IN THE HIGH COURT OF SINDH, KARACHI

ITC Nos.483 & 484 of 2004

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

BEFORE: Irfan Saadat Khan,
Zulfiqar Ahmad Khan,JJ

Commissioner
(Legal Division)
Large Taxpayers Units,
Appellant : through Mr.Muhammad Aqeel Qureshi, Advocate.

Pakistan Petroleum Ltd.,
Respondent : through Mr. Fawad Syed, Advocate.

Date of hearing : 13.01.2022

Date of decision : 25.01.2022

JUDGEMENT

Irfan Saadat Khan,J. These two Income Tax Cases (ITC) were admitted to regular hearing on 26.1.2005 to consider the following questions of law.

> (i) "Whether on the facts and in the circumstances of the case, and assessee's failure to provide employee-wise details of various benefits and perquisites given to its employees, the learned ITAT has erred in holding that the law does not permit making of an adhoc addition under section 24(i) of the Income Tax Ordinance, 1979?"
>
> (ii) Whether the learned Tribunal was justified in deleting the addition under section 24(1) when assessee failed to provide employee-wise details of benefits and perquisite, and also failed to establish facts and figures that it suffered greater tax incidence due to such addition?"
>
> iii) "Whether the learned Tribunal was legally justified in deleting the addition under section 24(1) by accepting the assessee's contention that no addition in respect of benefits and perquisites like Medical, Vehicle and Tiffen Room was made in the succeeding assessment year when every year being an independent assessment relating to each assessment year is an absolutely different and independent proceedings?"

2. Briefly stated the facts of the cases are that the Respondent is a public limited company which filed its return of total income for the assessment year 1999-2000 on 31.12.1999 by showing an income of Rs.769,480,870/-. The assessment thereafter was completed on 16.6.2001 by assessing the income for the tax year 1999-2000 at Rs.1,224,140,556/-. The Assessing Authority (AA) while making the assessment made an addition of Rs.2,66,98,126/- under the provision of Section 24(i) of the Repealed Income Tax Ordinance 1979, (hereinafter referred to as the Repealed Ordinance) by finding that excess perquisites have been given by the company to its employees, which are not allowable under the law, as no proper employee wise details were furnished. Similarly for the assessment year 2000-2001 the return of Income Tax was filed on 15.1.2001 by declaring an income of Rs.1,747,999,096/- and the assessment for the said year was completed on 16.6.2001 by assessing the income at Rs.2,352,939,859/-. An addition under Section 24(i) of the Repealed Ordinance was made to the tune of Rs.5 million being excess perquisites to the employees of the company on the ground that no proper employee wise details were furnished and supporting evidence not furnished. Being aggrieved with both these assessment orders appeals were preferred before the Commissioner of Income Tax Appeals, who vide order dated 30.5.2002, upheld the additions in respect of both the assessment years by observing that employee wise record of perquisites given to them was not maintained by the assessee.

3. Being aggrieved with the order of the Commissioner Appeals, appeals were preferred before the Tribunal bearing Appeals

No.1227/KB of 2002 & 1228/KB of 2002 and the Tribunal vide order dated 03.11.2003 deleted the said additions by holding that the law does not permit making of ad-hoc addition under Section 24(i) of the Repealed Ordinance. Reference Applications bearing R.A No.88/KB of 2004 & R.A No.89/KB of 2004 were filed then before the Tribunal by raising certain questions of law for opinion of this Court. However the Tribunal vide order dated 06.8.2004 declined to refer the questions raised by the department to this Court on the ground that no question of law arises out of the order passed by it. It was then the present ITCs have been filed which, as stated above, were admitted for regular hearing vide the above referred order.

4. Mr. Muhammad Aqeel Qureshi, Advocate has appeared on behalf of the Department and stated that since the Respondent has failed to furnish supporting evidence regarding payment of excess perquisites to the employees hence the department was justified in making additions under Section 24(i) of the Repealed Ordinance. He stated that the Tribunal erred in allowing the claim of the Respondent/Company which was not backed by documentary evidences. He stated that during the assessment proceedings the Respondent/company has shown his inability to provide the required documents/details to the department, which amply proves that the Respondent/company does not possess any document, evidence / detail to substantiate its claim. He further stated that a number of benefits given to the employees were excess perquisites to them and as per the provision of Section 24(i) of the repealed ordinance these were inadmissible. Hence, according to him, the AA was fully justified in making additions to

the incomes of the assessee in both these years under consideration. He therefore, prayed that the order of the AA and that of the Appellate Authority may be upheld and the order of the Tribunal may be set aside by answering the Question No.1 in affirmative and Question Nos.2 & 3 in negative.

5. Mr. Fawad Syed, Advocate has appeared on behalf of the Respondent/Company and has supported the order of the Tribunal. He stated that from the assessment orders it is evident that the department without properly working out the excess perquisites, if any, claimed by the Respondent/Company has adopted a shortcut method by making ad hoc additions to the income of the company. He stated that in a revised workings were submitted by the assessee to the AA through which the amounts falling under the provision of Section 24(i) of the repealed ordinance were added to the income of the assessee, hence the AA was not justified in making the ad-hoc additions. He stated that the law always deprecates making ad-hoc additions to the income of an assessee as the AA being a quasi-judicial authority is supposed to work out the actual income tax liability of an assessee by stating proper and cogent reasons for such additions. He stated that from the assessment orders it is clear that the ad-hoc additions were made in a slip shod manner without properly working out the same. He therefore, stated that the Tribunal quite rightly deleted the adhoc additions made by the AA as the same do not carry any legal sanction or authority and there is no provision in the income tax law justifying the AA to make ad-hoc additions to the income of an assessee. He therefore, stated that the order of the Tribunal may be upheld and the question raised in the instant

ITC may be answered in favour of the Respondent/Company i.e. Question No.1 in negative, and Question Nos.2 & 3 in affirmative.

6. We have heard all the learned counsel at length, have also perused the record and have done some research on our own.

7. Before proceeding any further we would like to reproduce hereinbelow the provision of Section 24(i) of the Repealed Ordinance, which state as under:-

> 24(i) "Any expenditure incurred by an assessee on the provision of perquisites, allowances or other benefits to any employee in excess of fifty percent of his salary excluding perquisites, allowances or other benefits".

8. In the instant matter it could be seen that the AA required from the Respondent to submit detailed explanation with regard to the claim of the allowances/benefits and perquisites of the employees. Section 24(i) of the Repealed Ordinance, empowers the AA to add to the income of a company any perquisite allowance or other benefits to any employee which is in excess of the 50% of his salary. It may be noted that when the AA confronted the Respondent about the excess perquisites paid to its employee the assessee itself added back substantial amount as excess perquisites to its employee by filing revised working. The AA however came to the conclusion that certain medical expenses, food, lunch, washing expenses etc. paid to the employees of the company were excess perquisites and thereafter made ad-hoc additions to the income of the assessee, as excess perquisites.

9. In our opinion in so far as the action of the AA in disallowing excess perquisites, which are in excess of 50% of the salary of the employees of the company is concerned, the law gives ample power

to the AA to add the same. However, no power is vested with the AA to make any ad hoc additions to the income of the assessee in a slip shod manner or without properly working out the excess perquisites claimed by the assessee, in a shortcut manner. The AA being a quasi-judicial authority is supposed to make the additions to the income of the assessee by giving cogent reasons and the justification for making such additions, if any. It is a settled proposition of law that any addition made to the income of the assessee without giving reasons and justification, for the same are not warranted under the law and are liable to be deleted.

10. In the instant matter as could be seen that the AA, though have opined that excess perquisites have been given to its employee, but instead of adding those amounts, which were to be calculated after working out the excess perquisites rather adopted a shortcut method of making ad hoc additions to the income of the assessee, in both the years under consideration, which in our opinion is not in accordance with law. We were able to lay our hands on the decision given in the case of *Messrs Rajput Metal Works Ltd., Gujranwala ..Vs.. The Commissioner of Income-Tax, Rawalpindi ZONE, RAWALPINDI* (**P L D 1976 Lahore 223**) wherein while dealing with the matter the bench has observed as under:-

> "9. The first proviso to section 13 of the Act expressly lays down that if no method of accounting has been regularly employed or if the method employed is such that in the opinion of the Income-tax Officer the income, profits and gains cannot properly be deduced therefrom, then the computation shall be made upon such basis and in such manner as the Income-tax Officer may determine. It is, therefore, clear from this proviso that after the Income-tax Officer had rejected the account version for the reasons assigned by him, a further and much onerous duty was cast upon him to make his

> "computation" of the income upon such "basis" and in such manner as he may "determine". The determination and the computation of the income must be made on a basis evolved by the Income-tax Officer. His judgment must be based on reason. He cannot just take a leap in dark and indulge in a pure guess by making arbitrary, capricious and an ad hoc addition without laying down the basis for it. He should endenvour to the best of his ability to ascertain the income, profits and gains of the assessee nearest to his true income, profits and gains as far as possible under the circumstances of the case." (Underline ours for emphasis)

11. We, therefore, under the circumstances are of the view that the income tax department does not have the authority or jurisdiction to make ad hoc additions to the income of an assessee though they do possess the authority under the law to make additions to the income of the appellant/assessee which in their opinion either not in accordance with law or after giving valid and cogent reasons for the same.

12. Hence, all the three questions referred to us are answered as under:-

> Question No.1 in negative.
>
> Question Nos.2 & 3 in affirmative.

13. Let a copy of this order be sent to the Registrar Income Tax Tribunal for information.

JUDGE

JUDGE

SM