

Income Tax Appellate Tribunal

I.T.A. No.104/LB of 2011, decision dated: 30-04-2012, hearing DATE : 6-03-2012

**AUTHOR(S): NAZIR AHMAD, JUDICIAL MEMBER AND KHALID AZIZ BANTH,
ACCOUNTANT MEMBER**

MESSRS QUALITY HOME (PVT.) LTD., LAHORE

VS

COMMISSIONER OF INLAND REVENUE, R.T.O., LAHORE

Irfan Ilyas, FCA for Appellant. Mrs. Humaira Maryum, D.R. for Respondent

Law: Income Tax Ordinance, 2001

Section: 21(l),111(1)(b),122(1)&177

Disallowance of Cost of Plot Purchase

- Key Issues: Taxation Officer added the cost of a purchased plot under Section 21(l), which was meant for expenses in the profit and loss account.
- Decision: The Tribunal held that Section 21(l) did not apply to the cost of goods purchased and deleted the addition, directing the use of Section 111(1)(b) if necessary.
- References: Messrs Farhan Food Industries, I.T.A. No.468/KB of 2010.

ORDER

NAZIR AHMAD (JUDICIAL MEMBER).---The above titled appeal pertaining to tax year 2008 has been filed at the instance of the taxpayer against the appellate order dated 14-12-2010 recorded by CIR(Appeals-II) Lahore, whereby confirmation of order passed under section 122(1) of the Income Tax Ordinance, 2001 (hereinafter called the 'Ordinance') has been agitated.

2. The facts in brief leading to the instant appeal are that the taxpayer, a private limited company, deriving income from the business of real estate, filed return for the year under consideration declaring loss of Rs. (233,529). The case was selected for audit under section 177 by the Commissioner and taxpayer was informed accordingly. During the audit proceedings, it was noted that taxpayer claimed cost of sale of plot, which was purchased on cash basis amounting to Rs.13,00,000. On the basis of the said discrepancy, the order was amended under section 122(1) of the Ordinance by making addition of Rs.13,00,000 under section 21(l) of the Ordinance. Feeling aggrieved, the taxpayer preferred appeal before CIR(A), who also upheld the action of taxation officer.

3. The learned counsel appearing on behalf of the taxpayer has termed the action of both authorities below to be arbitrary and contrary to facts of the case. He has elaborated his view point by maintaining that the taxation officer has grossly erred by invoking provisions of section 21(l) of the Ordinance as the same deal with the expenses made in P L account. Since, the issue pertains to cost of sale of plot, which was made on cash basis, therefore, addition in this regard could only be made by resorting to provisions of section 111(1)(b) of the Ordinance. In order to lend credence to his submissions, he has placed reliance on an unreported judgment of this Tribunal dated 25-10-2010 recorded in I.T.A. No.468/KB of

2010 titled as Messrs Farhan Food Industries, wherein the addition made under section 21(1) of the Ordinance under the head 'purchased' was deleted being not maintainable in the eyes of law. He, therefore, prays for vacation of the orders passed by both authorities below.

4. On the other hand, learned DR has fully supported the orders passed by both authorities below simply by reiterating the basis evolved therein.

5. We have heard the arguments advanced by rival parties and also carefully gone through the relevant record along with case-law referred before us by learned counsel. Before giving our opinion on the issue under consideration, we deem it appropriate to have a glance on the provisions of section 21(I) of the Ordinance, which reads as under:---

Deductions not Allowed

(I) "Any expenditure for a transaction, paid or payable under a single account head which, in aggregate, exceeds fifty thousand rupees, made other than by a crossed cheque drawn on a bank or by crossed bank draft or crossed pay order or any other crossed banking instrument showing transfer of amount from the business bank account of the taxpayer:

Provided that online transfer of payment from the business account of the payer to the business account of payee as well as payments through credit card shall be treated as transactions through the banking channel, subject to the condition that such transactions are verifiable from the bank statements of the respective payer and the payee"

6. From the bare perusal of the above provisions, it can easily be gathered that section 21(I) of the Ordinance can only deal with the expenses debitible to P L account whereas collective provisions of section 21 transpire that the same deal with the expenses debitible to profit and loss account and even if it is to cover trading account then it will deal with only the deductions like rent, wages, fuel, commission, interest, salary (relating to manufacturing cum trading account). In the light of said provisions the purchases, without any shadow of doubt, cannot be termed as deductions. Furthermore, the case-law relied on by learned AR clearly speaks about the issue as under:--

"A plain reading of the titles of the sections 20 and 21 and word used therein i.e. DEDUCTION as well as considering the doctrine of ejusdem generic, we are not inclined to find ourselves in agreement with the learned ACIT or CIR(A), hence orders of both the authorities below are hereby vacated with the direction to delete impugned additions of Rs.60,864.447 made under section 21(I).

Upshot of the all above discussion is that the addition made on account of purchases under section 21(I) is not maintainable in the eye of law and on facts, therefore, the same is directed to be deleted."

7. In the light of above clear-cut provisions of section 21(I) of the Ordinance as well as verdict given by this Tribunal in the above referred judgment dated 25-10-2010 we are also compelled to hold that the provisions of section 21(I) are only applicable to the expenses made in profit and loss account and that the same cannot be invoked for the purpose of making addition on account of purchases. Since, the addition of Rs.13,00,000 has been made by the authorities below by resorting to irrelevant provisions of section 21(I) of the Ordinance on account of purchase of plot on cash basis, therefore, the same is ordered to be deleted. Consequently, the taxpayer's appeal succeeds.

Appeal accepted