

# TaxHelpline Case No. 143 of 2014

## INLAND REVENUE APPELLATE TRIBUNAL

I.T.A. No.874/LB of 2012, decided on 7th March, 2014.

*Before Ch. Anwaar ul Haq, Judicial Member*

**Ms. Shabana Aziz, D.R. for Appellant. Nemo for Respondent**

**C.I.R., ZONE-VI, R.T.O., LAHORE**

**Vs.**

**SANAWAR HUSSAIN, SHEIKHUPURA**

### ORDER

**CH. ANWAAR UL HAQ (JUDICIAL MEMBER).**---The titled appeal pertaining to tax year 2006, has been preferred at the instance of Revenue, calling in question the impugned order dated 14-3-2012, passed by the learned CIR(A), Lahore on the following ground:--

"That the learned CIR (Appeals-IV) Lahore has no power to remand back the case to the Assessing Officer for de novo proceedings."

2). At the time of hearing it was pointed out by the Court Clerk that today an application for adjournment on behalf of the respondent has been received through fax which is signed by one Ms. Maleeha Athar, Advocate stating that she could not prepare the case due to shortage of time and prayed for adjournment of the case for some other date.

3). Rule 27 of the Appellate Tribunal Rules, 2010 provides that the Tribunal may, if sufficient cause is shown, adjourn the hearing of appeal or application on a request being made by the party or authorized representative and no request for adjournment sent through post or fax may be entertained. Since no one on behalf of the respondent was appeared at the time of hearing. Hence the application seeking adjournment is refused and I proceed the case ex parte under Rule 22 of the ATIR Rules, 2010 and decide the case on merits on the basis of available record.

4). Briefly stated, the relevant facts in brief are that taxpayer, an individual, deriving income from Oil Lubricant business filed his return declaring income at Rs.102, 000 which was deemed to be treated as an assessment in terms of section 120 of the Income Tax Ordinance, 2001. Subsequently, the department received an information, that the taxpayer had purchased a motor-vehicle for a total consideration of Rs.318,427 in the period relevant to tax year 2006. Accordingly, the assessing authority issued statutory notices for furnishing of certain information/ documentation in order to probe the sources of investment but allegedly no response was made by the taxpayer. Consequently, the assessing authority amended the assessment for the tax year 2008 under section

122(1)(5) and made addition under section 111(1)(b) amounting to Rs.906,800. Being aggrieved, the taxpayer went in appeal before the CIR(A) and assailed the treatment meted out at assessment stage. The learned CIR(A) observed that the order has been passed without providing adequate opportunity of being heard to the taxpayer and remanded the case to the assessing authority for de novo proceedings in the following words:--

"In view of the above, it would meet the ends of justice if the impugned order passed by the Assessing Officer under section 122(1)(5) of the Ordinance dated 7-10-2010 is remanded back to the assessing officer, for which the attending AR has given his consent, for de novo proceedings in the light of facts discussed above and with the directions to consider the evidence furnished by the taxpayer, provide adequate opportunity of being heard to the appellant and then pass a speaking and a judicious order in accordance with law."

5). Learned DR on behalf of the appellant/revenue argued the case in the light of grounds of appeal. She agitated that the order passed by the learned CIR (A) is contrary to law and facts of the case and vehemently urged for vacation of the same and restoration of the order passed by the assessing officer. No one is present on behalf of the respondent/taxpayer to controvert the arguments advanced by learned DR.

6). I have heard the arguments put forth by the learned DR and have carefully gone through the available record. It reveals that proper opportunity, as envisaged under the law, seems to be not accorded to the taxpayer to explain his case by the concerned assessing officer. In order to ascertain that the taxpayer has sufficient sources to make investment for purchase of motor-vehicles the assessing authority is best placed to verify the genuineness of the documentary evidences available with the taxpayer. Under such circumstances, I feel that learned CIR (A) has rightly remanded the case to the assessing officer for de novo proceedings. I find no reason to disturb the same. Further, it is strictly directed that every effort should be made to engage the taxpayer in the proceedings and matter be decided in accordance with law. It is also directed to the taxpayer to cooperate with the department in the proceedings in his own interest.

7). As regards the department's objection regarding learned CIR (A)'s jurisdiction to remand the case. I find that this issue has already been elaborately resolved by this Tribunal in the judgment bearing Nos. 420 and 421/LB/2009 dated 1-12-2009. Further, in terms of section 132(3) of the Income Tax Ordinance, 2011, read with Rule 28 of the Appellate Tribunal Inland Revenue Rules, 2010, the Tribunal is fully empowered to remand the cases to the competent authority, as it may deem fit.

8). The departmental appeal stands dismissed accordingly.

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