ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

ITRA No. 128 of 2019

DATE	ORDER WITH SIGNATURE OF JUDGE(S)

1. For orders on CMA No. 264/19 (Exemption)
2. For hearing of main case.

11.12.2025

Mr. Asad Aftab Solangi, advocate for applicant.

Per learned counsel identical question has already been determined by this Court vide order dated 20.11.2025 in ITRA No. 76 of 2019, which is reproduced herein below:-

"Operative part of impugned order reads as follows:

"9. We have heard the arguments advanced by the learned D.R. and have also perused the available record of the case. The case laws cited at ground No. 4 of the instant appeals i.e. 2012/PTD/554, 2013 PTD 2159 Review Application No.5 of 2014 all relates to the findings of the Honourable Federal Tax Ombudsman whose jurisdiction is barred by section 9 of the FTO Ordinance in matters of ascertaining tax liability in the following manners:

> "9. **Jurisdiction, functions and powers of the Federal Tax Ombudsman:-** (1) Subject to sub-section (2), the Federal Tax Ombudsman may on a complaint by any aggrieved person, or on a reference by the President, the Senate or the National Assembly, as the case may be, or on a motion of the Supreme Court or a High Court made during the course of any proceedings before it or of his own motion, investigate any allegation of maladministration on the part of the Revenue Division or any Tax Employee.
> (2) The Federal Tax Ombudsman shall not have jurisdiction to investigate or inquire into matters which:-
>
> (a) are sub judice before a court of competent jurisdiction or tribunal or board or authority on the date of the receipt of a complaint, reference or motion by him; or
>
> (b) relate to assessment of income or wealth, determination of liability of tax or duty, classification or valuation of goods, interpretation of law, rules and regulations relating to such assessment, determination, classification or valuation in respect of which legal remedies of appeal, review or revision are available under the Relevant Legislation."

10. The learned A.R of the taxpayer/respondent has drawn our attention towards this tribunals decision in ITA Nos. 1100/KB/2011 and ITA No. 1098/KB/2011 wherein the learned tribunal was pleased to observe that:-

> **ITA Nos. 1100/KB/2011 11**.
> "11. Regarding grounds No 6 the learned AR has maintained that in order to invoke the provisions of section 122(5A) the Additional Commissioner is required to establish that the assessment order he intends to amend or further amend is erroneous and prejudicial to the interest of revenue. In the instant case the Additional Commissioner has not pointed out any erroneousness or prejudiciality in the assessment order or the amended assessment order, as in view of the clear cut explanation of FBR rendered as per its Circular No 6 of 2009 issue of treating the tax deducted on receipts of the appellant from rendering or providing of services as minimum tax or otherwise was not at all there in

the original assessment or amended order of the respondent. Therefore, question of invoking the provisions of section 122(5A) on an issue which was not the subject matter of the orders u/s 120 or 122(1)/(5) does not arise. Besides, since order under section 120 was not in the field at the time of initiation of proceedings u/s 122(5A) the action of the Officer Inland Revenue under section 122(5A) was not sustainable in the eyes of law.

12. The learned AR has rightly pointed out that be it original deemed assessment order finalized u/s 120 on filing of return or the amended assessment order finalized on completion of audit both were made under the assurance given by the FBR through Circular No 6 of 2009 dated 18-08-2009 to the effect that tax withheld on receipts from rendering/ providing of services shall not be considered as minimum tax in the cases of corporate taxpayers. Additionally the Circular letter C No 1(25)/WHT/2009 dated 26-04-2011 interpreting the tax withheld on receipts from rendering/providing of services in corporate cases to the contrary was not in the field nor was part of the assessment orders u/s 122(1)/(5) as the case may be, therefore it is In-conceivable that provisions of section 122(5A) could be invoked on the assessment orders u/s 120 or 122(1)(5), as the case may be, to treat these order as erroneous or prejudicial to the interest of revenue on the basis of a clarification admittedly issued subsequent to the passing of said orders u/s 120 or 122(1)(5) as the case may be. It has further been observed that it was the FBR who vide its Circular No 6 of 2009 dated 18-08-2009 clarified that:

(i) the impression that after the amendments brought about in section 153 by the Finance Act 2009 the corporate tax payers would fall in the scope of minimum tax in terms of sub-section (6) and would not be eligible to obtain exemption certificate is misconstrued.
(ii) Even after the amendments in section 153 through Finance Act 2009 the position of services rendered by the corporate sector remained unchanged and outside the scope of both the final tax regime as well as the minimum tax regime of section 153 of the Ordinance.

Thus the controversy brought about by the subsequent Circular Letter C. No 1(25/WHT/2009 dated 26-04-2011 which prompted the Additional Commissioner to invoke the provisions of section 122(5A) in the appellant's case is not found anywhere in the order u/s 122(1)/(5) or for that matter in the order u/s 120, therefore no justification existed for Invoking the provisions of section 122(5A) in the appellant's case as the said circular letter was issued by the FBR after a considerable time of finalization of assessment u/s 122(1)/(5) or 120 as the case may be in the light of clarification issued by the FBR in the shape of Circular No 6 of 2009. Besides, no change was brought about in the provision of law which remained unchanged before and after issuance of C. No 1(25/WHT/2009 dated 26-04-2011. Anything that has changed was FBR's arbitrary interpretation of the same provision of law which cannot be allowed to sustain. It is also not disputed that when the assessment u/s 122(1)/(5) in the appellant's case for the tax year 2010 was completed on 31-01-2011, the beneficial clarification issued by the FBR through above Circular was in force and the then Officer Inland Revenue accordingly treated the tax deducted on receipts from rendering/providing of service as tax adjustable against the demand created. In this view of the matter the orders under section 120 made by the Commissioner or 122(1)/(5) passed by the DCIR on 31-01-2011 were neither erroneous nor prejudicial to the Interest of revenue. In view of the clear cut understanding given by the FBR through Circular No 6 of 2009, any subsequent change by the FBR in that status of the tax deducted on payments relating to rendering/providing of services would not have any bearing on the appellant's case, because such a change is of substantive nature, detrimental to the interest of the appellant and adds to its burden. The ratio of the judgments of superior courts including judgement of Hon'able Supreme Court of Pakistan in Fazal Din & Sons vs FBR reported as 100 Tax 177 and similar other judgments relied upon by the learned CIR(A) in this regard are squarely applicable in the appellant's case. The Commissioner (Appeals) has rightly held that the right accrued to the appellant

by virtue of Circular No 6 for 2009 of FBR cannot be taken away and it cannot be burdened with minimum tax liability through an arbitrary subsequent Circular letter of FBR. Thus clarification issued by the FBR vide Circular letter C. No 1(25/WHT/2009 dated 26-04-2011 is held to be of no legal effect. We fully agree with the findings of the learned CIR (A) in this regard and upheld the same. Department's appeal fails on this ground."

11. In view of the above judgment by this tribunal, we are of the considered opinion that the sole controversy involve in the instant case i.e. whether the tax deducted u/s 153(1)(b) is minimum or adjustable, more particularly if the taxpayer is a Company/Corporate body stand settled in clear terms. The judgment quoted supra is squarely applicable in the instant case and the appellant/department has failed to distinguish on legal and factual plains. That being so, and respectfully following the ratio set through the above decision, we re of the view that the departmental appeal is devoid of merits and thus dismissed. The impugned order by CIR(A) warrants no interference hence maintained."

On 20.10.2020 following order was passed:

"**20.10.2020**

Mr. Shahid Ali Qureshi, Advocate for the applicant.

1. To be complied with before the next date of hearing.

2. Granted subject to all just exceptions.

3. Learned counsel for the applicant is directed to ascertain as to whether any Reference has been filed against the order passed by the Appellate Tribunal, upon which, reliance has been placed by the Appellate Tribunal in the instant case while deciding the appeal of the applicant and may place on record copy of such order before the next date of hearing through Statement."

Today learned counsel states that order relied upon could not be distinguish or displaced. In view hereof, no question articulated to entertain the reference application, which is hereby dismissed in limine.

A copy of this decision may be sent under the seal of this Court and the signature of the Registrar to the learned Appellate Tribunal, as required per section 133(8) of the Income Tax Ordinance, 2001."

Learned counsel states that this reference may also be disposed of for the same reason and upon the same terms. Order accordingly.

A copy of this decision may be sent under the seal of this Court and the signature of the Registrar to the learned Appellate Tribunal, as required per section 133(8) of the Income Tax Ordinance, 2001.

Judge

Judge

Ayaz