

APPELLATE TRIBUNAL INLAND REVENUE (PAKISTAN)
KARACHI BENCH.

Present: Dr. Tauqeer Irtiza A.M.
Mr. Qazi Anwer Kamal, J.M.

ITA No.274/KB-2022
(Tax Year 2016)
U/s. 122(5A)

ITA No. 275/KB-2022
(Tax Year 2017)
U/s. 122(5A)

Registration No: 4220197308351

M/s. ST Agencies,
Prop: Muhammad Saleem Jamal
Karachi.....Appellant

V e r s u s

The Commissioner Inland Revenue,
Appeals-IV, Karachi.....Respondent

Appellant by : Mrs. Riffat Naeem Jan, Advocate

Respondent by : Mr. Fayyaz Hussain Abro, DR

Date of Hearing : 16.01.2023

Date of Order : 20.01.2023

ORDER

QAZI ANWER KAMAL, JUDICIAL MEMBER: These appeals bearing ITA No.274/KB-2022 and ITA No.275/KB-2022, pertaining to the tax years 2016 and 2017, have been filed by the Appellant/Taxpayer against the orders bearing the Bar Code No: 10000011309932, dated 23.11.2021 and Bar Code No: 100000113101126, dated 23.11.2021, respectively, passed by the Learned Commissioner Inland Revenue (Appeals-IV), Karachi [hereinafter referred to as CIR(A)]. Through these orders the Learned CIR (A) has confirmed the orders of the Additional Commissioner Inland Revenue Range-IV, Zone-IV, RTO-II, Karachi (hereinafter referred to as "ADCIR")

2. The Appellant/Taxpayer being dissatisfied with the orders of Learned CIR(A), preferred these appeals before this forum on the basis of grounds set forth in the memos of appeals.

3. Brief facts of the case, as gathered from the available record are that the Appellant/Taxpayer is an individual registered as wholesaler of textile, and carries out the business of yarn trading. Returns of income were filed which constituted assessments finalized u/s. 120 of the Income Tax Ordinance, 2001. The Taxpayer discharged his tax liability at 0.01% on his turnover under the provision of Clause 45A to the Part-IV to the Second Schedule of the Income Tax Ordinance, 2001. The deemed assessment orders were found erroneous and prejudicial to the interest of revenue. Accordingly, show cause notices u/s. 122(9) of the Income Tax Ordinance, 2001 were issues whereby the taxpayer was confronted with the discrepancies. After providing the hearing opportunity and considering the reply filed by the AR of the appellant/taxpayer in respect of the show cause notice, the ADCIR passed orders u/s. 122(5A) of the Income Tax Ordinance, 2001.

4. The Taxpayer/Appellant being dissatisfied with the order of ADCIR, preferred appeals before CIR (A), who confirmed the orders of the ADCIR. The Taxpayer being aggrieved with the orders of CIR (A) has now assailed the same before this Tribunal.

5. On the date of hearing, Mrs. Raffat Naeem Jan, Advocate, the learned AR, appeared on behalf of the Appellant/Taxpayer and Mr. Fayyaz Hussain Abro, the learned D.R attended the proceeding on behalf of the tax department. Case law has been submitted and placed on record for examination and perusal.

6. We heard both the representatives at length, examined the record and considered the arguments put forth by the rival parties.

7. The learned AR vehemently argued her case and relied upon the decision of the ATIR, Karachi passed vide ITA No: 1468/KB/2018, dated 08.03.2019 in case of M/s. Abdul Hafeez Aziz, Karachi, where issue under consideration has been decided in favour of the Taxpayer. The relevant para of the judgment is as below;

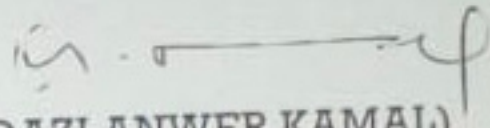
"4. We have given anxious considerations to the arguments of the rival parties have perused the impugned orders, the relevant provisions of law, the case law referred and the available record of the case. We find ourselves in agreement with the submissions of the learned AR in as much as the facility provided to the yarn dealers through proviso to Clause 45A of the Part IV of second schedule to the Ordinance has got nothing to do with section 153(1) of the Ordinance. We are of the view that the facility provided purposely by legislature to the yarn dealers, via proviso to the Clause 45A ibid, keeping in view the peculiar facts and circumstances of their business/ margin of profit is also independent of section 113 ibid which has altogether different dynamics and sphere of operation. The case law cited at bar also supports the contentions of the learned AR. We also observe that if department contention is accepted then proviso to clause 45A would become redundant and surplus which can never be the intention of the legislature. Thus tax liability of the appellant can be determined only in terms of proviso to clause 45-A of the Part-IV to the Second Schedule of the Income Tax Ordinance, 2001."

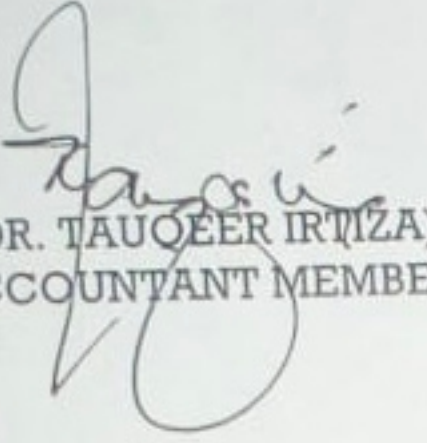
8. On the other hand, the Learned DR strongly supported the orders of both the officers of below authorities. He contended that the orders of ADCIR and Learned CIR (A) are well within the framework of law and carry no illegality, infirmity and irregularity in them.

9. Respectfully following the decision of ATIR passed vide ITA No:1468/KB-2018, dated 8.03.2019, we have no hesitation to conclude the appeals under consideration in terms of decision of ATIR. Hence we

hereby annul the orders of both the below authorities and accept the Taxpayer's appeal and direct the ADCIR to calculate tax liability of the Taxpayer in terms of Clause 45A to the part IV of the Second Schedule of the Income Tax Ordinance, 2001

10. The above appeals are disposed of as indicated above.


(QAZI ANWER KAMAL)
JUDICIAL MEMBER


(DR. TAUQEER IRTIZA)
ACCOUNTANT MEMBER

AshiQ/PS