Taxhelpline Case No. 146 of 2013

[INLAND REVENUE APPELLATE TRIBUNAL]

I.T.As. Nos.1103 and 1105 of 2012, decided on 11th October, 2012

Before Javaid Masood Tahir Bharti, Chairman and M.B. Tahir, Accountant Member 5

Shoaib Ahmed Sh. for Appellant. Farrukh Majeed, D.R. for Respondent

Messrs RAMZAN STEEL INDUSTRIES, Proprietor Khalid Mahmood, Gujranwala
vs
COMMISSIONER INLAND REVENUE (APPEALS), R.T.O., GUJRANWALA

ORDER

The titled appeals pertaining to Tax Years 2009 and 2010 have been preferred at the behest of taxpayer against the impugned order dated 2-8-2012 passed by the learned CIR (Appeals), Gujranwala.

2. Briefly stated, the relevant facts are that the annual turnover of the taxpayer for the year under consideration exceeds 50(M). Through Finance Amendment Act, 2008 AOPs having turnover of Fifty Million rupees or above in tax year 2007 and onward falls in the definition of "Prescribed Person". The taxpayer being a withholding agent was obliged to deduct Income tax and deposit into government exchequer as required under section 153(1)(a) of the Income Tax Ordinance, 2001 which it failed to do so. The assessing authority issued different letters requiring the taxpayer to provide party-wise details and evidence of tax deduction on raw material purchased locally during the period relevant to tax year 2010, but no compliance was made. Finally default for non-deduction of tax

being established. The taxpayer was treated as taxpayer in default for non-deduction of tax under section 153 of the Income Tax Ordinance, 2001 and total tax under sections 161/205 of Income Tax Ordinance, 2001, was charged at Rs.15,602,836 and Rs.11,663,029 respectively. Being aggrieved, the taxpayer went in appeals before the CIR (Appeals), who vides order dated 16-2-2012, dismissed the same by upholding the orders under sections 161/205 of the Income Tax Ordinance, 2001 passed by IRO.

3. The learned AR for appellant has vehemently contended that the assessing authority has passed the impugned orders without taking into consideration the facts of the case. It was argued that the orders passed under sections 161/205 of the Income Tax Ordinance, 2001, in a causal and mechanical manner without appraisal of the facts of the case and conscious application of mind without examination of record and returns of the taxpayer. Secondly, the A.R. of the taxpayer contended that orders passed under sections 161/205 was also illegal as the status of the Taxpayer during the years under consideration, was that of individual and not of AOP as return for Tax Year 2009, available on record had been filed in the status of individual and the returns of tax years 2009 and 2010 were also signed by Mr.Khalid Mahmood, as sole proprietor and was shown as owner of 100% shares of capital investment in the returns and, therefore, provisions of section 153(7)(h) of the Income Tax Ordinance, 2001, did not apply in the case of the appellant for Tax Year 2009, as well as Tax Year 2010, and the status in the returns for tax years 2009 and 2010 as AOP was indicated due to compulsion of e-filling owing to the technical reason of delay caused by the PRAL authorities regarding change in constitution and particulars of status in spite of application which could not blamed to Tax Payer to that effect.

4. The learned AR of the taxpayer has stressed upon the status of taxpayer as an individual and not of AOP. In support of his contention, he has produced copies of returns filed manually for tax years 2009 and 2010 being evidence showing status of individual. Further, he placed before us the copies of returns which were e-filed with the NTN No.1620345-3, having status of individual, Dissolution Deed, affidavits of the Taxpayer as well as of his disassociating

partners namely Mr.Aman Ullah Bashir, Khalil Ahmed, Malik Bashir Ahmed and Muhammad Shafique are working separately and independently in Gujranwala, since 1st July, 2008, and Certificate issued by the Gujranwala steel miter and Re-rolling Mills Association, Gujranwala.

5. On the contrary learned DR has strongly supported the orders of authorities below and contended that the status of taxpayer is of AOP and before the CIR(A) as well as before this Tribunal he has changed his stance. He argued that, if the AOP was dissolved than the intimation under section 117 of the Income Tax Ordinance, 2001, is mandatory within fifteen days of its dissolution and taxpayer being an AOP is a prescribed person who was required to deduct tax under section 153(7)(h) of the Income Tax Ordinance, 2001.

6. We have heard the arguments put forth by the both the learned representatives of both sides and have carefully gone through the available record. After due consideration, we find that main dispute between the taxpayer and the revenue is the determination of status of taxpayer either of individual or AOP. A perusal of the returns along with other connected documents show that the returns filed by the taxpayer for the Tax Years 2009 and 2010 are of Individual not an AOP. The learned AR of the Taxpayer invited our attention to the NTN of the returns manually as well as e-filled is No.1620345-3, whereas the NTN shown in the impugned order of CIR and IRO is 2124376 which are entirely different. We have also observed that the appellant used the status of AOP for e-filing of returns due to his compulsion because the department did not incorporate the status of individual in e-portal system till Tax year 2010.

7. The learned AR of taxpayer has further submitted that the intimation regarding closure of business 117 of the Income Tax Ordinance, 2001, was not necessary because that section pertains to discontinuation of business whereas, in the case of taxpayer the business was never discontinuated rather change took place in the constitution of business status of taxpayer so the provisions of section 117 of the Income Tax Ordinance, 2001, are not applicable

to the taxpayer. The learned AR for the taxpayer categorically contended before us that the provisions of section 153(7)(h) are not attracted in the instant case because taxpayer is an individual not AOP, whereas, section 153(7)(i) is inserted through Finance Act, 2010, which is applicable to individual relevant for the Tax year 2011.

8. In our considered view, the contention raised by the AR for the taxpayer carry much weight to establish his status being of an individual. The lower authorities below have not applied their judicious mind rather they proceeded to pass orders under sections 161/205 of the Income Tax Ordinance, 2001, in arbitrary, whimsical and technical manner and completely brushed aside the solid material/evidence provided by the taxpayer for determining his status. In such scenario, we are in line with arguments of the AR of the taxpayer and have no ambiguity in our mind to declare the taxpayer as an individual who is not obliged to deduct tax under section 153(7)(h) or (i) of the Income Tax Ordinance, 2001, for the year under consideration. Resultantly the order of CIR (Appeals) is vacated and the orders passed under sections 161/205 by the assessing authority are hereby annulled.

9. The appeals of the taxpayer succeed in the manner as indicated above