

2021 S C M R 437**[Supreme Court of Pakistan]****Present: Maqbool Baqar and Qazi Muhammad Amin Ahmed, JJ****COMMISSIONER INLAND REVENUE MULTAN---Petitioner****Versus****Sh. MUHAMMAD AMIN ARSHAD---Respondent**

Civil Petition No. 2732-L of 2016, decided on 7th January, 2021.

(Against the judgment dated 9.6.2016 passed by the Lahore High Court Multan Bench Multan in T.R. No.26/2013)

Income Tax Ordinance (XLIX of 2001)---

----Ss. 39, 122(5) & 182(2)---Income on account of supplies made to a company--- Amendment of assessment by Commissioner---"Definite information"---Scope--- Respondent-tax payer, who was a commission agent/broker, declared an income of Rs.34,42,374/- on account of supplies to a company; he assessed his income tax as Rs.3,42,437---Deputy Commissioner (Inland Revenue), however, detected receipt of payments through bank cheques far beyond the declared amount, running to the tune of Rs.56,12,36,365---Deputy Commissioner initiated proceedings against the respondent-tax payer under Ss. 122(5)(9) & 111(1) of the Income Tax Ordinance, 2001 ("the 2001 Ordinance"), considering the detection as "definite information" and determined tax liability---Legality---Respondent-tax payer did not deny the payments, the modes thereof and productwise quantum of the purchases--- Respondent failed to substantiate his contention qua business activities with the company, to which it had made supplies, in the light of banking transactions--- Department had rightly determined the income of the respondent under S. 39 of the 2001 Ordinance along with income tax chargeable and penalty consequent thereupon under S. 182(2) thereof---Orders passed by the Commissioner Inland Revenue (Appeals) and the Deputy Commissioner (Inland Revenue) being well within the remit of law were restored---Petition for leave to appeal was converted into appeal and allowed.

Ch. Muhammad Shakil, Advocate Supreme Court for Petitioner.

Sheikh Zafar-ul-Islam, Advocate Supreme Court for Respondent.

Date of hearing: 7th January, 2021.

ORDER

QAZI MUHAMMAD AMIN AHMED, J.---The respondent, a Commission Agent/Broker, declared an income of Rs.34,42,374/- on account of supplies to M/s Shujabad Oil Mills Pvt. Ltd; he assessed his income tax as Rs.3,42,437/-. The Deputy Commissioner Inland Revenue, however, detected receipt of payments through bank cheques far beyond the declared amount, running to the tune of Rs.56,12,36,365/- to set in motion through notice dated 24.9.2012, proceedings

under sections 122(5)(9) and 111(1) of the Income Tax Ordinance, 2001 (hereinafter referred to as "the Ordinance"), considering the detection as definite information and pursuant to a show cause notice determined tax liability vide order dated 18.2.2013 as under:

Income determined under section 39	Rs.56,12,36,365/-
Income Tax Payable @ 25 %	Rs.14,03,09,091/-
Income Tax Deducted as FTR as per Block A	Rs.3,42,437/-

Appeal filed by the respondent before the Commissioner Inland Revenue (Appeals) Multan met with no better fate vide order dated 18.3.2013, however, reversed by the Appellate Tribunal Inland Revenue Lahore Bench Multan (Camp at Multan) vide order dated 16.05.2013, assailed by the Department through Tax Reference No.26 of 2013. The High Court declined to answer the reference in affirmative, vide impugned order dated 9.6.2016, on the ground that in the absence of "any definite information" that too without confrontation to the assessee involving a factual controversy, the Department could not invoke the advisory jurisdiction.

2. Learned counsel for the petitioner contends that the learned High Court failed to consider facts of the case in their contextual backdrop that unambiguously constituted "definite information" within the contemplation of section 122(5) of the Ordinance, duly confirmed by documented transactions through banking channel, additionally verified by no other than the recipient i.e. Messrs Shujabad Oil Mills Pvt. Ltd. The impugned order being slipshod calls for interference, concluded the learned counsel. Learned counsel for the respondent has, however, defended the view taken by the Appellate Tribunal Inland Revenue, by maintaining that refusal by the High Court to decline interference being well within the remit of law did not admit space for a probe into factual controversy.

3. Heard. Record perused.

4. Definite information within the contemplation of section 122(5) of the Ordinance contemplates an assessment in respect of a relevant tax year by the Commissioner, upon satisfaction of the conditions:

- i. any income chargeable to tax has escaped assessment; or
- ii. total income has been under-assessed, or assessed at too low a rate, or has been the subject of excessive relief or refund; or
- iii. any amount under a head of income has been misclassified.

Position taken by the department has a substance inasmuch as the respondent did not deny payments, the modes thereof and product wise quantum of the purchases. Learned counsel for the respondent failed to substantiate his contention qua business activities with Messrs Shujabaad Oil Mills Private Limited in the light of banking transactions. The department has rightly determined the income of the respondent under section 39 of the Ordinance along with income tax chargeable and penalty consequent thereupon under section 182(2) thereof. The learned High Court failed to appreciate the law on the subject and passed the impugned order in a slipshod manner; the same, therefore, cannot sustain; the orders passed by the

Commissioner Inland Revenue (Appeals) and the Deputy Commissioner Inland Revenue being well within the remit of law are restored. Petition is converted into appeal and same is allowed.

MWA/C-2/SC Petition allowed.

;