IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

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

CIVIL APPEAL NO.1125 OF 2020
(On appeal from the Order dated 21.02.2017 of the Lahore High Court, Bahawalpur Bench passed in P.T.R. No.04 of 2014.)

Commissioner Inland Revenue, Zone-Bahawalpur, Regional Tax Office, Bahawalpur ... Appellant

vs

M/s Bashir Ahmed, (deceased through LRs.) Prop: Sarfaraz Hussain & Brothers Commission Agent, Grain Market, Fortabbas ... Respondent

For the Appellant : Mr. Sarfraz Ahmed Cheema, ASC (Video-Link, Lahore)

For the Respondents : Mr. Javed Iqbal Qazi, ASC

Date of Hearing : 28.01.2021

JUDGMENT

Munib Akhtar, J.: At the conclusion of the hearing it was announced that the appeal stood dismissed. The following are the reasons for that decision.

2. The matter arises out of the Income Tax Ordinance, 2001 and relates to the tax year 2010. The department sought to amend the deemed assessment order for that year for reasons shortly to be stated. The respondent taxpayer won in appeal before the Appellate Tribunal and the reference filed in the High Court by the department was dismissed by means of the impugned judgment. Leave to appeal was granted in this Court vide order dated 10.11.2020.

3. When the return filed by the respondent (deemed assessment order) was scrutinized, it was found that the respondent had only declared agricultural income of Rs.500,000/, whereas the

department (as claimed by it) had definite information that the latter had acquired immoveable property on or about 10.02.2010 in the sum of Rs.56,00,000/-. On such basis a notice dated 24.09.2011 was issued under s. 122(1) read with subsections (5) and (9) thereof, requiring the respondent to show cause as to why the deemed assessment order should not be suitably amended. It appears that later, on 07.12.2011, another notice, this time under s. 111(1)(b) was also issued in respect of the aforesaid property.

4. The taxpayer was proceeded against ex parte but contested the matter thereafter by way of appeal and, as noted, won relief before the learned Tribunal. The Tribunal concluded (see para 9 of its order) that the notice dated 24.09.2011 suffered from procedural defects that went to the root of the matter inasmuch as the notice did not specify which clause of s. 122(5) was sought to be applied, and that separate notices ought to have been issued, one under subsection (9) and then another under subsection (5). Finally, it was held (also in the said para) that there was, in fact, no definite information available with the department and that the concerned tax officer was merely "trying to fish out the material from the Taxpayer". In the impugned judgment, the learned High Court agreed with the Tribunal that there was no definite information within the meaning of law and that since the latter forum was the final finder of fact, its decision could not be challenged in tax reference. It was also held that the findings of the Tribunal were not shown to be perverse, contrary to the record or suffering from any other legal infirmity or impropriety as would warrant interference by the High Court. The tax reference was accordingly dismissed.

5. Leave to appeal was granted to consider whether the findings and conclusions, especially as regards "definite information" were consistent with the law laid down by this Court in *Commissioner of Inland Revenue-Zone I v. Khan CNG Filling Station* 2017 SCMR 1717 ("*Khan CNG*"). Before us, learned counsel for the department pressed his case on the authority of this decision. Learned counsel for the respondent submitted that both the High Court and the Tribunal had reached the correct conclusions of law and fact and that the appeal ought to be dismissed.

6. Insofar as *Khan CNG* is concerned, the facts of that case were far removed from those at hand. The precise question was whether

a formula for natural gas consumption developed by OGRA, and the results obtained from an application of that formula, could constitute definite information with the meaning of law. To this a negative answer was given by the High Court, which was reversed by this Court in the cited decision. Therefore, with respect, this decision does not, as such, have any direct bearing on, or relevance for, the appeal at hand.

7. Now, subsection (8) of s. 122 contains an inclusive definition of “definite information”, which provides in material part that such information includes “information ... on the acquisition, possession or disposal of any money, asset, valuable article or investment made or expenditure incurred by the taxpayer”. At the relevant time, subsection (5) required that the deemed assessment order could only be amended “where, on the basis of definite information acquired from an audit or otherwise” the Commissioner was satisfied that any one of three clauses of the subsection was applicable. In the present case, there was of course no audit involved, and therefore the definite information could only have been “otherwise” acquired. Now, one manner in which the information can be so acquired is by proceedings under s. 111. This provided, at the relevant time and as presently material, in subsection (1) that if any of its clauses was found to apply, and the person concerned

> “offers no explanation about the nature and source of the amount credited or the investment, money, valuable article, or funds from which the expenditure was made ... or the explanation offered by the person is not, in the Commissioner’s opinion, satisfactory—
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> (a) the amount credited, value of the investment, money, value of the article or amount of expenditure ... shall be included in the person‘s income chargeable to tax under head “Income from Other Sources” to the extent it is not adequately explained...”

8. As noted above, a notice under s. 111 was issued to the respondent. However, the sequence of the notices was crucial. The notice under s. 122, subsections (1), (5) and (9) was issued first, on 24.09.2011 and it was only later, on 07.12.2011, that the notice under s. 111 was issued. Now, and this is crucial and determinative for present purposes, the first notice purported to state that “the department is in possession of definite information” regarding the investment allegedly made in immoveable property.

That claim was repeated in the notice under s. 111. In other words, the respondent was not given an opportunity, as is mandatorily required by s. 111, to satisfy the tax authorities as to the source etc. of the funds by which the immoveable property was acquired. Rather, the department from inception, and throughout, proceeded on the basis that it already had definite information with it in this regard, such as was sufficient to allow the amendment of the deemed assessment order. However, that could not be so until first the proceedings under s. 111 had culminated in an appropriate order. That order could have constituted the definite information as would allow the amendment of the deemed assessment order, and indeed, subsection (2) of s. 111 contains elaborate statutory instructions as to which is the tax year in which the concealed income is to be added. It is possible for both steps, i.e., the finding under s. 111 and the amendment of the deemed assessment order to be done together, and for the notice under s. 111 to be issued along with the notice to amend. However, in such a case, the proceedings and notice(s) must expressly so state on the face of it. Here, the proceedings under s. 111 were, as it were, “short circuited” altogether since the department began with the premise that it already had definite information available with it, and the concerned officer proceeded accordingly. That, in law, could not be so. Therefore, in our view, there was no definite information available within the contemplation of the statute. The conclusions arrived at by the learned Tribunal and learned High Court were correct and did not warrant interference by this Court.

9. For the foregoing reasons, the appeal stood dismissed and it was so announced at the conclusion of the hearing.

Judge

Judge

Judge

Islamabad,
28.01.2021
Naveed Ahmad/*
Approved for reporting