

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

Mr. Justice Maqbool Baqar

Mr. Justice Qazi Muhammad Amin Ahmed

**Civil Petition No.2732-L of 2016**

*(Against the judgment dated 9.6.2016 passed by the Lahore High Court Multan Bench Multan in T.R. No.26/2013)*

***Commissioner Inland Revenue Multan***

*...Petitioner(s)*

**Versus**

***Sh. Muhammad Amin Arshad***

*...Respondent(s)*

For the Petitioner(s): Ch. Muhammad Shakil, ASC

For the Respondent(s): Sheikh Zafar-ul-Islam, ASC

Date of hearing: 07.01.2021.

**ORDER**

**Qazi Muhammad Amin Ahmed, J.-** The respondent, a Commission Agent/Broker, declared an income of Rs.34,42,374/- on account of supplies to M/s Shujabad Oil Mills Pvt. Ltd; he assessed his income tax as Rs.3,42,437/-. The Deputy Commissioner Inland Revenue, however, detected receipt of payments through bank cheques far beyond the declared amount, running to the tune of Rs.56,12,36,365/- to set in motion through notice dated 24.9.2012, proceedings under sections 122(5)(9) and 111(1) of the Income Tax Ordinance, 2001 (*hereinafter referred to as "the Ordinance"*), considering the detection as definite information and pursuant to a show cause notice determined tax liability vide order dated 18.2.2013 as under:

<i>Income determined u/s 39</i>	<i>Rs.56,12,36,365/-</i>
<i>Income Tax Payable @ 25 %</i>	<i>Rs.14,03,09,091/-</i>
<i>Income Tax Deducted as FTR as per Block A</i>	<i>Rs.3,42,437/-</i>

Appeal filed by the respondent before the Commissioner Inland Revenue (Appeals) Multan met with no better fate vide order dated 18.3.2013, however, reversed by the Appellate Tribunal Inland Revenue Lahore Bench Multan (Camp at Multan) vide order dated 16.05.2013, assailed by the Department through Tax Reference No.26 of 2013. The High Court declined to answer the reference in affirmative, vide impugned order dated 9.6.2016, on the ground that in the absence of "*any definite information*" that too without confrontation to the assessee involving a factual controversy, the Department could not invoke the advisory jurisdiction.

2. Learned counsel for the petitioner contends that the learned High Court failed to consider facts of the case in their contextual backdrop that unambiguously constituted "*definite information*" within the contemplation of section 122(5) of the Ordinance, duly confirmed by documented transactions through banking channel, additionally verified by no other than the recipient i.e. M/s Shujabad Oil Mills Pvt. Ltd. The impugned order being slipshod calls for interference, concluded the learned counsel. Learned counsel for the respondent has, however, defended the view taken by the Appellate Tribunal Inland Revenue, by maintaining that refusal by the High Court to decline interference being well within the remit of law did not admit space for a probe into factual controversy.

3. Heard. Record perused.

4. Definite information within the contemplation of section 122(5) of the Ordinance contemplates an assessment in respect of a relevant tax year by the Commissioner, upon satisfaction of the conditions:

- i. any income chargeable to tax has escaped assessment; or*
- ii. total income has been under-assessed, or assessed at too low a rate, or has been the subject of excessive relief or refund; or*
- iii. any amount under a head of income has been misclassified.*

Position taken by the department has a substance inasmuch as the respondent did not deny payments, the modes thereof and product wise quantum of the purchases. Learned counsel for the respondent failed to substantiate his contention qua business activities with M/s Shujabaad Oil Mills Private Limited in the light of banking transactions. The

department has rightly determined the income of the respondent under section 39 of the Ordinance along with income tax chargeable and penalty consequent thereupon under section 182(2) thereof. The learned High Court failed to appreciate the law on the subject and passed the impugned order in a slipshod manner; the same, therefore, cannot sustain; the orders passed by the Commissioner Inland Revenue (Appeals) and the Deputy Commissioner Inland Revenue being well within the remit of law are restored. Petition is converted into appeal and same is allowed.

**Judge**

**Judge**

Islamabad, the  
7<sup>th</sup> January, 2021  
Not approved for reporting  
*Ghulam Raza/-*