

TaxHelpline Case No. 191 of 2013

[LAHORE HIGH COURT]

JUDGMENT

SYED MANSOOR ALI SHAH, J.-This judgment will decide T.R. No. 22 of 2012 and T.R. No. 23 of 2012, as identical questions of law and facts arise in these references

2. The question of law raised in this reference is as follows:-

"(1) Whether on the facts and circumstances of the case, but contrary to the section 8 of the General Clauses Act, 1897, the Appellate Tribunal was justified to vacate the order under section 4(4) Workers Welfare Ordinance, 1971 and maintained the CIR (Appeals) for Tax Year, 2010 on the score that section 2(ff) of Workers Welfare Ordinance, 1971 was amended vide Finance Act, 2006 replacing reference to Income Tax Ordinance, 1979 by Income Tax Ordinance, 2001 applicable to tax year 2006 and onward?"

3. Learned counsel for the petitioner submits that respondent assessee was liable for the payment of Workers Welfare Fund ("WWF") under the Workers Welfare Fund Ordinance, 1971 ("WWF Ordinance") but failed to make the payment, as a result thereof notice was issued to the respondent-assessee under section 122(9) read with section 122(5) of the Income Tax Ordinance, 2001, ("Ordinance") on 15-6-2011, and vide amendment order dated 24-6-2011 passed by Deputy Commissioner Inland Revenue respondent assessee was held liable to pay a sum of Rs.1,881,117 as payment towards Workers Welfare Fund. The assessee challenged the said order before the Commissioner Inland Revenue (Appeals) Multan, who vide order dated 20-1-2012 deleted the amount of Workers Welfare Fund charged under section 4(4) of the WWF Ordinance on the ground that at the time of insertion of section 2(38-A) and substitution of section 207 in the Ordinance through

Finance Act, 2010 corresponding amendment was not made in section 2(ha) and section 4(4) of the WWF Ordinance hence, the "Taxation Officer" under the WWF Ordinance as opposed to Officer of Inland Revenue could not initiate the proceeding against respondent assessee. This view was upheld by the learned Appellate Tribunal Inland Revenue Lahore Bench, Lahore, vide order dated 27-6-2012. He further submits that amendment had been brought in section 2(ff) of the WWF Ordinance through Finance Act, 2006 replacing the repealed Income Tax Ordinance, 1979 with the new Ordinance, therefore, the learned Tribunal has erred in deleting the amount of WWF added by the Taxation Officer.

4. The learned counsel for the respondent-assessee submits that though the amendment was brought in section 2 of Workers Welfare Fund Ordinance, 1971, replacing the nomenclature of the repealed Ordinance with the new Ordinance through Finance Act, 2006, no amendment was made in section 2(ha) of the WWF Ordinance, which defines "Taxation Officer". He also submits that the terms "Taxation Officer" is mentioned in section 4(4) of WWF Welfare Fund Ordinance and until and unless the terms "Taxation Officer" is replaced with the "Officer of the Inland Revenue" proceeding could not be initiated under section 4(4) of the WWF Ordinance against the respondent-assessee by the Taxation Officer. He added that the term "Taxation Officer" does not exist in the new Income Tax Ordinance, 2001, He referred to section 2(38-A), wherein the terms "Taxation Officer" is mentioned. He further added that this is material omission and unless legislative amendment is made the Taxation Officer cannot proceed in the matter. He relies on the case of Haji Nasim-ur-Rehman v. Commissioner of Income Tax/Wealth Tax and others (2009 PTD 164) in support of his contention.

5. We have heard the argument of the learned counsel for the parties and examined the record appended therewith.

6. Brief facts of the case are that the return for Tax Year, 2010 did not include the liability under WWF Ordinance. According to the amended assessment order passed by Deputy Commissioner Inland Revenue dated 24-6-2011 under section 122(1) of the Ordinance,

respondent assessee was made liable to pay WWF in the sum of Rs.1,881,117 under section 4(4) of the WWF Ordinance. Against the said order the respondent assessee preferred an appeal before the learned Commissioner Inland Revenue (Appeals), who vide order dated 20-1-2012 deleted the amount of WWF on the ground that the Deputy Commissioner, Inland Revenue had no jurisdiction under the WWF Ordinance to charge WWF under section 4(4) of the WWF Ordinance from the respondent-assessee. Similar view was taken by the learned Appellate Tribunal, Inland Revenue, in the impugned order, dated 27-6-2012.

7. In essence, the legal question that arises in this case is whether after the amendments brought about in section 2 (38-A) and section 207 of the Ordinance, through Finance Act, 2010, wherein the term "Taxation Officer" was substituted with "Officer of Inland Revenue" and in the absence of any corresponding amendments made in section 2(ha) and section 4(4) of the WWF Ordinance could the Officer of Inland Revenue assess WWF in the case of the respondent assessee? Or could the absence of change in the nomenclature from "Taxation Officer" to "Officer of Inland Revenue" in section 2 (ha) and section 4(4) of the WWF Ordinance, deprive the Taxation Officer to hold the respondent assessee liable for WWF.

8. Perusal of the WWF Ordinance reveals that an amendment was brought about in section 2(ff) through Finance Act, 2006 and the nomenclature of the Repealed Income Tax Ordinance, 1979 was replaced by the Income Tax Ordinance, 1001. Partial amendment was made in the definition of the term "Taxation Officer" given in section 2(ha) to mean a Taxation Officer under the new Ordinance however section 4(4) of the WWF Ordinance remained unchanged.

9. Section 8 of the General Clauses Act, 1897, provides a solution. Section 8(1) is reproduced hereunder:-

Section 8. Construction of the references to repealed enactments.

"(1) Where this Act, or any Central Act or in any Regulation made after the commencement of this Act, repeals and re-enacts, with or

without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.”

10. According to the above section, it is clear that after the repeal of the Income Tax Ordinance, 1979 by Income Tax Ordinance, 2001 reference in any other enactment of the repealed Ordinance or its provisions will be read as the new Ordinance i.e. Income Tax Ordinance, 2001 along with the new provisions. Hence for all practical purposes the term “Taxation Officer” appearing in section 2(ha) will be read as “Officer Inland Revenue” as appearing in the Income Tax Ordinance, 2001. Therefore, the repeal of the Income Tax Ordinance, 1979 does not absolve the respondent-assessee of his liability under the WWF Ordinance, simply on the pretext that appropriate amendment was not made in the nomenclature of the “Taxation Officer” in section 2(ha) or section 4(4) of the WWF Ordinance. The case law relied upon by the learned counsel for the respondent proceeds on a different legal and actual plane and has no application to the present case.

11. For the above reasons, the question of law raised before us is answered in negative.

12. Disposed of.

13. Office shall send a copy of this order under the seal of the Court to the learned Appellate Tribunal Inland Revenue as per section 133(5) of the Income Tax Ordinance, 2001.

Disposed of

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