

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE UMAR ATA BANDIAL

MR. JUSTICE SAJJAD ALI SHAH

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

CIVIL PETITIONS NO.2021-L TO 2025-L OF 2015

(On appeal against the judgment dated 17.06.2015
passed by the Lahore High Court, Lahore in WTA Nos.
189 to 193/2003)

M/s Liberty Car Parking (Pvt.) Ltd. through its Director

...Petitioner(s)
(In all cases)

VERSUS

Commissioner Inland Revenue (Ex-Commissioner of Income Tax /
Wealth Tax), Lahore etc.

...Respondent(s)
(In all cases)

For the Petitioner(s): Mian Ashiq Hussain, ASC
(Through video link from Lahore)

For the Respondent(s): Mr. Amir Malik, ASC

Date of Hearing: 15.12.2020

...
JUDGMENT

SAYYED MAZAHAR ALI AKBAR NAQVI, J.- Through these petitions, the petitioner has challenged the impugned judgment dated 17.06.2015 whereby the Wealth Tax Appeals filed by the petitioner were dismissed and the order of the Income Tax Appellate Tribunal, Lahore, dated 09.05.2003 was maintained.

2. Briefly stated the facts of this case are that in response to Notice under Section 17 of the Wealth Tax Act, 1963, returns of wealth tax were filed by the petitioner for five years commencing from 1993-94 to 1997-98 declaring 'nil' wealth. Since the petitioner had set up car parking on the area adjacent to plaza in the same premises, the Notice issued by the Wealth Tax Officer relates to

declaration qua the market value of the car parking attached with the aforesaid plaza. The said car parking was leased out by LDA to the petitioner initially for a period of 50 years. The Notice issued by the petitioner was replied with the stance that as the said car parking area is on lease, therefore, the petitioner is not liable to charge of wealth tax. However, the Assessing Officer vide a consolidated order dated 26.12.1998, assessed the car parking of the petitioner on the basis of cost appearing in the balance sheet. Feeling aggrieved, the petitioner filed appeals before the Commissioner Appeal Zone II, Lahore, who vide order dated 07.02.2000 vacated the assessments for the years 1993-94 to 1995-96 and set aside the assessments for the years 1996-97 and 1997-98 for *de novo* action. Against this order, both the parties preferred appeals before the Income Tax Appellate Tribunal, Lahore. The learned Appellate Tribunal vide order dated 09.05.2003 while holding that the method of valuation adopted by the assessing officer for assessing value of petitioner's immovable property was not justified, remanded the case back to him, to pass a fresh order after hearing the petitioner and examining the evidence produced by the petitioner. This led to filing of Wealth Tax Appeals by the petitioner before the Lahore High Court, Lahore. The learned High Court vide impugned judgment dismissed the appeals on a technical ground that the appeals filed by the petitioner should have been accompanied by a resolution of the Board of Directors, authorizing the Chief Executive of the Company to file the appeals and as the same was not done, the appeals were held not maintainable. Hence, these petitions seeking leave to appeal.

3. Learned counsel for the petitioner, who appeared through video link from Lahore, has *inter alia* contended that the case of the petitioner is covered under the charging section because it had lease hold rights and the same cannot tantamount to ownership; that instead of deciding this question, the learned High Court dismissed the appeals on technical grounds by holding that the appeals have not been accompanied by a resolution of the Board of Directors, authorizing the Chief Executive of the Company to file the appeals; that the right of an assessee to file appeal to High Court could not be nullified by reference to general law like the Companies Ordinance, 1984 or CPC; that the appeals being continuation of assessment proceedings were exclusively governed by the special provisions of Wealth Tax Act, 1963; that subjecting tax appeals to CPC or Company law will lead to unjustified consequences of hampering smooth functioning of tax proceedings and that the learned High Court has misread and misplaced the law, therefore, the judgment passed by the High Court is liable to be set aside.

4. On the other hand, learned counsel for the respondent has mainly contended that the order of the learned High Court is well reasoned and based upon the proper appreciation of law and the same cannot be disturbed through these petitions.

5. We have heard learned counsel for the parties and have perused the case file as also the relevant law.

6. The main issue involved in the present petitions is whether the learned High Court has rightly dismissed the appeals filed by the petitioner before it on the technical ground that they were not accompanied by a resolution of the Board of Directors,

authorizing the Chief Executive of the Company to file the appeals. Before proceeding further, it would be in order to reproduce the relevant paragraph of the impugned judgment, which reads as follows:-:-

"5. We must bear in mind that a company is a juristic person and the normal functions of the corporate affairs of the company are regulated and conducted by the Board of Directors duly constituted under the Companies Ordinance, 1984. The company, therefore, as a person acts through its Board of Directors. It is trite principle that any acts which any officer of the company is to perform, shall be performed on the authorization of the Board of Directors of the company and by no other means. Unless the Board of Directors by a proper resolution authorizes the doing of an act, no officer of the company can undertake the act which will be ultra vires otherwise. In the instant case, admittedly the resolution of Board of Directors authorizing the chief executive to file the instant appeal has not been placed on the record and, therefore, it will be presumed that there was no authorization in favour of the chief executive to file the instant appeal."

7. The learned High Court while knocking out the petitioner mainly observed that the company is a juristic person and its functions are regulated and conducted by the Board of Directors and the company acts through its Board of Directors. The Court further held that any officer of the company shall perform any act only on the authorization of the Board of Directors and by no other means and the same shall be by a proper resolution. We may observe that by now the law has been well settled. This Court in Rahat and Co. Vs. Trading Corporation of Pakistan (PLD 2020 SC 366) has categorically held that a company is a juristic entity and it can duly authorize any person to sign the plaint or the written statement on its behalf and this would be regarded as sufficient compliance with the provisions of Code of Civil Procedure. It has also been held that a person may be expressly authorized either by the Board of Directors or by a power

of attorney. However, in absence thereof and in cases where pleadings have been signed by one of its officers, the same can be accredited by the company by express or implied action. It would be advantageous to reproduce the relevant portion of the said judgment. The same reads as under:-

"10. It cannot be disputed that a company like the appellant can sue and be sued in its own name. Under Order 6 Rule 14 of the Code of Civil Procedure a pleading is required to be signed by the party and its pleader, if any. As a company is a juristic entity it is obvious that some person has to sign the pleadings on behalf of the company. Order 29 Rule 1 of the Code of Civil Procedure, therefore, provides that in a suit by against a corporation the Secretary or any Director or other Principal Officer of the corporation who is able to depose to the facts of the case might sign and verify on behalf of the company. Reading Order 6 Rule 14 together with Order 29 Rule 1 of the Code of Civil Procedure it would appear that even in the absence of any formal letter of authority or power of attorney having been executed a person referred to in Rule 1 of Order 29 can, by virtue of the office which he holds, sign and verify the pleadings on behalf of the corporation. In addition thereto and de hors Order 29 Rule 1 of the Code of Civil Procedure, as a company is a juristic entity, it can duly authorise any person to sign the plaint or the written statement on its behalf and this would be regarded as sufficient compliance with the provisions of Order 6 Rule 14 of the Code of Civil Procedure. A person may be expressly authorised to sign the pleadings on behalf of the company, for example by the Board of Directors passing a resolution to that effect or by a power of attorney being executed in favour of any individual. In absence thereof and in cases where pleadings have been signed by one of its officers a Corporation can ratify the said action of its officer in signing the pleadings. Such ratification can be express or implied. The Court can, on the basis of the evidence on record, and after taking all the circumstances of the case, specially with regard to the conduct of the trial, come to the conclusion that the corporation had ratified the act of signing of the pleading by its officer."

(Underlined is to provide emphasis)

8. We have been informed that although the appeals filed before the High Court were not authorized by Board of Directors by proper resolution but they were duly signed by the Chief Executive Officer of the petitioner company. According to Section 2(18) of the Wealth Tax Act, 1963, the definition "Principal officer" is used with

reference to a company, means the secretary, manager, managing agent or managing director of the company, and includes any person connected with the management of the affairs of the company upon whom the Deputy Commissioner has served a notice of his intention of treating him as the principal officer thereof. The definition of 'principal officer' clearly shows that the Chief Executive Officer of the petitioner company is the principal officer and if he had signed the appeals before the High Court, the same would be accorded as express ratification by the company. In this view of the matter, the learned High Court ought to have decided the appeals on merits and not on technical grounds.

9. For what has been discussed above, we are of the considered view that the impugned judgment of the High Court is not based on the proper appreciation of law. Consequently, we convert these petitions into appeals, set aside the impugned judgment and remand the case back to the High Court to decide the appeals filed by the petitioner afresh in accordance with law.

JUDGE

JUDGE

JUDGE

Islamabad, the
15th of December, 2020
Approved For Reporting
Khurram