2012 SLD Equiv. Citation: **2012 PTD 1535** = = =

Inland Revenue Appellate Tribunal of Pakistan

I.T.A. No.1046/KB of 2011, decided on 29th February, 2012

Before Jawaid Masood Tahir Bhatti, Judicial Member and Shaista Abbas, Accountant Member

Ghulam Murtaza Khoro, D.R. for Appellant. Sayed Muhammad Maraj for Respondent

COMMISSIONER OF INLAND REVENUE, ZONE-IV, LTU
Vs
Messrs PHARMEVO (PVT.) LTD., KARACHI

ORDER

The Department through this appeal has objected against the impugned order of the Learned CIR(A) dated 1-7-2011 on the following grounds:--

(2) That the learned CIR(Appeals-III) was not justified to delete the addition of Rs.547,971 made under section 21(c) of the Income Tax Ordinance, 2001 on account of interest free loan disbursed to the employees.

(3) That the learned CIR(Appeals-III) was not justified to restrict the disallowance of Rs.1,633,929 to Rs.816, 965 made on account of cash expenditure under section 21(l) of the Income Tax Ordinance, 2001 without appreciating the fact that specific instances of payment of expenses in cash exceeding the threshold limit were specifically confronted to the Taxpayer as mentioned in the amended order passed under section 122(1) of the Income Tax Ordinance, 2001.

Without prejudice to above the learned CIR(Appeals-III) has reduced the disallowance from Rs.1,633,929 to Rs.816,956 without any basis and cogent reasons.

(4) That the learned CIR(Appeals-III) was not justified to knock off the addition of Rs.2,046, 663 made on account of Profit and Loss Account expenses disallowed under section 174(2) of the Income Tax Ordinance, 2001 without appreciating the fact that specific instances of discrepancies were specifically confronted to the taxpayer as mentioned in the amended order passed under section 122(1) of the Income Tax Ordinance, 2001.

(5) That the learned CIR(Appeals-III) failed to appreciate that the position of law has been substantially changed after the decision of the High Court of Sindh reported as 2002 PTD 14 (HC Kar). After amendment of WWF Ordinance, 1971 vide Finance Acts, 2006 and 2008 WWF is to be charged on higher of taxable income or the accounting profit for the year. Although after taking into account brought forward losses the taxable income may result into loss but in all situations accounting profit for the year remains unchanged. Therefore, keeping in view the intention of the legislature and the spirit of law, WWF is to be levied on higher of taxable income or accounting profit for the year. The brought forward losses do not impair/debar the levy of WWF on accounting profit for the year.

2. We have heard the learned representatives from both the sides and have also perused the impugned order of the Learned CIR(A), the order passed by the Taxation Officer under section 122 of the Income Tax Ordinance, 2001 and the other available record of the case. Regarding addition made under section 21(c) on account of interest free loan disbursed to the employees which has been deleted by the Learned CIR(A), the Learned DR representing the appellant/department has contended that the addition in this respect has

been made by the Taxation Officer after confronting the Taxpayer on the issue, and as the explanation furnished by the Taxpayer was not satisfactory therefore, the addition was made. He has contended that under subsection (7) of section 13 of the Ordinance, 2001 the difference of benchmark rate as profit on any interest free loans provided to the employees is a perquisite and in this case the Taxpayer has paid interest free loans to the employees which are recoverable in instalments and, as such, the profit on loan as computed at the benchmark rate of 8% for the year under consideration being a perquisite of the employees was taxable under above referred section 13(7) of the Ordinance, 2001. The Learned D.R has contended that the Taxpayer company has failed to furnish evidence in respect of inclusion of such amount of perquisite in the salaries of employees therefore, the Taxation Officer has rightly made the addition in this respect, the amount of loans being inadmissible expense in terms of the provisions of clause (c) of the Section 21 of the Income Tax Ordinance, 2001. Regarding the disallowance made on account of expenditure the Learned D.R. has contended that during the course of audit proceedings, the Taxpayer company furnished details of cash withdrawals made during the year under consideration and on the examination of these withdrawals it revealed that the transactions of amount to Rs.1,9633,929 are made in respect of expenses, which fall within the domain of clause (1) of section 21 of the Income Tax Ordinance, 2001 and as these transactions were made through cash, therefore the expense has been disallowed under clause (1) of section 21 of the Ordinance, but according to the Learned D.R. the Learned CIR(A) without any justification has restricted disallowance to Rs.816,956. Regarding the addition made on account of profit and loss account expenses disallowed under section 174(2) of the Ordinance the Learned D.R. has contended that the vouchers regarding the payments were not furnished before the Taxation Officer and the Taxpayer company failed to furnish the supporting evidence in respect of such amounts of expenses and therefore, the expenses in this regard were treated by the Taxation Officer to be not genuine and were therefore, disallowed. Regarding the issue of Workers Welfare Fund the Learned D.R. has contended that the Learned CIR(A) has deleted the levy without any justification and without considering the fact that the position of law has been substantially changed after the decision of the High Court of Sindh reported as 2002 PTD 14 (HC Kar). He has contended that after the amendment in the WWF Ordinance, 1971 vide Finance Act, 2006 and 2008 WWF is to be charged on higher of taxable income or the accounting profit for the year. He has therefore submitted that the impugned order of the Learned CIR(A) may please be vacated and the order passed by the Taxation Officer may please be upheld.

3. On the other hand the learned counsel representing the Taxpayer is supporting the impugned order of the Learned CIR(A). He has contended that the addition made on account of loan disbursed to employee is without any justification as the Taxation Officer has not considered the fact that total salary of an employee after including markup is below taxable limit, therefore, question of tax deduction on the same does not arise. The learned counsel has pointed out that the Taxation Officer in this case has himself admitted that the interest free loan provided by the Taxpayer company constitutes perquisites in terms of subsection (7) of section 13 of the Income Tax Ordinance, 2001, and these perquisites are taxable in the hand of the employees. He has contended that since the Taxpayer company had provided interest free loan to the employees which are in the shape of perquisites, which otherwise, after inclusion bench mark interest @ 8%, the salaries remained below the threshold of taxable limit. He has therefore of the view that as the Taxpayer was not under obligation to deduct tax thereon therefore there was no justification for the disallowances made by the Taxation Officer invoking clause (c) of section 21 of the Income Tax Ordinance, 2001 which according to him has rightly been deleted by the Learned CIR(A). Regarding the addition made under section 21(l) of the Income Tax Ordinance, 2001 on cash payments, the learned counsel has contended that all the amounts paid were below the threshold limit of Rs.10,000 but these amounts were paid through single voucher. He has contended that admittedly the payments made were below the threshold of taxable limit which fulfils the conditions laid down by law. He has contended that the Taxation Officer has not denied that these expenses were related to the business purposes. According to the learned counsel the Learned CIR(A) instead of deleting the addition has only restricted the addition at 50% of the claim placing reliance on the decision of this Tribunal dated 11-6-2010 in I.T.A. No.44/KB/2010. The Learned

Counsel is also supporting the deletion of addbacks made out of profit and loss expenses on the arguments that as the Taxpayer company in this respect provided books of accounts, vouchers and other relevant documents and there was no justification for these addbacks. He has contended that the Taxation Officer has made the lumpsum addition using of stock phrases without considering the fact that in most of the expenses claimed, the payments were made through cross cheques. Regarding the charge of Workers Welfare Fund the Leaned Counsel has contended that the amendments in the WWF Ordinance, have been made through Finance Act, 2006 and 2008, but the case of the assessee is for the Tax Year 2006 and therefore, these amendments are not applicable in the case of the Taxpayer. According to the learned counsel the learned CIR(A) placing reliance on the decision of the honourable High Court reported as 2011 PTD 2643 (Lah H.C) has rightly deleted the levy of WWF. He has submitted that the impugned order require no interference.

4. We have considered arguments furnished from both the sides and have also perused relevant provisions of law and case-law referred. Regarding the issue of addition made under section 21(c) on account of interest free loan disbursed to the employees we have found that interest free loan has admittedly been provided by the taxpayer company which constitutes perquisite in terms of subsection (7) of section 13 of the Ordinance which, is admittedly taxable but the Taxation Officer without establishing the fact that after inclusion of interest, the salaries of the employees were above threshold of the taxable limit, has made addition in this respect. On the other hand on behalf of the Taxpayer it has been contended that the salaries of the employees remain below the threshold of the taxable limit and therefore the Taxpayer company was not under obligation to deduct tax thereon. We therefore, find no warrant for interference in this respect in the impugned order of the Learned CIR(A) as he has rightly deleted the addition.

In respect of addition made under section 21(l) we have found that the Taxation Officer has no where observed that expenses claimed by the Taxpayer were not related to the business purposes. On the other hand it is contended that most of the expenses are below taxable limit and paid for the purpose of factory petty cash electricity account etc. The Taxation Officer has failed to confront the Taxpayer specifically regarding the claim of the amount exceeding the Taxable limit. We are therefore, of the view that the Learned CIR(A) has rightly restricted the disallowance in this respect to the 50% of the claim. No interference in this respect is therefore required. Similar is the position regarding the additions made out of profit and loss expenses amounting to Rs.2,046,663. Admittedly the Taxpayer in this case provided books of accounts, vouchers and other relevant documents but the Taxation Officer has made lumpsum addition using stock phrases without pointing out the specific heads. The Learned CIR(A) has rightly knocked off addition which requires no interference. Similar is the position regarding the levy of Workers Welfare Fund. The Learned CIR(A) has deleted the charge in this respect for the reason that admittedly the Taxpayers amended income has been determined after setting off the brought forward losses and the WWF charged on amended income for the tax year under appeal cannot be endorsed in view of the judgment of the Hon'ble High Court reported as 2002 PTD 14(H.C. Kar). Regarding the contention of the Learned D.R. that the position of law has been changed, we are of the view that the amendment in the WWF Ordinance, 1971 are through Finance Act, 2006 and 2008 while the case of the present Taxpayer is of tax year 2006 therefore, these amendment will not be applicable in the case of the present Taxpayer. Even otherwise the amendments made through Finance Act has been struck down by the honourable Lahore High Court in a case reported as 2011 PTD 2643 wherein it has been held that WWF being a fee can not be amended, altered or modified through a money bill but require regular legislative procedure under Article 70 of the constitution.

The appeal on this score filed by the department is therefore, also dismissed.

5. The appeal filed by the department is dismissed for the reasons discussed above.