

IN THE APPELATE TRIBUNAL INLAND REVENUE,  
LAHROE BENCH, LAHORE

ITA No.1057/LB/2010  
(Tax year 2006)

The CIR (RTO), Sialkot. Appellant

Versus

Mr. Muhammad Yasin S/o Sadiq Ali, Respondent  
Through Mst. Shehnaz Kausar W/o  
Muhammad Yasin (Agent), Noor Kot,  
Shakargarh. N.T.N.59-Audit-04-TR-263

Appellant by : Mrs. Nawal Sheikh, D.R  
Respondent by : None

J328  
24/6/12

Date of hearing : 09.09.2011  
Date of order : 02.11.2011

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HRC/13  
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ORDER



This appeal has been filed by the Revenue against the order of the CIR(Appeals) dated 04.12.2009, whereby he annulled the order passed by the taxation officer u/s 121(1)/129 of the Income Tax Ordinance, 2001 on 30.06.2009.

2. Facts leading to the instant appeal, briefly stated, are that the department received information to the effect that the taxpayer purchased a property measuring 5 1/2 marla for a consideration of Rs.770,000/- on 07.12.2004. Proceedings were, therefore, initiated by the concerned taxation officer through issuance of statutory notice u/s 114(4) of the Income Tax Ordinance, 2001 which

remained unresponded. Another notice issued u/s 111(1)(b) of the Income Tax Ordinance, 2001 requiring the taxpayer to explain sources of investment met similar fate. Accordingly the taxation officer passed assessment order u /s 121 of the Income Tax Ordinance, 2001 on 26.05.2007, whereby investment of Rs.770,000/- was treated as concealed income in terms of section 111(1)(b) of the Income Tax Ordinance, 2001. Order of the taxation officer was contested in appeal before the CIR(Appeals) Gurjanwala, who vide his order dated 22.08.2007 annulled the assessment for the following two reasons:-



- i) The taxpayer Mr. Muhammad Yasin was a non-resident who, because of non-service of statutory notices, could neither respond to them nor could he attend the proceedings initiated against him. The CIR(A) held that it was obligatory on the part of the taxation officer to appoint a representative for the purpose of conducting proceedings in terms of section 172(3)(f) of the Income Tax Ordinance, 2001. This requirement of law was allegedly not fulfilled by the taxation officer.
- ii) Addition u/s 111(1)(b) of the Income Tax Ordinance, 2001 was made in the tax year 2005 which was not in accordance with the provisions of section 111(2) of the Income Tax Ordinance, 2001. According to the CIR(Appeals) the said addition could be made in the tax year 2006 whereas the addition had been made in the tax year 2005.

3. After the annulment of assessment order passed u/s 121 of the Income Tax Ordinance, 2001 proceedings were again initiated by the taxation officer. During the course of these proceedings the taxpayer's wife Mst. Shahnaz Kausar (her real name is Shaheena Kausar) was appointed as agent of the taxpayer in terms of 172(3)(f) of the Income Tax Ordinance, 2001 vide order dated 20.06.2009. Further proceedings i.e. issuance of notices u/s 114(4) and 116(1) of the Income Tax Ordinance, 2001 were also conducted in her name. These notices issued from time to time, however, remained uncomplied with. Accordingly notice u/s 111(1)(b) of the Income Tax Ordinance, 2001 dated 22.06.2009 asking the wife of the taxpayer to produce evidence with regard to the sources of investment was issued but it also remained unresponded. Resultantly, the taxation officer finalized the assessment at the income of Rs.770,000/- by treating the investment made in the property as concealed income in terms of section 111(1)(b) of the Income Tax Ordinance 2001.



4. Being aggrieved the taxpayer filed appeal before the CIR(Appeals) Gujranwala, who vide his impugned order annulled the assessment order for lack of proper service of statutory notices as a result of which the

taxpayer had been deprived of opportunity of being heard. The learned first appellate authority also held that after the annulment of the original assessment order by the CIR(Appeals) in the earlier round of appeal, the taxation officer was not competent to initiate the reassessment proceedings and the only course open to the department was to file appeal before the Tribunal to get the order of the taxation officer set aside in order to assume jurisdiction for initiating reassessment proceedings. Now the Revenue feeling dis-satisfied has come up in appeal before us.



5. Mrs. Nawal Sheikh appeared on behalf of the Revenue, whereas none attended on behalf of the taxpayer. We, therefore, decided to dispose of the appeal with the help of record and assistance of the learned DR.

6. From the perusal of the impugned order it appears that the learned first appellate authority was under the impression that the taxation officer had no jurisdiction to take up the reassessment proceedings because his predecessor (CIT-A) had annulled the assessment order instead of setting it aside. This view is not correct because when an assessment order is annulled, it ceases to exist ab initio, meaning thereby that all the proceedings taken in connection with the passing of the annulled order

also disappear thus leaving the case at the stage at which it was before the commencement of the proceedings which led to the passing of the order annulled in appeal. In such a situation the taxation officer was fully competent to initiate the proceedings for assessment provided they were within the period of limitation provided in law for initiation and finalization of the proceedings.

For this reason the finding recorded by the CIR(Appeals) to the effect that the taxation officer, after the annulment of the order, was not competent to take up reassessment proceedings is not based upon correct appreciation of law and therefore, vacated. It is held that assumption of jurisdiction by the taxation officer after the annulment of the order by the first appellate authority, did not suffer from any legal infirmity.



7. We, however, concur with the learned first appellate authority to the extent that proper service of notice is a sine qua non for assumption of jurisdiction. In the instant case statutory notices were served on some lady Mrs. Shahnaz Kausar, whereas the name of non-resident taxpayer's wife is Mrs. Shaheena Kausar. Since service of statutory notices is not in accordance with law, subsequent proceedings and assessment on the basis of such notices are also not sustainable.

8. For reasons recorded supra annulment of the assessment order by the learned first appellate authority is upheld.

9. The departmental appeal fails.



Sd/  
( MUHAMMAD NAWAZ BAJWAH )  
Judicial Member

Sd/  
( ABDUL RAUF )  
Accountant Member

Nov. 11/17-22  
Musafir

Copy of the bench order forwarded to

- 1. The Appellant.....
- 2. THE CIT. .... RTO Siakhot.

By order  
*[Signature]*  
Assistant Registrar 10/04/12  
Income Tax Appellate Tribunal  
Lahore.