present reference application u/s 133(1) of the Income Tax Ordinance, 2001 against the ITA No. 647/IB/10, relating to tax year 2004 and referred following question of law said to arise out of the said order:-

Question of Law:-

Whether in the facts and circumstances of the case the learned Appellate Tribunal Inland Revenue was justified to accept the plea of the taxpayer regarding its non-claiming of the expenses against the additions made under the heads administrative expenses at Rs. 34.792 (m) and other expenses at Rs.1.365 (m) when these expenses were duly claimed by the taxpayer unlawfully?

4. The learned counsel for the applicant supported the amended order passed by the Assessing Officer and submitted that “administrative expenses” and “other expenses” were unlawfully claimed by the respondents, because section 21(c) of the Ordinance, 2001 specifically provide for disallowance of such expenses, where the taxpayer failed to withheld/deduct tax at the time of making payments of the expenditure to the recipient. She submitted that as the Respondent Bank failed to deduct tax from the payments made for expenditure, the disallowance of such amount and its addition to the income was justified and submitted that the ATIR, since has misapplied the law, the impugned order is, therefore, not sustainable.

5. Conversely, learned counsel for the respondent bank, opposed the arguments of applicant and submitted that the CIRA and the ATIR has rightly deleted the additions made by the Assessing Officer as the provision of section 21 (c) was not applicable in respect of the expenses claimed under the head repair & maintenance and stationary & printing declared as administrative expenses. Further, he submitted that during hearing before the Assessing Officer, it was submitted that no such expenses under the

heading "tax on investment" was claimed by the respondent and while filing the first reply the expense under this head was inadvertently mentioned, however, revised explanatory letter was submitted which was not considered by the Assessing Officer. The CIRA allowed the claimed expenses and deleted the additions on being satisfied with the contentions of the respondent bank.

6. Argument heard and record perused with the able assistance of the learned counsel for the parties.

7. Case of the Appellant is that since the tax, as required under the Ordinance 2001, was not deducted while making payments to the recipient, therefore, the administrative expenses claimed under the heading repair & maintenance and stationary & printing were liable to be disallowed under section 21(c) of the Ordinance, 2001. Therefore, Section 21 of the Ordinance, was perused, which revealed that it provides for disallowance of deduction of expenses under various heads while computing income of a person; clause (c) of section 21 in particular cater for disallowance of business expenses claimed as *salary, rent, brokerage or commission, profit on debt, payment to non-resident, payment for services or fee paid by the person*, wherefrom the claimant of the expense failed to deduct tax at the time of making payment to the recipient. Section 21(c) of the Ordinance 2001 as prevailed at the relevant time reads as under:

Section 21(c):

any salary, rent, brokerage or commission, profit on debt, payment to non-resident, payment for services or fee paid by the person from which the person is required to deduct tax under Division III of Part V of Chapter X or section 233 of chapter XII, unless the person has paid or deducted and paid the tax as required by Division IV of Part V of Chapter X;

The plain reading of the above provision shows that printing & stationary and repair & maintenance have not been included in clause(c) of section 21 of the Ordinance 2001. The Assessing Officer thus, has misapplied the provision for disallowance in respect of the said expenses for addition to the income of the respondent bank. The CIRA and ATIR were, therefore, legally justified in deleting the additions made by the Assessing Officer. It is by now well settled that the subject could only be taxed if he come within the letter of law. Reliance is placed on the judgment of the Hon'ble

Supreme Court of Pakistan titled as “Messrs Hirjina & Co. (Pakistan) Ltd., Karachi vs. Commissioner of Sales Tax Central, Karachi” (1971 SCMR 128) wherein, it has been held as under:-

“We may here observe that interpreting the taxing statute the Courts must look to the words of the statute and interpret it in the light of what is clearly expressed. It cannot imply anything which is not expressed, it cannot import provisions in the statute so as to support assumed deficiency.”.

8. So far as the grievance of the Applicant regarding deletion of addition made under the head “other expenses” is concerned, the impugned appellate orders revealed that the CIRA decided the matter by appreciating the facts of the issue that such expense was not claimed by the respondent bank, and his findings was also confirmed by the ATIR. The findings since based on appreciation of fact do not constitute question of law said to arise out of impugned order for adjudication by High Court through reference under section 133 of the Ordinance, 2001.

9. The above question, in view of the foregoing findings is therefore, answered in **affirmative**, against the Applicant department and in favour of the Respondent.

10. It is noted that the applicant has proposed one question for determination of two issues since, decided by the ATIR through common finding, but have been adjudicated upon by the Assessing Officer and CIRA through separate findings. Thus, before parting with this judgment, it is pertinent to observe that in reference jurisdiction the question of law proposed for opinion of the High Court should be framed separately and concisely so that the precise issue is answered in affirmative or negative. High Courts in its advisory jurisdiction is legally restricted to answer as substantial question of law requiring interpretation of statute and to give opinion on the proposition of law and to resolve the legal controversy arising out of the order of the Appellate Tribunal. The vague, misleading and argumentative questions and questions based on factual propositions should be avoided as being against the spirit of advisory jurisdiction. The reference jurisdiction of the High Court in the matters relating to tax laws cannot be equated with appellate or revisional jurisdiction. The Hon'ble

Sindh High Court in case of Commissioner Inland Revenue vs Siemens Pakistan Engineering Co. Ltd (2017 PTD 1832 HC Kar), in this regard has held as under:

"We may observe that scope of filing a reference application in terms of section 133 of the Income Tax Ordinance, 2001 cannot be equated with filing an appeal as a revision whereas its scope is restricted only to the extent of referring only question(s) of law arising from the order the order as may be passed by the Appellate Tribunal, for the opinion of this Court."

Copy of this order is to be sent to Registrar, Appellate Tribunal (Inland) Revenue.

(MOHSIN AKHTAR KAYANI)
JUDGE

(LUBNA SALEEM PERVEZ)
JUDGE

Announced in the Open Court on : 7th April 2020.

JUDGE

CHIEF JUSTICE

Junaid Usman