HCJD/C-121

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

I.T.R. No.60 of 2015

Commissioner Inland Revenue, Islamabad
Versus
M/s Khudadad Heights, Islamabad

Applicant by : Sh. Anwar-ul-Haq, Adv.

Respondent by : Sardar Abdul Wahab, Adv.

Date of Hearing : 14.11.2023

Babar Sattar, J:- This reference emanates from the order of the learned Appellate Tribunal Inland Revenue, Islamabad (**"Tribunal"**) dated 13.11.2014 pursuant to which it was held that the tax department possessed no definite information for purposes of section 122(5) of the Income Tax Ordinance, 2001 **("2001 Ordinance")**.

2. Learned counsel for the tax department submitted that the Tribunal had erred in not considering the merits of the case and by dismissing the appeal of the tax department on the basis that the department did not possess definite information. He submitted that the law in relation to definite information had been clarified by the Supreme Court in ***Commissioner Inland Revenue, RTO, Rawalpindi Vs. Messrs Khan CNG Filling Station, Rawalpindi (2017 SCMR 1414)*** and the finding of the Tribunal that there existed no definite information with the department was erroneous. The Commissioner Inland Revenue had sought the bank statement from the taxpayer and it was on the basis of entries in the bank statement that the Commissioner issued a show cause notice to the taxpayer in

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exercise of authority under section 122(5) of the 2001 Ordinance, as in view of the law laid down in ***M/s Khan CNG Filling Station*** bank statements were to be treated as definite information.

3. The learned counsel for the respondent submitted that the Commissioner (Appeals) had set aside the demand generated by the reassessment order dated 30.04.2011 on the basis that the respondent had successfully provided complete explanation to reconcile how advances had been received from customers and how reimbursements had been made to clarify the entries in the bank statement. He submitted that the Commissioner (Appeals) had set aside the entire demand generated against the respondent in view of the clarifications together with record produced by the taxpayer before the Commissioner (Appeals) even though the Commissioner (Appeals) had not agreed with the contention of the taxpayer that the tax department possessed no definite information to order reassessment of the taxpayer. He submitted that the Tribunal correctly concluded that entries of the bank statement, which were comprehensively explained to Commissioner (Appeals), did not constitute definite information for purposes of Section 122(5) of the 2001 Ordinance.

4. A perusal of the order of Commissioner (Appeals) establishes that the Commissioner (Appeals) set aside the entire demand generated by the Commissioner Inland Revenue against the taxpayer on the basis that the taxpayer by virtue of the record adduced before the Commissioner (Appeals) had

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been able to reconcile all entries in the bank statement and explain how advances were received from customers for purposes of construction of the project and how refunds were issued to customers. It was on such basis that Commissioner (Appeals) concluded that all entries in the bank statement of the taxpayer could not be treated as revenue that was to be offered up for taxation in the form of income. The Tribunal in Para 06 of its order noted that, *"we are also convinced that the actions of Commissioner Inland Revenue (Appeals) of deleting the addition in his order is legally justified."* In other words the Tribunal even on the merits of the case endorsed the findings of fact made by Commissioner (Appeals) while upholding the order of the Commissioner (Appeals) with regard to the deletion of the demand generated by the tax department against the taxpayer. We find that this is in itself sufficient to dispose of this reference as the decision rendered by the Tribunal confirms the factual findings made by Commissioner (Appeals), the conclusion of which was that the demand generated against the taxpayer was not sustainable as the taxpayer had provided satisfactory explanation for the tax return filed which was the deemed assessment for purposes of the 2001 Ordinance.

5. The Tribunal further held that the tax department was not in possession of any definite information for purposes of section 122(5) of the 2001 Ordinance. Learned counsel for the tax department has failed to convince us that this finding suffers from any infirmity. The law laid down by the Supreme Court in ***M/s Khan CNG Filling Station*** is of no help to the applicant in the instant case.

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6. Let us revisit the jurisprudence that has been evolved by the Supreme Court enumerating the scope and meaning of definite information with a view to understanding the law as laid down in ***M/s Khan CNG Filling Station***. The words "definite information" were used in Section 65(2) of the 1979 Ordinance and Section 122(5) and 122(8) of the 2001 Ordinance. Both the 2001 Ordinance and the 1979 Ordinance have used "definite information" in identical contexts and for this reason the jurisprudence produced under 1979 Ordinance has been relied upon in interpreting the concept for purposes of the 2001 Ordinance. The seminal decision of the Supreme Court enumerating the meaning of "definite information" was ***Income-Tax Officer and Another V. M/S. Chappal Builders (1993 PTD 1108)***. In the case, the department reopened the assessment of the taxpayer on the ground that the purchase price of the plots as declared by the taxpayer was much lower than the actual price of the plots. The material relied upon by the department was the price of the plots in the same locality which was higher than the purchase price of the plots of the taxpayer. Supreme Court held that higher price of the plots in the same locality did not fall within the definition of "definite information":

> *"The expression "definite information", and similar other expressions used in the above-noticed provisions or other related provisions certainly meant much more than mere material so as to cause a reasonable belief or even such evidence which might lead to a definite belief. Unless there is definite direct information and there is no further need to put the said definite information to trial by putting in further supporting material the process of self-*

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assessment could not be reopened. In this case in order to establish through so-called 'definite information', the department had to rely upon further reasoning in order to clothe their information with credibility what to talk of definiteness…definite information in the context of the law under discussion could not mean mere difference of opinion or further reasoning or other exercise of logic or even drawing of conclusions."

7. The scope of "definite information" then came up before the Supreme Court in ***Messrs Central Insurance Co. and Others V. The Central Board of Revenue, Islamabad and Others* (1993 SCMR 1232).** The taxpayer had assessment finalized under Section 25 of the 1979 Ordinance. Upon receipt of a circular from the Central Board of Revenue, the department reopened the assessment under Section 65 of the 1979 Ordinance. The content of the circular furnished a different interpretation of the provisions of the 1979 Ordinance and as a consequence the taxpayer was found liable for further tax. The Supreme Court held that a different interpretation by the department or by any other administrative body of a provision of law did not amount to "definite information". It was also held that:

"if an assessee discloses all the material facts without any concealment and the assessment has been consciously completed by the Income Tax Officer, in such a case in the absence of discovery of any new fact which can be treated as a definite information, there cannot be any scope for reopening of the assessment under the provisions of section 65 of the Ordinance on the grounds referred to in clause (a) or (b) of subsection (1) of section 65. In other words, any change of opinion on the basis of

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the same material by the Income Tax Officer will not warrant pressing into service section 65 (1) of the Ordinance."

8. It was clarified in ***Messrs Central Insurance Co.*** that "guess, gossip or rumour" cannot be termed as definite information. The ratio of ***Messrs Central Insurance Co.*** was reiterated in ***Messrs E.F.U. General Insurance Co. Limited V. The Federation Of Pakistan And Others***. ***(P L D 1997 Supreme Court 700)***. The facts that emerged in ***Inspecting Assistant Commissioner And Chairman, Panel 20 Companies Versus Pakistan Herald Ltd*** **(1997 S C M R 1256)** were that the taxpayer had completed its assessment under Section 62 of the 1979 Ordinance. The department issued notices under Section 65 and reopened the assessment on the ground that Section 34-A had escaped notice and that on the applicability of the said provision the liability of the taxpayer was higher than what had been assessed previously. The Supreme Court held that:

"….In the present case, there is no concealment of facts. Everything had been declared right from the very beginning and even after 1980 the legal position did not change as section 34 A was not applicable to the respondent. In these circumstances, the opinion of the petitioners that a definite information has been received as it was discovered that section 34 A was ignored, was completely misconceived and based on misappreciation and misapplication of law. Where an assessment has been framed consciously by applying mind and there being no concealment of facts by the assessee, discovery of the fact that a provision of law had been ignored or not applied, cannot be called a definite information."

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9. The facts before the Supreme Court in ***Commissioner Inland Revenue vs Messrs Khan CNG Filling Station (2017 S C M R 1414)*** were that the taxpayer was involved in the sale of Compressed Natural Gas (CNG). The Oil and Gas Regulatory Authority (OGRA) employed a formula to convert the volume of natural gas into kilograms of CNG. The department conducted a Section 176 audit of the taxpayer and sought information re the volume of gas provided by Sui Northern Gas Pipeline Limited (SNGPL) to the taxpayer and also the formula of OGRA used to convert the natural gas to CNG along with the price of CNG during the tax years in question. The department then applied the OGRA formula to determine the total quantity of CNG sold by the taxpayer and came to the conclusion that there was a disparity in the consumption of natural gas and the sale of CNG by the taxpayer for the tax years in question. Based on this information the department issued notices to the taxpayer under Section 122(9) read with Section 122(5) of the 2001 Ordinance. The question before the august Supreme Court was whether the OGRA formula constituted "definite information". It was held that:

> *"For the purpose of determining the correct tax liability, any information falling within the ambit of 'definite information' may not by itself produce an answer unless such information is further processed. The use of any process to ascertain something depends upon the type of information and the result that is sought to be obtained. So the process could be a chemical analysis conducted in a laboratory or the application of some mathematical or*

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> *scientific formula or simply the use of a calculator. For example need may arise to apply some formula or method which converts volume into weight or vice versa, miles into kilometers or vice versa. The word 'definite' not only means being certain of something but also means that one knows with certainty that something will happen. In the 9th edition of Oxford dictionary by A.S. Hornby1 the word 'definite' has been defined as "something that you are certain about or that you know will happen."*

10. ***M/s Khan CNG*** therefore qualifies the scope of "definite information" as enumerated in ***Chappal Builders*** and the subsequent decisions by creating a carve out to the requirement that "definite information" is information so definite that it suffices in engendering a reasonable or definite belief without the need for such information to be subjected to further analysis, scrutiny or logical deduction. The Supreme Court clarified in ***M/s Khan CNG Filling Station*** that application of predetermined formula or calculation to definite information that is merely to be inserted into such formula to produce a definite outcome will not fall foul of the definition of "definite information" or the prohibition that such information must not require further processing or assessment.

11. The question of amendment to the scope of definite information brought about by ***M/S Khan CNG Filling Station*** came before the Supreme Court in ***Commissioner Inland Revenue, RTO, Bahawalpur Vs. M/s Bahsir Ahmed (deceased) through LRs*** ***(2021 SCMR 1290)*** and the apex Court clarified that the facts in ***M/s Khan CNG Filling Station*** were different and in such case, *"the precise question was*

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whether a formula for natural gas consumption developed by OGRA and the result obtained from an application of that formula could constitute definite information within the meaning of law". The Court proceeded to find that the tax department was vested with no definite information to reopen assessment proceedings where a demand was generated in exercise of authority under section 111 of the 2001 Ordinance.

12. It is a settled preposition by now that whether or not information constitutes definite information for purposes of section 122(5) of the 2001 Ordinance is to be determined on a case to case basis and no overarching test can be laid down. What is also settled in view of the law laid down in ***M/s Central Insurance Co. and others Vs. The Central Board of Revenue, Islamabad and others (1993 SCMR 1232)*** and ***Inspecting Assistant Commissioner and Chairman, Panel 20 Companies and another Vs. Pakistan Herald Ltd. through Director, Finance and Corporate Affairs (1997 SCMR 1256)*** that merely deriving a different conclusion from an already available set of facts would not amount to "definite information" and mere conjecture or guesswork would also not be treated as "definite information". Information would be deemed to be definite for purposes of Section 122(5) of the 2001 Ordnance where such information engenders and supports the reasonable or definite belief with regard to the outcomes now referred to in sub-clauses (i) or (ii) or (iii) of Section 122(5) without the need to subject such information to further analysis, rationalization, scrutiny or processing (except to the

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extent of limited processing as permitted by ***M/s Khan CNG Filling Station*****.**

13. In the instant case reassessment proceedings were initiated on the basis of bank statement of the taxpayer. In view of the entries reflected in such bank statement the tax department suspected that the income of the taxpayer might be higher than that which was offered up for taxation while assuming that all entries in the bank statement constituted revenue and without taking into account the refunds issued by the taxpayer to its customers as reflected in its tax return. It was the Commissioner (Appeals) that afforded the taxpayer an opportunity to explain the entries in the bank statement and the taxpayer successfully did so which is why the Commissioner (Appeals) then set aside the additional demand generated after reassessment by Commissioner Inland Revenue. The findings of Commissioner (Appeals) itself demonstrated that the basis on which the tax department initiated reassessment proceedings was not definite information. As such basis withered once a meaningful opportunity was provided to the taxpayer to explain the tax return that constituted the original assessment. We therefore find that the Tribunal did not err in concluding that bank statements in and of themselves did not constitute definite information for purposes of section 122(5) of the 2001 Ordinance, as it stood at the relevant time. Consequently, the judgment of the Tribunal doesn't suffer from any infirmity in terms of its finding in relation to lack of definite information.

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14. We answer the question framed for our consideration accordingly. A copy of this order is directed to be sent to the Registrar of the learned Tribunal under the seal of this Court.

(CHIEF JUSTICE) **(BABAR SATTAR)**
JUDGE

Announced in open Court on 28.11.2023.

(CHIEF JUSTICE) **JUDGE**

Approved for reporting.

M.A. Raza

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