IN THE HIGH COURT OF SINDH, KARACHI

I. T. R. No. 755 of 2000

Date	Order with signature of Judge

Present:
Mr. Justice Muhammad Junaid Ghaffar
Justice Ms. Sana Akram Minhas

Applicant:	**M/s. Qazi Carpets, Through Mr. Arshad Siraj, Advocate.**
Respondent:	**The ITO, Service Unit No. 2, Circle 4, Hyderabad, Through Mr. Muhammad Aqeel Qureshi, Advocate.**
Date of hearing:	**04.09.2023**
Date of Order:	**20.11.2023.**

O R D E R

Muhammad Junaid Ghaffar, J: Through this Reference Application, the then Income Tax Appellate Tribunal at Karachi, has proposed the following questions of law for opinion of this Court under Section 136(1) of the Income Tax Ordinance, 1979 (since repealed):

> "1. Whether on the facts and in the circumstance of the case the learned Income Tax Appellate Tribunal was justified in holding that the corrected version of the return, filed on 08.12.87 after rectifying the mistake apparent from the return filed, within the due date, is a 'revised return' within the meaning of the term used under Section 57 of the Income Tax Ordinance, 1979.
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> 2. Whether on the facts and in the circumstance of the case the learned Income Tax Appellate Tribunal was right to hold that corrected version of the return filed which did not enhance the tax paid with the uncorrected return, did not qualify under the Self-Assessment Scheme vide Circular No. 9 of 1987 dated 26th October, 1987."

2. Learned Counsel appearing on behalf of the Applicant has contended that the Tribunal has erred in law and facts while setting aside the order of Commissioner (Appeals) passed in favor of the Applicant as it has failed to assign any cogent reason for not agreeing with the findings of the learned Commissioner (Appeals). According to him, the Applicant had filed its return for total income

under Section 55 of the Ordinance and was qualified under the Self-Assessment Scheme in terms of Section 59 ibid and Circular issued by Central Board of Revenue ("CBR") in this regard. He has further contended that the Applicant had never filed any revised return, and the only correction made was by way of a letter in respect of columns of the Income Tax Form; hence, the order passed by the Income Tax Officer, whereby, the Applicant has been denied the benefit of Self-Assessment Scheme was bad in law. In support, he has relied upon ***Commissioner of Income Tax Vs. Kamruddin Fakhruddin*** **(2001 P T D 623)**.

3. On the other hand, Department's Counsel has supported the order of the Tribunal and has argued that since a revised return does not qualify under the Self-Assessment Scheme, therefore, no exception can be drawn as to the findings of the Tribunal.

4. We have heard both the learned Counsel and perused the record. It appears that the Applicant filed its return of total income for Assessment Year 1987-88 under Section 55 of the Ordinance by declaring its total income as Rs. 122,165/- after claiming a depreciation of Rs. 54,608/-, whereas, in the previous assessment year the total income was shown as Rs. 92,282/- with a claim of depreciation of Rs. 57,668/-. It further appears that the Applicant also made some voluntarily add backs on account of inadmissible expenses of Rs. 6500/- which raised its total income to Rs. 128,665/- and paid an amount of Rs. 12,032/- as tax compared to an amount of Rs. 12031/- paid as tax in the assessment year 1986-87. It further appears that since the income before charging depreciation allowance is to be compared for the purpose of qualification under the Self-Assessment Scheme and immunity from total audit, the Applicant compared income of Rs. 183,273/- in 1987-88 with income of Rs. 149,950/- in 1986-87 i.e. the figures before deduction of the depreciation allowance. It further appears that while filing the Income Tax Return, the Applicant made some mistakes in certain columns of the Return Form inasmuch as in Column 13 of IT 201 net income of Rs. 92,282/- was shown in the assessment year 86-87. However, in Column 1 and Column 10 of the return of income the Applicant was

required to show figure of Rs. 128,665/- as its total income and for that the Applicant wrote a letter to the Income Tax Officer dated 7.12.1987 by explaining the aforementioned facts and enclosed a return form showing the corrected figures of total income in the respective columns of income tax return form. The Assessing Officer treated such request as a revised return with further observations that the return was not filed within the due date including the extended date; hence, the condition precedent as per Para (a) of Para 1 of the Self-Assessment Scheme notified through Circular No. 9/1987 dated 26.10.1987 was not fulfilled and he then proceeded under Section 61 of the Ordinance and passed an Ex-parte order under Section 63 of the Ordinance determining the total income as Rs. 896,467/-. The said order of the Assessing Officer was impugned before Commissioner (Appeals) who vide its Appellate Order dated 8.11.1988 found merit in the submission of the Applicant and held that the letter in question as well as the revised form was not a revised return within the ambit of Section 57 of the Ordinance, and therefore, the order passed by the Assessing Officer was set aside. The relevant findings of the Commissioner (Appeals) to this effect read as under: -

> "Having considered the facts and circumstances of the case and perusal of the returns available on record ***I am convinced that appellant's return qualified for immunity from total audit and the figures shown in the so-called revised return filed on 8.12.1987 where substantially the same as shown in the original return except that correct figures were placed in relevant Columns.*** Thus, the revision was only to the extent of form and not in substance. This is a classic example of the callousness of some of our assessing officers and their failure to do their duty of fulfilling the commitments made by the Department with the tax payer not to harass him on flimsy(sic). Accordingly, I cancel the impugned order passed under Section 63 of the Income tax ordinance and direct the Income Tax Officer to accept the declared income under Section 59(1) of the Income Tax Ordinance, 1979."

5. It further appears that the Department being aggrieved filed an Appeal before the Tribunal who vide its order dated 10.02.1999 was pleased to set aside the order of the Commissioner (Appeals) and at the same time also modified the order passed by the Assessing Officer against which the Department was not aggrieved any further. The relevant findings of the Tribunal's order read as under: -

> 6. We have examined the issue and we feel that the figures of the return income had changed by revising the return. As such the return could not qualify for

> the assessment u/s 59(1) and therefore, it was rightly picked up by the ITO from the self-assessment scheme.

6. Being further aggrieved, the Applicant preferred a Reference Application before the Tribunal by raising the above questions of law and the Tribunal vide its order dated 10.02.1999 agreed with the submissions made by the Applicant and has referred the above questions of law for opinion of this Court.

7. Insofar as the scheme of law as prevalent at the relevant time is concerned, the Applicant was required to file a return of total income under Section 55 of the Ordinance, whereas, Section 59 deals with Self-Assessment Scheme as may be notified by CBR from time to time. Section 59 further provides that a return of total income furnished under Section 55 does not include a return of a total income furnished under Section 57. Section 57 provides a revised return of total income and reads as under: -

> **57. Revised return of total income,-** If any person has not furnished a return of total income as required by, or under, any provision of this Ordinance (hereinafter in this section referred to as 'return') or having furnished a return, discovers any omission or wrong statement therein, he may, without prejudice to any liability incurred by him under any provision of this Ordinance or the repealed Act, furnish a return or a revised return, as the case may be, at any time before the assessment is made.

8. Perusal of the aforesaid provision reflects that if a person having furnished a return, discovers any omission or wrong statement therein, he may, without prejudice to any liability incurred by him under any provision of this Ordinance or the repealed Act, may furnish a return, at any time before the assessment is made. The Assessing Officer while passing his order under Section 61 ibid came to the conclusion that the Applicant had filed a revised return which was done after the extended date of filing of return; hence it was not qualified under the Self-Assessment Scheme and was not immune from total audit as well.

9. Though if there is any return which falls within the ambit of Section 57 of the Ordinance; (a revised return or a return which had not been filed in accordance with the Ordinance) it may not qualify under the Self-Assessment Scheme as excluded under Section 59

ibid, read with CBR Circular No. 9/1987. However, the question before us is that whether writing a letter to the Income Tax Officer while making certain corrections in the columns of the Income Tax Form would *ipso facto* amount to filing a revised return as envisaged under Section 57 of the Ordinance or not. In the present facts and circumstances of this case, we are of the view that the Applicant had not filed any revised return of its total income which could disqualify its claim under the Self-Assessment Scheme. The Applicant had never altered the total amount of income or the tax so payable, and it was only by way of a letter that the Applicant approached the Income Tax Officer by stating that the mistake, if at all, is in respect of placing the correct figures in relevant columns. It had no effect on the liability of tax; nor any income was revised upwards or downwards. Income in both the situations was shown as higher by 20% from the income so assessed in the immediate past assessment year; hence, qualified under the Self-Assessment Scheme. We have not been assisted in any manner that as to how this could be treated as a revision of income; or a revised return, without having any direct impact on the total income of the Applicant. There is no material on record for us to treat the said letter or information furnished to the Income Tax Officer, as being a complete revised return falling within the ambit of Section 57 ibid. It is a matter of admitted position that the figures shown in the original return as well as in the purported revised return were substantially the same, whereas, the revision was only to the extent of form and not any substance as correctly held by the Commissioner (Appeals). Per law settled if there is failure on the part of an assessee to submit documents within a prescribed period of time for availing a Self-Assessment Scheme, either due to circumstances beyond his control or for sufficient grounds, this by itself cannot be made basis to deprive him of the benefit of the said scheme[1]. In essence, the law settled is, that the scheme being initiated for benefit of a tax-payer as well as seeking collection of higher taxes with a minimum increase of 20% of income in favour of the department, has to be

[1] Novitas International v Income Tax Officer (1991 PTD 968)

construed liberally and not strictly, or in the manner as has been done in this case.

10. In view of hereinabove facts and circumstances both the referred questions as above, are answered in ***negative***; in favor of the Applicant and against the Department. Reference Application stands answered and the order of the Tribunal stands set aside, whereas, the order of the Commissioner (Appeals) stands restored. Let a copy of this order be sent to the Income Tax Tribunal (now Inland Revenue Tribunal) in terms of Section 136 of the Income Tax Ordinance, 1979 (since repealed).

Dated: 20.11.2023

J U D G E

J U D G E

Arshad/