IN THE HIGH COURT OF SINDH AT KARACHI

ITA No. 66 of 2000
ITA No. 67 of 2000
ITA No. 68 of 2000
ITA No. 69 of 2000
ITA No. 70 of 2000

Before : **Mr. Justice Irfan Saadat Khan**
Mr. Justice Fahim Ahmed Siddiqui

M/s. Sky Rooms (Pvt.) Ltd. ….. Appellant.

Versus

The Deputy Commissioner of Income Tax, Circle 05, Companies-IV and others. …… Respondents.

Date of hearing: **17.10.2019**
Date of judgment: _____

Appellant through Mr. Ammar Athar Saeed, advocate for appellant along-with Mr. Muhammad Usman Alam, advocate

Respondent/Department The Deputy Commissioner of Income Tax through Dr. Shahnawaz Memon, advocate alongwith Mr. Abdul Hameed Anjum, Director Law (F.B.R.), Karachi.

J U D G E M N T

FAHIM AHMED SIDDIQUI, J:- The appellant introduces the following similar questions of law, which arise for determination in theses appeals:

1. Whether on the facts and circumstances of the case, the learned Income Tax Appellate Tribunal (hereinafter referred as ITAT) was justified in rejecting the declared version and making additions out of expenses charged to the profit & loss account without pointing out any defects in the books of accounts and any instance of un-verifiability of expensive from the details filed?

2. Whether on the facts and circumstances of the case, the learned ITAT was justified in rejecting the declared income and making various additions on misreading and distortion of evidence and early on summarises and conjectures without substantiating the additions with evidence?

3. Whether the learned ITAT was justified in holding that ex-gratia payment is a perquisite and not a part of the salary for the purpose of computation of addition under Section 24 (1)?

4. Whether on the facts and circumstances of the case, the learned ITAT was justified in holding that provision for gratuity is not an allowable expense under the provisions of Income Tax Ordinance, 1979?

2. To state in brief, the assessee herein is a subsidiary public limited company of Pakistan International Airlines Corporation and carries on the business of operating and managing a hotel at Karachi Airport. The appellant filed income tax returns for the assessment years 1993-94, 1994-95, 1995-96, and 1996-97 along with audited statements of accounts with supporting documents. The appellant received notices under Sections 61 & 62 of the Income Tax Ordinance, 1979 (hereinafter referred to as 'the repealed Ordinance') which was duly responded by producing all the relevant and requisite details. However, the assessing authority (respondent No. 1) rejected the accounts of the appellant and made various additions out of trading account and profit & loss account without specifying and pinpointing the unverifiable and un-vouched occurrences/instances. The appellant challenged the assessment orders before the Commissioner Income Tax (Appeals), who deleted certain additions but overall maintained the orders of the respondent No. 1. The appellant then approached the learned ITAT by filing appeals but he faced similar fate under the impugned order.

3. Mr. Ammar Athar Saeed, the learned counsel for the appellant, submits that the appellant has produced all the books of accounts with supporting documents and when complete books were produced, it becomes mandatory for the assessing authority to check and pinpoint the instances of un-vouched and unverifiable accounts. He points out that the assessing authority has not followed the provisions of Section 62 of the repealed Ordinance properly, as such he has not discharged his part in accordance with law. According to him, after scrutiny of the books, it was not justifiable to make add-backs on the basis of assumptions and conjectures. He further submits that the learned ITAT has to disclose the reason for declaring ex-gratia payment as a perquisite and not a part of the salary so also holding that provision for gratuity is not an allowable expense. In support of his above contentions, he relied upon the cases of Messrs Ghazi Tanneries Ltd vs Commissioner Income Tax (2011 PTD 2161) and Messrs Bilz (Pvt) Ltd vs Deputy Commissioner Income Tax (2002 PTD 1).

4. Dr. Shahnawaz Memon, the learned counsel appearing for the department, while supporting the impugned order submits that the assessment order, as well as subsequent findings, were proper. According to him, instances were quoted by the assessing authority and after going through the assessment orders, he refers to few occurrences mentioned in the orders. He submits that the add-backs were made on the basis of some shortfalls on account of past history also as previously the same were never challenged.

5. We have given anxious considerations to the submissions that were made before us and have pondered upon the questions of law placed before us. In this backdrop, the paramount issues raised in the first two questions, according to which it is to ascertain whether the ITAT erred in law in confirming the rejection of the declared accounts and additions to

the income out of expenses charged by the appellant in their books. It is also a considerable point under these two initial questions of law that the mode and style under which the 'add-backs' were made in the case of the appellant were justified or not.

6. Placing heavy reliance upon the case of Messrs Ghazi Tanneries (supra), Mr. Ammar Athar Saeed's submission was that when books of accounts were duly produced in support of explanation of the assessee, the burden shifted upon the Assessing Officer to examine and controvert the explanation given by the assessee from the accounts. According to him, there is no question that the un-vouched expenses should be deleted from the expenses but the same must be pinpointed by the assessing officer. On the other hand, Dr. Shahnawaz contends that the add-backs were made under various heads after pointation of some instances and based on past history as well.

7. We are of the view that the initial burden regarding assessment is upon the assessee or the taxpayer. Such burden is discharged by presenting the books of account and when the books of accounts are produced by the assessee, it becomes obligatory upon the assessing officer to go through the said account books produced by the taxpayer then refute and contradict the same by pinpointing specified instances and occurrences of shortcomings in the books by giving proper reasoning and instances. Whenever books are produced by a taxpayer and vouchers are available, the onus is always shifted upon the assessing authority to rebut the entries by pointing out un-vouched or improper, unverifiable and personal expenses before adding back the same in the income of the assessee/taxpayer. In the present case, the books were not rejected but the expenses, as shown by the assessee/taxpayer, were not accepted as claimed by them. No doubt, the expenses as described by the assessee/taxpayer were not acceptable as a gospel truth and the same

might be added but such addition could not be made on the guesswork under the discretion of the assessing authority or based on the previous history of the taxpayer, when properly maintained books were duly produced by the taxpayer. There is no cavil to the proposition that if the books are found faulty, the same have to be rejected and in such a situation, the entire scenario will be different. Nevertheless, when the books were not rejected and there was only some adjustment in the profit and loss account before making the addition or deletion in expenses/income, it becomes necessary for the assessing officer to substantiate it by giving cogent and convincing reasons and examples. The difference between correction and rejection has been beautifully defined by the Hob'ble Supreme Court in a case reported as Commissioner of Income Tax vs Krudd Sons Ltd. (1994 SCMR 229), wherein it is described as;

> *"Occasion may also arise where although the profit shown in the accounts is not true or correct the Assessing Officer can deduce correct figures from the accounts. If the account books are found to be false and manipulated with a view to suppress the income and profit and the same cannot be deduced correctly the Assessing Officer can reject the accounts."*

8. From the above observation of the Apex Court, it is clear that the assessing officer can construe the correct figures from the accounts for which he is not allowed to use his discretion up to the extent that he may assume the figures under some conjecture and speculation. We are therefore of the considered view that all the 'adds back' in different heads of accounts of expenses were not based upon cogent and convincing reasons; therefore, the same stands deleted in the aforementioned assessment years. Hence so far as questions Nos 1 and 2 are concerned, we reply the same in "NEGATIVE" i.e. in favour of the taxpayer and against the department.

9. So far as the remaining questions about 'ex-gratia' and 'gratuity' are concerned, we have examined the impugned order passed by the learned ITAT and are surprised to see that on this account, the learned ITAT findings are vague and do not convey any reason. We are of the view that it would not be proper to say that the learned AR is unable to persuade us OR the appeal is dismissed on that ground. Regarding that aspect of the case, the tone of the said order is not speaking as such does not convey any reasoning. As per the provision of Section 24-A of General Clauses Act, 1897, even an executive authority is not absolved to give reasons for making the orders. We are of the considered view that such an order cannot be termed as a judicial order within the parameters set by the superior courts regarding a 'judicial order' or 'quasi-judicial order'.

10. The Hon'ble Supreme Court of Pakistan has repeatedly disapproved the tendency of passing orders perfunctorily in those cases, where the valuable rights of the parties are involved. There is a series of judgments of the Apex Court in which it is held that the order, which is not speaking and having no reasoning, is in contravention of the law and not sustainable. In this respect, reliance may be taken from the cases reported as Adamjee Jute Mills Ltd. v. The Province of East Pakistan and others {PLD 1959 SC (Pak) 272}, Gouranga Mohan Sikdar v. The Controller Import and Export and 2 others (PLD 1970 SC 158), Mollah Ejahar Ali v. Government of East Pakistan and others (PLD 1970 SC 173) and Muhammad Ibrahim Khan v. Secretary, Ministry of Labor and others (1984 SCMR 1014).

11. After insertion of Section 24-A in General Clauses Act in 1997, it is not only under the verdict of the juristic opinion but it is also obligatory to all judicial and executive authorities to give reasons in their orders. We are of the view that now such statutory obligation cannot be ignored. In this respect, reliance may be taken from Airport Support Services vs Airport

Manger, Quaid-e-Azam Internation Airport (1998 SCMR 2268), wherein it was held as;

> *"The doctrine has further been recognised and augmented by the recent insertion of section 24-A in the General Clauses Act, 1897, which delares that where a statute confers a power to make any order or to give any direction to any Authority, office or person, such would be exercised reasonably, fairly, justly and for the advancement of the purpose of the enactment. What is more, the order or direction, so far as necessary or appropriate would reflect reasons for its making or issuance and, where the same is lacking, an affectee may demand the necessary reasons, which, in response, would be furnished."*

12. In the light of above discussion, the answers to questions Nos.1 & 2 are given in “NEGATIVE” i.e. in favour of the taxpayer and against the department. Resultantly, all the 'add-backs' made in the assessment orders in all the aforementioned appeals are set aside. So far as the remaining two questions are concerned, the matter is remanded back to the learned Tribunal for considering the same afresh after giving opportunity of hearing to the parties and their after passing an order as per the parameters pointed out in this judgment. The appeal is allowed in the above terms. The questions Nos.3 and 4, therefore, are left unanswered.

13. To fulfil the statutory obligation, the office is directed to send a copy of this order under the seal of the Court to the Registrar, learned Appellate Tribunal Inland Revenue.

JUDGE

JUDGE