

THE HIGH COURT OF SINDH KARACHI

Present:

Mr. Justice Adnan Iqbal Chaudhry
Mr. Justice Muhammad Jaffer Raza

C.P. No. D – 5136 of 2021: HRSG Outsourcing (Pvt.) Ltd., and others
versus Federation of Pakistan and another.

C.P. No. D – 485 of 2022: Resources Linked (Pvt.) Ltd., and others
versus Federation of Pakistan and another.

C.P. No. D – 486 of 2022: Zafar & Sons and others versus Federation
of Pakistan and others.

C.P. No. D – 523 of 2022: M/s. Blessings Enterprises versus
Federation of Pakistan and another.

C.P. No. D – 7706 of 2022: M/s. Mian Iqbal Shah Enterprises versus
Federation of Pakistan and others.

C.P. No. D – 4793 of 2024: All Pakistan Security Agencies Association
and others versus Federation of Pakistan
and another.

For the Petitioners : M/s. Muhammad Umer Akhund and
Uzair Qadir Shoro, Advocates.

[In C.P. Nos. D – 5136 of 2021, 485 and 523 of 2022]

M/s. Qazi Umair Ali and Muhammad
Inzimam Sharif, Advocates.

[In C.P. Nos. D – 486 and 7706 of 2022]

Mr. Muhammad Inzimam Sharif, Advocate,
holds brief for Mr. Ali Nawaz Khuhawar,
Advocate.

[In C.P. No. D – 4793 of 2024]

For the Respondents : M/s. Muhammad Bilal Bhatti and Dr.
Mahmood Ahmed, Advocate in C.P. No.
D – 485 of 2022.

Mr. Mukesh Kumar Khatri, Advocate
for the Respondent in C.P. No. D –
5136 of 2021.

Barrister Syed Ahsan Ali Shah, Advocate
for the Respondents/FBR in C.P. Nos. D –
523 and 7706 of 2022.

Ms. Mehreen Ibrahim, Deputy
Attorney General for Pakistan.

Dates of hearing : 08-09-2025 & 25-09-2025.

Date of decision : 29-10-2025

JUDGMENT

Muhammad Jaffer Raza J. – Petitioners are service providers and are contracted to provide man-power to their clients. Through the instant petitions, the Petitioners have impugned the Explanation added to Division III, Clause 2(i) of Part III of the First Schedule to the Income Tax Ordinance, 2001 (**‘Ordinance’**) vide the Finance Act, 2021 (**‘Act’**). Clause 2(i) specifies the rate for deducting tax under section 153(1)(b) of the Ordinance at the time of making payment to a resident person for the rendering of services. For ease of reference the relevant provisions, for the purposes of the present adjudication, are reproduced hereinunder: -

“153. Payments for goods, services and contracts.— (1) Every prescribed person making a payment in full or part including a payment by way of advance to a resident person -

(b) for the rendering of or providing of services 5 [except where payment is less than thirty thousand Rupees in aggregate, during a financial year];

Division III Payments for Goods or Services

(1)

The rate of tax to be deducted from a payment referred to in clause (b) of sub-section (1) of section 153 shall be —

(i) [3%]¹ of the gross amount payable, in the cases of transport services, freight forwarding services, air cargo services, courier services, manpower outsourcing services, hotel services, security guard services, software development.....

²Explanation:—The tax rate under this subparagraph shall be applicable only to a service provider whose services are subjected to withholding tax on gross receipts and the service provider has not agitated taxation of gross receipts before any court of law;” (Emphasis added)

2. It is the case of the Petitioners that the Impugned Explanation effectively nullifies the judgment of a learned Division Bench of this Court

¹ The noted provision has been amended under Finance Act, 2025 and the rate of tax has increased to 6%.

² Impugned Explanation.

rendered in the case of Human Resources Solutions (Pvt.) Ltd³, which was subsequently upheld by the Hon'ble Supreme Court vide judgment dated 31.01.2021⁴.

3. Learned counsels⁵ appearing for the Petitioners have argued that the Impugned Explanation is patently arbitrary, illegal, discriminatory and ultra vires to the provisions of the Ordinance and the Constitution of the Islamic Republic of Pakistan 1973 (**"Constitution"**). The same, according to learned counsels, is tantamount to nullifying the judgment of this Court in the case of Human Resources Solutions (Pvt.) Ltd. They have further argued that the term "*gross receipt*" has been deliberately added to the Impugned Explanation to achieve the above noted purpose and the same effectively places the Petitioners at a disadvantage. It has been further argued by both the learned counsels that no change or amendment has been introduced in section 153 (1)(b) of the Ordinance, which according to the learned counsels, is the charging provision⁶. They have further argued that withholding tax is only payable/deductible on the fee for the service⁷ rendered and cannot be stretched to include other heads/items beyond the scope of the noted services. They have contended that the Impugned Explanation expands and alters the scope of the charging provision and renders the tax deductible on the entire receipt/s which includes certain heads over and above the services being provided by them, for the Petitioners to be eligible for a reduced rate of tax deduction. They have further argued that it is a settled principle of law that the Explanation cannot go beyond the charging section and in case of any conflict the charging provision

³ Human Resources Solutions (Pvt.) Ltd Through authorized representative vs. Federation of Pakistan through Secretary Revenue Division/Chairman, Federal Board of Revenue, Islamabad and others reported at **2021 PTD 933**.

⁴ The Commissioner Inland Revenue (legal) versus M.M. Associates (Pvt) Limited in Civil Petitions No. 868-K, 883-K to 889-K.

⁵ Qazi Umair Ali and Muhammad Umer Akhund, Advocates.

⁶ Section 153(1)(b) was held to be the charging provision by the learned divisional bench in the case of Human Resources Solutions (Pvt.) Ltd, notwithstanding that the same does not amount to levy of tax by itself.

⁷ The present Petitioners are engaged in providing "manpower outsourcing services", deductible rate of tax, for which has been laid down in Division III, clause 2(i) Part III of the First Schedule of the Ordinance.

shall prevail. To advance their case, they have relied upon several reported judgments⁸.

4. Conversely learned counsels⁹ representing the FBR in the noted petitions, have argued that the instant petitions are liable to be dismissed as the Petitioners failed to avail the remedies available to them under the scheme envisaged in the Ordinance. They have further argued that the intent and purpose of the Impugned Explanation is not to nullify the judgment of this Court in the case of Human Resources Solutions (Pvt.) Ltd. They have contended that the Parliament has complete power to make the laws including retrospective laws. They have averred that the Impugned Explanation does not impose a new liability or charge, but the same only elucidates the original legislative intent behind Section 153(1)(b) of the Ordinance and the Impugned Explanation was only introduced to remove any “doubts”. They have lastly argued that there is no violation of the law, and the instant petitions are liable to be dismissed.

5. We have heard all the learned counsels and have perused the record with their able assistance. More particularly, we have examined the noted provision of law and the Impugned Explanation. It has already been held by a Division Bench of this Court in the case of Human Resources Solutions (Pvt.) Ltd. that the “gross amount payable” in section 153(1)(b) of the Ordinance means only the

⁸ Muhammad Hussain Patel vs. Habib Walt Muhammad, Etc reported at **PLD 1981 SC 1**.
Colony Sarhad Textile Mills Ltd vs. Collector, Central Excise and Land Customs and another reported at **PLD 1969 Lahore 228**.

Chief Administrator of Auqaf, Punjab Lahore vs. Koura alias Karam Ilahi and another, reported at **PLD 1991 SC 596**.

Commissioner Inland Revenue, Lahore vs. Messrs Millat Tractors Limited, Lahore and others, reported at **2024 SCMR 700**.

Molasses Trading & Export (Pvt.) Limited vs. Federation of Pakistan and others, reported at **1993 SCMR 1905**.

Dewan Motors (Pvt.) Ltd. Through authorized officer and others vs. Federation of Pakistan and 3 others, reported at **2021 PTD 232**

Government of Baluchistan vs. Azizullah Memon and 16 others, reported at **PLD 1993 SC 341**.

Miss. Benazir Bhutto vs. Federation of Pakistan and another, reported at **PLD 1988 SC 416**.

I.A. Sharwani and others vs. Government of Pakistan and others, reported at **1991 SCMR 1041**.

Commissioner Inland Revenue Lahore vs. Messrs Millat Tractors Limited, Lahore and others, reported at **2024 SCMR 700**.

⁹ Mr. Syed Ahsan Ali Shah, Nadir Hussain, and Mukesh Kumar Khatri, Advocates.

service fee and **excludes** other amounts payable by the recipients of services to the service provider, which are either expenses or reimbursables. The scope of determination was clearly laid down in paragraph number 1 of the noted judgment in the following words: -

“Through these Petitions, the Petitioners seek a declaration that Withholding Tax under Section 153(1)(b) of the Income Tax Ordinance, 2001 ("Ordinance") has to be deducted on the amount of their service fee and not the gross amount received from recipient of services, which includes amounts of salaries, contributions, insurance etc. etc. They also seek a declaration that wherever the word "turnover" has been used in this respect, including for obtaining an Exemption Certificate, it is only the gross service fee and not the entire amount of gross receipts on which such tax is payable.” (Emphasis added)

6. After noting the parameters for deliberation, it will at this juncture be expedient to highlight the adjudication pertaining to the noted parameters. The relevant part of the said judgment is reproduced below: -

*“The crux of the matter and the relevant provision, which requires interpretation for the present purposes, is Section 153(1)(b) as this appears to be, if we may term it a charging Section for the purposes of withholding advance tax from the service providers, notwithstanding that this does not amount to levy of tax by itself. In addition the connected issue is that what is turnover for the purposes of Clause 94 *ibid.* When Section 153(1)(b) is read, it requires deduction of advance tax for the rendering of, or providing services which at the time of making payment, the service recipient has to deduct from the gross amount payable at rate specified in Division-III of Part-III of the First Schedule to the Ordinance. Therefore, in essence, the gross amount payable has to be understood vis- -vis for rendering or providing services. The triggering event is the rendering or providing services, hence, reference to the gross amount has to be in relation to the rendering or providing services. It cannot be read in isolation. It has come on record that the mode and manner in which the petitioners operate, it is the rendering or providing services for human resource for which they are paid service fee and other*

amount in lieu of salaries and other reimbursements. It has a distinct break up in their billing system as well. Therefore, when we read both these provisions in juxta-position, it can be safely said that the gross amount referred to is the amount of service fee, which is being received by the service provider and not otherwise. It is clear that the gross amount, they are receiving includes the service fee along with various amounts, which are either expenses or reimbursable. It has come on record and has not been denied that the major chunk of this gross amount is the salary of labourers or the manpower provided by the Petitioners, which is then paid to them and necessary tax, if liable to be deducted from such salary, is being done and then deposited with the concerned authority.....Nonetheless, in our considered view as of today when the advance tax deducted under Section 153(1)(b) is a minimum tax, the gross amount referred to therein cannot include the amount of salaries and contributions paid by the service recipients and would only be in respect of the gross amount received for rendering of services by the Petitioners.” (Emphasis added)

8. The question now before us is whether the Impugned Explanation alters or affects the determination made by this Court in the case of Human Resources Solutions (Pvt.) Ltd. It is apparent and already settled that both section 153(1)(b) and clause 2(i) Division III, of Part III of the First Schedule envisage a deduction on the “gross amount” for rendering of services, payable to the service provider by the recipient of the service. This already settled proposition was confounded by adding the Impugned Explanation as the same uses the term “gross receipts” which words, in ordinary parlance, signify the amount received by a person as distinct from the amount payable to that person. Undoubtedly, no tax can be deducted when the amount is already paid and received. To solve this conundrum, the noted provision has to be read and understood from the lens of the prescribed person¹⁰ to whom the noted provisions are directed, at

¹⁰ 153 (7) In this section, — (i) “prescribed person” means—

- (a) the Federal Government;
- (b) a company;
- (c) an association of persons constituted by, or under law;
- (d) a non-profit organization;

the time they make payment to a service provider. When read in that context, the term “*gross receipt*” under the Impugned Explanation, is intended to signify a situation where tax is being deducted on the entire amount payable to the service provider. Simply put, the Impugned Explanation stipulates that the lower rate of deduction in clause 2(i) will **only** apply if two conditions are met: -

- (i) the deduction is made by the prescribed person on the entire amount payable to the service provider irrespective of whether that amount is for service fee, reimbursement of expenses or for any other account; and
- (ii) that at the time of payment, the noted deduction is not under challenge by the service provider in a court of law.

9. The Impugned Explanation, therefore, worded as a proviso, imposes the two noted conditions. Failing to meet the conditions, automatically triggers tax deduction at a higher rate as stipulated under clause 2(ii)¹¹. The benefit of the lower rate as stipulated in clause (i) will almost never be available to the present Petitioners, who are in the service of manpower outsourcing. The majority of

(e) a foreign contractor or consultant;

(f) a consortium or joint venture;

(g) an exporter or an export house for the purpose of subsection (2);

(h) an association of persons, having turnover of [one hundred] million rupees or above in [any of the preceding tax years];

(i) an individual, having turnover of 4 [one hundred] million rupees or above in [any of the preceding tax years];

[(j) a person registered under the Sales Tax Act, 1990 [having turnover of one hundred million rupees or more in any of the preceding tax years];

(k) a person deriving income from the business of construction and sale of residential, commercial or other buildings (builder);

(l) a person deriving income from the business of development and sale of residential, commercial or other plots (developer)] [;]

[(m) for the purpose of sub-section (2A), a payment intermediary; or (n) for the purpose of sub-section (2A), a courier service.]

¹¹ (ii) in case of rendering of or providing of services other than sub-clause (i),-

(a) in case of a company, [9%] of the gross amount payable;

(b) in any other case, [11%] of the gross amount payable; and

(c) in respect of persons making payments to electronic and print media for advertising services, 1.5% of the gross amount payable.]

The noted provision has been amended under Finance Act, 2025. The same reads as under: -

[(ii) in case of rendering of or providing of services other than subparagraph (i) shall be 15% of the gross amount payable:

Provided that in respect of persons making payments to electronic and print media for advertising services the rate shall be 1.5% of the gross amount payable.]

the amount payable to this category of service providers will inevitably entail reimbursement of expenses, which as already been held, is not subject to tax deduction. In other words, even though ‘manpower outsourcing services’ provided by the Petitioners are categorically listed in clause 2(i) as entitled to a lower rate of tax deduction, they are by virtue of the Impugned Explanation, for all intents and purposes, disentitled to the same.

10. Having interpreted the Impugned Explanation, we shall now divert the present adjudication to determine whether the same is ultra vires to the scheme of the Ordinance and the Constitution in the absence of any corresponding amendment in the charging provision i.e. 153(1)(b). It is a settled principle of law¹² that the scope of an Explanation is limited to clarifying any ambiguity which may surface. The same acts as an aid or a guide to interpret and construe a provision of substantive law. The same cannot expand, alter or amend substantive provisions of law. The scope, “*worth*” and tools of interpretation pertaining to an Explanation were clearly laid down by the Hon’ble Supreme Court in the case of Commissioner of Income Tax Division in the following words: -

“What is the worth of an explanation to a section in a statute and how is it to be interpreted? An explanation is appended to a section of an enactment to stipulate the meaning of a word, term, or phrase, and becomes part and parcel of the enactment. Its function is to clear the ambiguity and explain the meanings of the words used in the section to which it is appended. It is an intrinsic aid available to the reader to understand and appreciate the statute and particularly the section to which such explanation has been affixed.”

11. It has already been noted above that the legislature whilst introducing the Impugned Explanation, in its wisdom, did not amend Section 153(1)(b) i.e.

¹² Commissioner of Income Tax Legal Division, Lahore and others versus Khurshid Ahmad reported at **2016 PTD 1393**.

Commissioner Inland Revenue, Lahore Versus Millat Tractors Limited, Lahore reported at **2024 SCMR 700**.

Muhammad Hussain Patel versus Habib Walt Muhammad reported at **PLD 1981 Supreme Court 1**.

charging provision. It is a settled proposition of law, enunciated by the Hon'ble Supreme Court in the case of Muhammad Hussain Patel, that an explanation cannot create or extinguish a liability which has been laid down in the main or charging provision. The liability in the charging provision i.e. 153(1)(b) was already adjudicated upon by a Division Bench of this Court, as noted above.

12. Having determined the scope of an Explanation clause, we shall now divert the present adjudication to the vires of the Impugned Explanation. The concept of equality is well entrenched in our jurisprudence. The same permits discrimination between those who are “*differently circumstanced*”¹³ subject to a rational standard being laid down. The protection of Article 25¹⁴, on the basis of reasonable classification, is founded on the principles of *intelligible differentia*. The “*greater latitude*”¹⁵ generally afforded to fiscal statutes in the context of Article 25, is not “*infinitely elastic*” and the same can be examined on the touchstone of Article 25. The legislature, by introducing the Impugned Explanation, excluded the present Petitioners from the benefit of lower tax deduction. In our view, there is no *intelligible differentia* in excluding a service provider from the benefit of lower rate of tax deduction on the criterion that tax is not deducted on payments over and above service fee when section 153(1)(b) itself does not envisage such deduction. The Impugned Explanation discriminates against the present Petitioners and other similarly placed service providers who are expressly included in clause 2(i), and given the nature of the services rendered, are entitled to a lower rate of tax deduction. In light of the noted principles, we see no reason to deny that protection to the present Petitioners and we hold that there is no rational basis for this discrimination,

¹³Secretary Economic Affairs Division, Islamabad and others Versus Anwarul Haq Ahmed and others reported at **2013 SCMR 1687**.

¹⁴ 25. (1) All citizens are equal before law and are entitled to equal protection of law.

(2) There shall be no discrimination on the basis of sex.

(3) Nothing in this Article shall prevent the State from making any special provision for the protection of women and children.

¹⁵ The Commissioner Inland Revenue versus Mekotex (Pvt) Limited & Others in C.P.L.A 824-K/2023 reported at **2024 SCP 316**.

which is clearly in violation of the constitutional prohibition contained in Article 25. Hence, the same is liable to be struck down under the principles laid down in the recent judgment of the Hon'ble Supreme Court rendered in the case of Gul Zarif Khan¹⁶.

13. There is another aspect which requires deliberation. The same is in reference to the second condition imposed in the Impugned Explanation. The said condition exposes a service provider to a higher rate of tax deduction, if the said provider agitates the “*taxation of gross receipts before any court of law*”. We disagree with the contention advanced by the learned counsels appearing for the Petitioners, that the noted condition restricts and prohibits access to justice and in contravention of Articles 4 and 10-A of the Constitution. The noted condition is only a safeguard for the service recipient i.e. prescribed person to deduct at the higher rate of tax, in cases in which the dispute pertaining to deduction is being agitated before a court of law.

14. In light of what has been held above the instant petitions are allowed. The Impugned Explanation is declared to be ultra vires to the scheme of section 153(1)(b) of the Ordinance and Article 25 of the Constitution and is consequently struck down. There is no order as to cost.

JUDGE

JUDGE

Karachi:

Dated: 29-10-2025

Nadeem Qureshi PA

¹⁶ Gul Zarif Khan and others Versus Government Of Khyber Pakhtunkhwa through Chief Secretary, Peshawar and others reported at **2025 SCMR 415**.