

1/30/09 Attn: Mr. Masood / UNED

35715272

APPELLATE TRIBUNAL INLAND REVENUE,
LAHORE BENCH, LAHORE.

ITA No.420/LB/2009
(Assessment Year 2001-02)
ITA No.421/LB/2009
(Assessment Year 2002-03)

CIT, Legal Division, LTU, Lahore.

Appellant

Versus

M/s. Crescent Steel & Allied Products Ltd. Lahore
(NTN-0683821-1)

Respondent

Secretary(Lit)

Secretary(Lit)



Applicant by : Mr. Muhammad Asif, DR
Respondent by : None

Date of hearing : 01.12.2009
Date of order : 01.12.2009

ORDER

These two appeals have been filed by the department against the consolidated impugned order of the CIT(A-I) Lahore dated 30-03-2009 on the following grounds:

TAX YEAR 2001-2002

1. That the learned CIT(A) was not justified in reducing the disallowance of expenses on account of foreign tours of directors from Rs.1,464,119/- to Rs.1,000,000/- without cogent reasons.
2. That the learned CIT(A) was not justified in directing to allow tax credit at Rs.54,612/- after due verification, without any valid reasons as the power of set-aside by CIT(A) has already been withdrawn vide Finance Act 2005.

FBR e-Dox No
Received in M(L) Office on

Signature
16/12/09

Signature

3. ITA No.420 & 421/LB/2009

4. That the learned CIT(A) was not justified in directing to allow rebate on account of donations paid to approved institutions after due verification without bringing any material evidence on record as the power of set-aside by the CIT(A) has already been withdrawn vide Finance Act 2005.

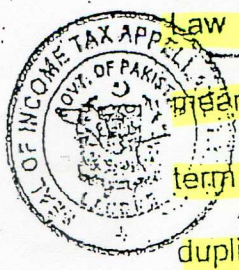


The learned DR states that the relief allowed is without reason. The assessing officer had taken due care and determined the expenditure of foreign tour after proper confrontation as well as after determining the nature of the assessee activity abroad. The CIT(A) while reducing the amount has not given any consideration to the efforts done by the assessing officer.

Record perused and learned D.R. heard.

It is evident from the order of the CIT (A) that the assessing officer had made the addition on hypothetical basis. His presumption remained that personal element in the said tour cannot be ruled out. The CIT(A) has restricted the addition to Rs.10,00,000/- and Rs.20,00,000/- respectively for the two years from Rs.14,64,119/- to Rs.26,81,463/- by substituting his estimate. Since it is one estimate against another in which not much has been discussed by either of the two officers reversion to the

the subordinate forum or set aside it for re-consideration is unfounded. Even otherwise, the interpretation of the department of the term 'set aside' is not correct. It is a synonymous term to 'annul' which is evident from the Black's Law Dictionary. In the said Dictionary the term 'set aside' means to 'annul or vacate judgment'. The withdrawal of this term from Section 129 presumably is removal of the duplication. There is, therefore, no reason for the department to say that the CIT (A) cannot set aside/remand the case. The direction given by the CIT (A) even after remand is practically another chance given to the department to verify the record of the assessee. It obviously means it can be rejected if the taxpayer defaults in his duty.



Similar is the position in respect of the other ground. The direction is to verify the claim of the assessee with regard to the tax credit and allow the same should not have been considered as an adverse order. It has not caused any prejudice to the department.

The appeal is dismissed:

- sd -

(KHAWAJA FAROOQ SAEED)
Chairperson

- sd -

(MAZHAR FAROOQ SHIRAZI)
Accountant Member

Copy of the bench order forwarded to
 1. The Appellant, M/s. Crescent Steel Applied
 2. THE CIT, Products LTD., Karachi.
 By order