IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:
MR. JUSTICE UMAR ATA BANDIAL
MR. JUSTICE SAJJAD ALI SHAH
MR. JUSTICE MUNIB AKHTAR

CIVIL PETITION NO.1591-L OF 2017
(On appeal from the judgment dated 11.04.2017 of the Lahore High Court, Lahore passed in P.T.R. No.457 of 2010.)

AND

CIVIL PETITION NO.2281-L OF 2017
(On appeal from the judgment dated 29.05.2017 of the Lahore High Court, Lahore passed in P.T.R. No.459 of 2006.)

The Commissioner Inland Revenue, Zone-II, Larger Taxpayers Unit, Lahore ... Petitioner (in both cases)

vs

Kohinoor Sugar Mills Limited, 18-Main Gulberg, Lahore : (in CP 1591-L/2017)
Lahore Medical Instruments (Pvt.) Limited, 65-Syed Maratib Ali Road, F.C.C. Gulberg-IV, Lahore : (in CP 2281-L/2017)

... Respondents

For the Petitioner : Mr. Ibrar Ahmed, ASC (in CP 1591-L/2017)

Ch. M. Zafar Iqbal, ASC (in CP 2281-L/2017) (Video-Link, Lahore)

For Respondent No.1 : Mr. Shahbaz Butt, ASC (in CP 1591-L/2017)

Date of Hearing : 22.01.2021

ORDER

Munib Akhtar, J.: At the conclusion of the hearing it was announced that these two petitions were being dismissed. The following are our reasons for having done so.

2. These matters arise under the Income Tax Ordinance, 1979 ("1979 Ordinance"). Although the respondent-assessees are

different in the two cases, the point in issue is the same. Indeed, in CPLA 2281-L/2017, where the department's Tax Reference was dismissed by the learned High Court on 29.05.2017, it was expressly noted that the same was being done on account of the judgment (dated 11.04.2017) in the other matter before us, i.e., CPLA 1591-L/2017. (The last mentioned was also a Tax Reference filed by the department.) Both cases relate to the same assessment year, 2001-02. The assessee in CPLA No.1591-L/2017 is engaged in the business of the manufacture and sale of sugar, whereas the one in the other petition is engaged in the sale of medical instruments / equipment. Thus, in both cases the business undertaken by the assessee was the sale of goods.

3. It appears that in furtherance of their respective businesses, each assesse received payment in advance for the sale and supply of goods from some of their customers. These payments were made in cash. It is not in dispute that such sales were governed by the Sales of Goods Act, 1930 ("Act"). As is well known, in that Act the money consideration payable for the sale of goods is described as the 'price' of the goods sold. Section 5(1) provides as follows:

> "A contract of sale is made by an offer to buy or sell goods for a price and the acceptance of such offer. The contract may provide for the immediate delivery of the goods or immediate payment of the price or both, or for the delivery or payment by installments, or that the delivery or payment or both shall be postponed."

4. The advance (or, to use the language of the Act, "immediate") payments made by the customers as noted above were duly recorded in their books as such. Now, s.12 of the 1979 Ordinance provided in its various subsections that the amounts as therein described were deemed to be the income of the assessee. Subsection (18) was (as presently relevant) in the following terms (herein after referred to as "the subsection"):

> "Where any sum claimed, or shown, to have been received as loan or advance or gift by an assessee during any income year commencing on or after the first day of July, 1998, from any person, not being a banking company, or a financial institution notified by the Central Board of Revenue for this purpose, otherwise than by a crossed cheque drawn on a bank or through a banking channel from a person holding a National Tax Number, the said sum shall be deemed to be

> the income of the assessee for the said income year chargeable to tax under this Ordinance:..."

The department treated the advance payments of price as an 'advance' within the meaning of the aforesaid provision and brought them to tax accordingly. The assessees resisted this characterization, and the application of the subsection. The learned Appellate Tribunal agreed with the assessees and made orders accordingly. The department filed Tax References, which were dismissed in terms as noted above; hence, these leave petitions. Before us, the matter was argued by learned counsel for the department in each leave petition as also by learned counsel for one of the assessees, in CPLA 1591-L/2017. Learned counsel for the department submitted that the learned High Court had erred materially in regarding that as the word 'advance' appeared alongside the word 'loan', it was to be read *ejusdem generis* the latter. It was submitted that 'advance' was broad enough to cover both loans and finances as well as any payment made in advance by a customer to the supplier of goods. Since the transactions in question were admittedly in cash they were within the scope of the subsection and properly brought to tax. Learned counsel for the assessee submitted that the reasoning and conclusion of the learned High Court were correct and that in any case the amounts sought to be taxed under the subsection were subsequently brought to tax as the gross receipts on sales of the assessees. It was submitted that the approach taken by the department resulted in the double taxation of the same amounts.

5. After having heard learned counsel as above we concluded that the leave petitions ought to be dismissed. It is of course well established that the words 'loan' and 'advance' are used synonymously and reference may, e.g., be made to the definitions given in the Banking Companies Ordinance, 1962 and the Financial Institutions (Recovery of Finances) Ordinance, 2001 (being ss. 2(gg) and 2(d)(iv), respectively). Arguably, it is possible to also consider the "immediate" payment of price for the sale of goods (for deferred delivery of the same) to be an 'advance'. However, we are of the view that the word 'advance' as used in the subsection does not include such payment of price. The reason is that s.12 of the 1979 Ordinance, inasmuch as it brought to tax by

way of deeming provisions various transactions and amounts, was a charging provision. It is well settled that such provisions are to be construed strictly, and if two reasonable interpretations are possible the one in favour of the assessee is to be adopted. The approach and interpretation put forward by the department falls foul of this fundamental principle and hence cannot be accepted. We may note that this is not a case of reading the word 'advance' *ejusdem generis* with 'loan' but, rather, an application of what is one of the most fundamental rules of tax law to the former term itself. Furthermore, and this is the second reason why in our view the department's case must fail, as submitted by learned counsel for the assessee the amounts in question were in any case the gross receipts of each assessee for the supply/sale of goods (i.e., were brought to revenue account in the ordinary course of business) and were taxed accordingly. To bring these amounts also within the ambit of the subsection and hold them liable to tax for that reason as well would, in the facts and circumstances of the present cases, be tantamount to an impermissible double taxation.

6. For both of the aforesaid reasons we concluded that the subsection had no application, as rightly concluded by both the learned Appellate Tribunal and the learned High Court (although our reasons may perhaps be somewhat different from those that found favour with those forums). Leave was accordingly refused and the petitions stood dismissed.

Judge

Judge

Judge

Islamabad,
22.01.2021
Naveed Ahmad/*
Approved for reporting