

IN THE HIGH COURT OF SINDH AT KARACHI
M.A. NO. 41 / 2012

Appellant: **Ghulam Ahmed Adam & others through Mr. Muhammad Aleem Advocate.**

Respondent. **The Executive Director (Enforcement), the Securities & Exchange Commission of Pakistan through Mr. Muhammad Salim Mangrio.**

Date of hearing: **04.03.2019.**
Date of Order: **04.03.2019.**

Muhammad Junaid Ghaffar, J. This is an appeal under Section 34 of the Securities & Exchange Commission of Pakistan Act, 1997 against order of the Appellate Bench of SECP dated 05.06.2012, whereby, while maintaining the Order in Original dated 20.10.2009, the amount of penalty was reduced from Rs.500,000/- on each Appellant to Rs.250,000/- each.

2. Learned Counsel for the Appellants submits that the recording of advance money as Sales in the financial statement was not intentional, and subsequently, the mistake has been rectified in the next financial year. According to him since delivery orders were issued; therefore, the amount of advance was recorded as sales in good faith which had no effect on the overall Accounting of the Company. According to him such act was not intentional and therefore, no penalty could be imposed or sustained.

3. On the other hand, learned Counsel for SECP submits that there was a qualified report of the Auditors, whereas, false statement / figures have been recorded in the Accounts; which is an offence in terms of s.492 of the Companies Ordinance, 1984; hence, no case is

made out. He further submits that penalty has already been reduced by fifty percent in the order of the Appellate Bench, which is a substantial relief, therefore, the Appeal is liable to be dismissed.

4. I have heard learned Counsel for the Appellant as well as Respondent and perused the record. The Show Cause Notice dated 19.8.2009 was issued by SECP after examination of the Accounts and Financial Statements submitted by the Company as against the qualified report of the Auditors to the members of the Company. According to the Auditors the act of recording advance money as sales was in violation of the Accounting policy as per Note 3.14 which reads as under:-

“Revenue from sales of sugar is recognized on dispatch of sugar of customers.”

5. Thereafter, on the basis of this violation a qualified report was issued by the Auditors and the relevant para reads as under:-

“During the current year, sales made to one of the customers are recognized on the basis of contractual arrangement instead of accounting policy as stated in note 3.14 to the financial statements. Had the revenue been recognized as per accounting policy, profit after tax would have been reduced by Rs. 34.188 million.”

6. This was responded by the Company in the report annexed with the Accounts in the Annual Report that *“the Company has recognized the revenue in respect of contract sales as these were confirmed and subsequent to the year-end and before finalization of financial statement, the Company has received all the amounts against this sale”*. Thereafter, before issuance of the Show Cause Notice, an explanation was called and it was replied vide letter dated 20.1.2009, again justifying the act of the Company on the same grounds. Perusal of these replies as well as the reply to the Show Cause Notice leads to only one conclusion that all along this act of recording the Advances

as Sales in violation of Note 3.14 of the Accounting Policy was defended. If the case of the Company was of a bona fide act and or mistake, then immediately an apology with a request to take a lenient view should have been forthcoming. However, this is not the case and instead it has been contested as well as defended; hence, the question that it was intentional or not is not relevant for the present purposes. It is a matter of record that the Company in question is a listed Company and is supposed to record financial transactions with utmost care and in accordance with law as well the Accounting policy and the directions issued from the Regulators from time to time. This has to be done for the benefit of its shareholders. However, apparently this treatment by the appellants has resulted in over-stated net profit after tax by Rs.34.188 million; contractual sales by RS.233.338 million; and cost of sales by Rs.148.967 million. All these figures do reflect on the financial health of a Public Company, whereas, it has been found to be in violation of the Accounting Policy by the Auditors of the Company. In the circumstances, there appears to be no justification in the contention of the appellants as to this being non-intentional. At the same time it is to be noted that though the law provides imposition of a maximum penalty of Rs. 500,000/- for violation of s.492 of the Ordinance, which was imposed by the original authority and reduced subsequently by the Appellate Bench to Rs.2,50,000/- on each Appellant; but it is settled law that the purpose of imposition of penalty is not to generate revenue; but to act as deterrent and to reprimand an offender. In this matter it is not in dispute, that in subsequent years, necessary rectification has been done, whereas, it is not that the Appellants are habitual offenders of this nature.

Therefore, while dismissing the Appeal and maintaining the impugned order, taking a lenient view the penalty is further reduced to Rs.100,000/-on each appellant. Appeal stands dismissed, whereas, the impugned order stands modified to this extent.

J U D G E

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