

**BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD AT  
KARACHI  
SINGLE BENCH-I  
APPEAL NO. AT-158/2022**

Assistant Commissioner (Unit-12)  
Sindh Revenue Board SRB,  
02<sup>nd</sup> Floor, Shaheen Complex Building  
M.R. Kiyani Road  
Karachi..... Appellant

Versus

M/s Security Leasing Corporation limited,  
9<sup>th</sup> Floor, Lakson Square Building No. 3,  
Karachi..... Respondent

Date of filing of Appeal: 24.08.2022  
Date of hearing: 16.11.2022  
Date of Order: 15.12.2022

Syed Athar Ali Shah, AC, (Unit-12)-SRB, for appellant.  
Malik Arsalan Ahmed, FCA and Mr. Muhammad Asad, ITP for the  
respondent.

**ORDER**

**Justice <sup>®</sup> Nadeem Azhar Siddiqi:** This appeal has been filed by the Assistant Commissioner (Unit-12), on behalf of Sindh Revenue Board (SRB) Karachi challenging the Order-in-Appeal (hereinafter referred to as the OIA) No. 106/2022 dated 30.06.2022 passed by the Commissioner (Appeals) in Appeal No. 13/2019 filed by the respondent against the Order-in-Original (hereinafter referred to as the OIO) No. 1056/2018 dated 09.01.2019 passed by Mr. Zohaib Athar, Assistant Commissioner, (Unit-12) SRB Karachi.

02. The facts as stated in the OIO were that the respondent having SNTN: 0698203-4 was registered with Sindh Revenue Board (SRB) under the service category of "leasing" classified under the tariff heading

9813.3000, 9813.3010 and 9813.3020 of the Second Schedule to the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as the Act).

03. It was alleged in the OIO that from the perusal of annual audited accounts available with the SRB for the tax year 2015 and 2017 revealed that services provided/rendered by the respondent were taxable under Tariff Heading "9813.3000" of the Second Schedule to the Act read with rule 30 of Sindh Sales Tax on Services Rules, 2011 (hereinafter to as the Rules). It was further alleged that the respondent during the above mentioned tax periods earned taxable income amounting to Rs.541,700/- and Rs.11,468/-; respectively in respect of fees, commission and other charges. It was further revealed that the respondent earned income in respect of operating lease amounting to Rs.4,000,000/- during the tax year 2017, however, it had declared Sindh Sales Tax (SST) amounting to Rs.3,368/- and Rs.58,667/- as its total revenues in its Sindh Sales Tax Returns (SST Returns) during the tax years 2015 and 2017. Accordingly, the respondent had short declared the revenues by Rs.77,887/- and Rs.462,824/- during the tax years 2015 and 2017. The detailed calculation of the short declared Sindh sales tax is mentioned below:-

Head of Operating Revenue	2014-2015 (Rs.)	2016-2017 (Rs.)
Fee, Commission and other charges	541,700	11,468
Operating Lease Income	-	4,000,000
Total Revenue	541,700	4,011,468
Sindh Sales Tax should have been declared @ 15% and 13% (a)	81,255	521,491
Sindh Sales Tax declared (b)	3,368	58,491
Outstanding SST (a-b)	77,887	462,824
Total Outstanding SST		540,711

04. The respondent was served with a Show-Cause Notice (SCN) dated 29.11.2018 under section 23 (1) of the Act to explain as to why SST at Rs.540,711/- should not be assessed and recovered from it alongwith default surcharge under section 44 of the Act. The respondent was also asked to explain as to why the penalties under Serial No. 3 of the Table



under section 43 of the Act should not be imposed for the contravention of the provisions of section 13 of the Act.

05. The respondent through its representative submitted written reply dated 04. 01.2019, which is reproduced as under:-

*"in 2014-2015 Security Leasing Corp sold some vehicles that were booked for staff and earned income of Rs.541,700/-. The gain is not subject to tax on services.*

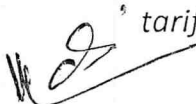
*The income of Rs.4,000,000/- represented reversal of provision of bad debts against overdue lease rental outstanding since 2009. You would appreciate that the services were not taxable in 2009 and therefore the recovery shall not be taxed under Sindh Sales Tax on Services Act."*

06. The Assessing Officer (AO) passed OIO under section 23(1) Of the Act determining the SST at Rs.540,711/- along with payment of default surcharge under section 44 of Act (to be calculated at the time of payment). The AO also imposed penalty of Rs. Rs.240,000/- (being Rs.10,000/- per month) as provided under Serial No. 3 of Table under section 43 of the Act.

07. The respondent challenged the said OIO by way of filing of appeal under section 57 of the Act before Commissioner (Appeals), SRB who partly allowed the appeal of the respondent. The relevant portion of the OIA is reproduced as under:-

*Para 6 (b).....Operating lease rental receivable amount was declared in head of account tiled as Advance, Payments and other receivables at Note "8" of Annual Audited Accounts since FY-2009 to FY-2016 by the appellant. After receiving the payment from auction appellant was declared as Operating Lease Income of Rs.4,000,000/- other operating income' in FY-2017 which was confronted in SCN issued by the respondent (appellant). There is no taxability on 'operating lease income' in FY 2009 under the Act, 2011. Respondent (appellant) has lease bothered to look into the documents provided by the appellant and just gave his submissions arbitrarily.*

*Hence, on basis of above facts, and legal position, I am of view that Sindh Sales Tax cannot be levied on Rs.4,000,000/- under main tariff heading 98.13 (including the sub-headings thereof).*



Para 7.....I hereby, upheld the impugned OIO to the extent of taxability on 'Fee, Commission & other charges' chargeable under category of 'Leasing' covered under tariff heading 9813.3000, 9813.3010 and 9813.3020 read with Rule 30 of the Rules, 2011. The SST amount of Rs.77,887/- (on Rs.541,700/-) is recoverable along with default surcharge under section 44 of the Act, 2011. Penalty in the matter is also upheld, therefore, appellant shall pay Rs.3,894/- (5% of default tax). The appeal stands disposed off accordingly.

08. The learned Assistant Commissioner-SRB submitted as under:-

- i. The appeal was filed against the portion of OIA by which the Commissioner (Appeals) deleted the SST of Rs.520,000/- charged on the value of Rs.4,000,000/- earned by the respondent from operating lease.
- ii. The learned Commissioner (Appeals)-SRB (CA-SRB) erred in holding that the earning from operating lease was during the year 2009 and was not taxable without realizing that the revenue was received during the FY 2016-17 the same was taxable in that fiscal year.
- iii. The payment against the service of operating lease was received during the Financial Years (FY) 2016-2017 and was rightly taxed.
- iv. The earning from operating lease was not receivable during the previous years and the same was earned during FY 2016-2017.
- v. The Commissioner CA-SRB erroneously waived/reduced the 9penalties without any cause and justification.

09. The learned representative of the respondent submitted as under:-

- i. The CA-SRB for valid reason rightly deleted the SST on overdue lease rental which was earned during the year ended 2009 and realized during the FY 2016.2017 after the decree passed by the Banking Court, Karachi in Suit No.1021/2008.
- ii. The services were provided in the years 2009 when this service was not a taxable service and mere receiving the amount in subsequent year is not sufficient to charge SST.
- iii. The respondent had provided all necessary and relevant documents to the AC in support of its contention which were not considered.
- iv. The OIA was compiled with and against an amount of SST of Rs.77,887/- on value of service Rs.541,700/-, default surcharge



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and penalty of Rs.3,894/- imposed under serial No. 3 of the Table under section 43 of the Act an amount of Rs.244,640/- was recovered.

- vi. The AC just after the OIO dated 09.01.2019 without any prior notice recovered an amount of Rs.244,644/- by way of attachment of bank account on 21.01.2019.
- vii. The receivable overdue operating lease amount was deleted from the list of receivables in the subsequent year.
- viii. The access payment of Rs.162,859/- recovered by way of attachment of bank account may please be refunded.
- ix. The department particularly the concerned AC wasted his and other time by filing this frivolous appeal

10. I have heard the learned representatives of the parties and perused the record made available before me.

11. The appeal was filed against the portion of OIA by which the Commissioner (Appeals) deleted the SST of Rs.520,000/- charged on the value of Rs.4,000,000/- earned by the respondent from operating lease during FY 2009 and the amount was recovered during the FY 2016-2017 after the Decree of Banking Court dated 05.11.2009.

12. The perusal of the Decree of Banking Court it appears that the Decree was passed on 05.11.2009 for an amount of Rs.5,342,510/- against M.s Makkah Advertising and Marketing Private Limited. The Decree of the Banking Court is sufficient prove to establish that the income from operating leasing was earned in the year 2009 when the Act was not in field. The respondent also produced a letter dated 09.05.2017 to show that the payment of Rs.4,000,000/- was received through sale of property. The SST was levied on providing and rendering taxable services mentioned in the Second Schedule to the Act and not on earning or revenue.

13. The appellant submitted the photocopies of the Audit Reports from 2010-2011 to 2015-2016 which shows that the receivable on account of operating lease rentals was Rs.3,702,153/-. The Audit Report for the year 2016.2017 shows that the said amount was deleted. The appellant also produced the photocopy of the Ledger alongwith the details of lease rentals

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receivable which also shows that the services were provided during the year 2004 to 2006 when the Act was not in field.

14. The SST could be charged from a registered person on providing or rendering taxable services as provided under section 3 of the Act in furtherance of economic activity carried on by a person that involves or is intended to involve the provision of services to another person as provided under section 4 of the Act. As per these provisions the services should have been provided after coming into the existence of the Act and mere receipt of payment after coming into existence of the Act is not enough to charge SST. The documents produced by the respondent are sufficient to hold that against services provided during 2004 to 2006 the payment was received in the year 2017 due to court proceedings.

15. I have carefully gone through the OIA particularly para 6 (b) which is reproduced as under:-

*“b. Whether provision of reversal of bad debts against overdue lease can be covered under head of operating lease Income or not?”*

*Under Note No. 1.2 of Annual Audited Accounts it is mentioned that the leasing No. 1021/08 against M/s Makkah Advertising and Marketing Pvt. Ltd on 06.10.2009 in the Banking Court No. 1, Karachi for recovery revenue receivable for the year 2009. Thereafter Banking Court No. 1, Karachi issued final decree for repossession of assets, attachment, sale of the mortgaged property Auction report dated 10.05.2017 was issued from Banking Court No. 1, Karachi in Execution No. 16 of 2010 against the sale proclamation of said mortgaged property published in daily Jang and daily The News on 05.04.2017. Appellant accepted purchase offer against the amount of Rs.4,000,000/- as full and final payment claim in Execution 16/2010. General Ledger titled ‘Rental Receivables all others’ represents history of operating lease rentals against M/s Makkah Advertisers. Lastly updated on 11.05.2017 account ‘Makkah Advertisers-Settlement of operating lease rentals’ debited with amount of Rs.3,702,153/-. Operating lease rental receivable amount was declared in head of account tiled as Advance, Payments and other receivables at Note “8” of Annual Audited Accounts since FY-2009 to FY-2016 by the appellant. After receiving the payment from auction appellant was declared as Operating Lease Income of Rs.4,000,000/- other operating income’ in FY-2017 which was confronted in SCN issued by the respondent (appellant). There is no taxability on ‘operating lease*



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income' in FY 2009 under the Act, 2011. Respondent (appellant) has lease bothered to look into the documents provided by the appellant and just gave his submissions arbitrarily.

Hence, on basis of above facts, and legal position, I am of view that Sindh Sales Tax cannot be levied on Rs.4,000,000/- under main tariff heading 98.13 (including the sub-headings thereof)".

16. The finding of CA-SRB that there is no taxability on 'operating lease income' in FY 2009 under the Act, 2011 is correct and free from any illegality and infirmity. The representative of the appellant is correct in saying that by filing this appeal the department has not only waste its precious time but also waste the time of others.

17. The filing of this appeal is against the instructions contained in Standing Order No.01/2019 dated 03.06.2019, which provides that "unnecessary appeals are not filed before the superior fora. Decisions for filing of appeal should be taken with the approval of the Commissioner on merits/reasonable grounds instead of filing of appeal just as a matter of routine". Apparently the officers-SRB are ignoring the instructions of the Board, which is against the discipline.

18. In view of the above discussions I do not find any merits in this appeal, which is accordingly dismissed. The SRB is directed to refund the excess payment of Rs.162,859/- to the respondent within thirty days from the date of receipt of this order or the same may be adjusted in the future liability of the respondent. The copy of this order may be provided to the learned representatives of the parties

Karachi:

Dated.15.12.2022.

(Justice Nadeem Azhar Siddiqi)

CHAIRMAN

Copy Supplied for compliance:

- 1) The Assistant Commissioner, (Unit-12), SRB, for compliance
- 2) The Appellant through Authorized Representative.

Copy for information to:-

- 3) The Commissioner (Appeals), SRB, Karachi.
- 4) Office Copy.
- 5) Guard File.

Order Dispatched on

15-12-2022

Registrar

Order issued on

15-12-2022

Registrar

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Registrar

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APPELLATE TRIBUNAL  
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