

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE UMAR ATA BANDIAL
MR. JUSTICE IJAZ UL AHSAN
MR. JUSTICE MUNIB AKHTAR

Civil Appeal No.1127 of 2011

*Against judgment dated 26.05.2009 passed by
the Peshawar High Court, Peshawar in T.R.
No.85 of 2007.*

Commissioner of Income Tax (legal)
Regional Tax Officer, Peshawar.

...Appellant(s)

Versus

Safeer Jan

...Respondent(s)

For the Appellant(s): Mr. Rehman Ullah, ASC

For the respondent(s): Syed Mudassar Ameer, ASC

Date of Hearing: 05.11.2019

O R D E R

IJAZ UL AHSAN, J.- This appeal by leave of the Court is directed against a judgment of the Peshawar High Court, Peshawar dated 26.05.2009 (*"impugned judgment"*). Through the impugned judgment, Income Tax Reference No.85 of 2007 filed by the appellant was dismissed.

2. Leave was granted by this Court on 13.12.2011. For ease of reference, the leave granting order is reproduced below:

"Leave of the Court is sought on the ground that where the statute has provided a mode and mechanism for money transaction any side way or by way to defeat such mode and mechanism would tend to defeat the soul and spirit of the law.

We, in this view of the matter, grant leave to consider the point mentioned above."

3. The brief facts necessary for decision of this *lis* are that the Respondent is an individual deriving income from salary and agriculture. Return was filed declaring the income at Rs.65,000/- for the assessment year 2001-02 and Rs.230,000/- for the assessment year 2002-03. In view of the fact that the declared income was not supported by documentary proof and it was found that the source of income and investment had swelled up exponentially, the Department came to the conclusion that the Respondent had concealed his income. Therefore, notice under Section 61 of the Income Tax Ordinance, 1979 (*since repealed*) [*hereinafter to be referred as "the Ordinance"*] alongwith detailed memo was issued. The Respondent contested the notice and produced wealth reconciliation statement, record of land revenue, accounts of M/s Khalil Enterprises (*a partnership Firm*), gift deeds from Mrs. Jani Begum, Mr. Ali Raza, Ms. Jan Parwana and Mrs. Sarwat Mehmood. The said documentation was produced to justify the accretion of Rs.11,490,640/-. The Taxation Officer did not accept the contention of the Respondent regarding withdrawal of the amount of Rs.2.9 million from the Firm and added the same under Section 13(1)(aa) of the Ordinance. Similarly, the amount of gifts received from various members of the family was also added under Section 12(18) of the Ordinance.

4. As far as the addition of Rs.2.9 million withdrawn from the account of the Firm is concerned, it was found that

the said amount was the share of the Respondent out of the income of the Firm namely, M/s Khalil Enterprises. The said Firm was an existing assessee of the Circle. The amount was fully explained as reflected in the Wealth Statements and Wealth Reconciliation Statements. Since the Respondent had fully explained the amount in question as his share out of the income of the Firm that accumulated over the years. This fact was duly supported by the record including audited balance sheet showing that the said amount was fully tax paid. Consequently, no addition under Section 13(1)(aa) of the Ordinance could be made. The said issue is not before us.

5. As far as the amount gifted to the Respondent by other share holders of the Firm through gift deeds executed between the partners is concerned, the Assessing Officer had added the said amount under Section 12(18) of the Ordinance for the reason that the transaction had not been undertaken through banking channels. The said finding of the Taxation Officer was challenged before the Commissioner of Income Tax (Appeals), who set aside the same, vide order dated 15.09.2005. This order was upheld by the Income Tax Appellate Tribunal and was not disturbed by the learned High Court.

6. The learned counsel for the Appellant has repeated the same argument to the effect that the Taxation Officer was justified in adding the amounts allegedly received by the Respondent by way of gifts from other partners of the

Firm in view of the fact that the transactions in question were not through banking channels.

7. We have heard the learned counsel for the parties and examined the record. Section 12(18) of the Ordinance appears to be relevant in the present case. For ease of reference, the said provision of law is reproduced below:

"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."

8. A plain reading of Section 12(18) of the Ordinance shows that the said provision is attracted when loans, advances and gifts are received in cash. However, in the case before us, admittedly, no cash exchanged hands. Members of the AOP had only authorized the Respondent to withdraw a certain amount from their share in the AOP. As such no cash had been paid or received which fact has clearly been mentioned in the gift deeds executed between the partners. The transaction was *ex facie* reflected in book entries made in the records of the AOP. Further, the language of the gift deeds is clear that the amount gifted was liable to be withdrawn by the donee (Respondent) from the share of donors in M/s Khalil Enterprises which further lends support to the findings recorded by three lower *fora* that only a right was given to the Respondent to withdraw the amounts in question from time

to time from the share of the donors in the AOP and that no transaction which could be interpreted as immediate and actual transfer of funds had taken place.

9. This being the position, we are in no manner of doubt that the provisions of Section 12(18) of the Ordinance were not attracted in this case and the Commissioner of Income Tax as well as the Income Tax Appellate Tribunal and the learned High Court were correct in recording findings to that effect. Learned counsel for the Appellant has not been able to persuade us to take a different view from the one taken by the lower *fora*.

10. For the afore-noted reasons, we do not find any merit in this appeal. The same is accordingly dismissed. No order as to costs.

JUDGE

JUDGE

JUDGE

ISLAMABAD, THE

05.11.2019

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'Not Approved For Reporting'