Order Sheet

IN THE HIGH COURT OF SINDH AT KARACHI

Income Tax Reference Application Nos.411 to 413 of 2025

Date	Order with Signature of Judge

Fresh Case
1. For orders on CMA No.2775/2025
2. For hearing of main case

21.05.2026

Mr. Nazir Ahmed Shoro, Advocate for the applicant

These three references have been argued conjunctively by the learned counsel and the representative fact stated is that para-9 of the judgment has ignored the merits of the case, therefore, the impugned judgment is unsustainable.

As an illustration, the operative part of the representative judgment is reproduced herein below:

> 2. Briefly stated, the appellant is an Association of Persons (AOP) engaged in the business of wholesale and retail trade, including the wholesale of food, beverages, and tobacco. As a prescribed person within the meaning of Section 153(7) of the Income Tax Ordinance, 2001, the taxpayer was legally bound to comply with the provisions of Chapter XII of the Ordinance. Accordingly, tax deducted at source was required to be deposited into the Government Treasury, and monthly as well as annual statements were to be e-filed in accordance with Sections 165(2) and 165(6) of the Ordinance.
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> 3. In order to reconcile expenses and obtain the relevant details, a notice dated 10.05.2023 was issued to the taxpayer under Rule 44(4) of the Income Tax Rules, 2002 read with Section 176 of the Ordinance, requiring compliance by 17.05.2023. Upon failure to comply with the said notice, a Show Cause Notice under Sections 161 and 205 of the Ordinance was issued on 08.09.2023, requiring a response by 15.09.2023. As no response was received by the stipulated date, reminders were subsequently issued on 03.11.2023, 17.11.2023, and 23.11.2023. In response, the taxpayer eventually filed a written reply through IRIS, along with certain documents in an attempt to substantiate compliance. The officer duly examined the reply and allowed relief where satisfactory evidence of deduction or exemption was provided. However, in respect of the remaining un-reconciled amounts-where no evidence was produced, nor any reconciliation statement under Rule 44, books of accounts, or other supporting records were furnished-the

taxpayer (to the extent of such un-reconciled amounts) was declared as assessee in default and tax liability (along with surcharge) was adjudged accordingly vide the impugned order dated 12.12.2023.

4. The taxpayer being aggrieved with the impugned order, preferred statutory appeal, under the then prevailing law, before the CIR(Appeals), however, subsequently under the amended law same was transferred to the ATIR and accordingly after transfer the appeal has been assigned captioned ITA number.

5. On the date of hearing, no one appeared on behalf of the appellant/taxpayer, whereas Mr. Sardar Ali, learned Departmental Representative, was present on behalf of the department. Before proceeding to decide the matter on merits, it is pertinent to observe that a perusal of the record received from the office of the Commissioner (Appeals) reveals that whenever the matter was fixed for hearing before the learned CIR (Appeals), adjournment applications or requests were consistently filed by the appellant/taxpayer seeking deferment of the proceedings. Subsequently, upon transfer of the appeal to this Tribunal by operation of law, the office of the Registrar, ATIR, issued a transfer/intimation notice dated 07.01.2025 to the appellant/taxpayer, inter-alia, directing him to file the appeal in the prescribed form along with the requisite duplicate sets, so that the matter could be placed before the Bench for hearing. However, no compliance was made in this regard. Although the appeal, under the relevant rules, was liable to be dismissed for non-compliance, this Tribunal, in the interest of justice, fixed the matter for hearing on 22.05.2025, 13.08.2025, and 08.10.2025. On each of these dates, notices were duly served upon the appellant, yet, despite proper service, no appearance was made, nor the requisite sets of appeal were filed either. It is an admitted position that the appeal has been filed by the taxpayer, and the primary responsibility to diligently pursue the proceedings rested upon him. Unfortunately, the manner in which the proceedings have been conducted reflects a lack of seriousness and disregard for the appellate process, which is both regrettable and contrary to the principles of due diligence expected from a litigant and therefore captioned appeal is liable to be dismissed for non-compliance accordingly.

6. In addition to what has been observed above, the issue in hand is also in respect of proper application and interpretation of Section 161 of the Income Tax Ordinance, 2001. In view of the **recent judgment of the Hon'ble Supreme Court of Pakistan in the case of Chawla Footwear (2025 PTD 574)**, it is now settled law that if a taxpayer fails to collect or deduct tax from payments made during the tax year, such inaction is deemed as a default under section 161 of the Ordinance and here once the department raises an objection that though certain payments have been made but no advance tax has been collected or deducted, the burden squarely shifts to the taxpayer to

establish, through credible evidence, that such transactions were outside the purview of the said provisions.

7. Upon examination of the record and applicable law, it is evident that the appellant, being a prescribed person under Section 153(7) of the Income Tax Ordinance, 2001, was legally obligated to deduct tax at source and file requisite statements under Sections 165(2) and 165(6). The record reveals that despite issuance of notice under Rule 44(4) of the Income Tax Rules, 2002 read with Section 176 of the Ordinance, and subsequent Show Cause Notice under Sections 161 and 205, the taxpayer failed to produce the required reconciliation statements, books of accounts, or any credible supporting documentation. Although some response was submitted through IRIS, the same was found partially satisfactory, and relief was granted accordingly. However, in respect of the un-reconciled portion, where no documentary support was offered, the assessing officer declared the appellant as an assessee in default, and raised tax liability thereon. In view of the authoritative pronouncement of the Hon'ble Supreme Court in Chawla Footwear (2025 PTD 574), once the department establishes that certain payments were made without deduction or collection of tax, the burden squarely shifts to the taxpayer to demonstrate that such payments fell outside the purview of Section 153. Failure to discharge this burden attracts the consequences under Section 161. We may also highlight that the Rule 44 of the Income Tax Rules, 2002, outlines the compliance obligations of persons responsible for deducting or collecting tax under Chapter XII or related provisions of the Income Tax Ordinance, 2001. It mandates the submission of biannual withholding tax statements in the prescribed format by 31st July (for the half-year ending 30th June) and 31st January (for the half-year ending 31st December), along with evidence of tax deposit to the Federal Government. Moreover, where required by the Commissioner the person must also furnish a reconciliation statement aligning the figures reported in the withholding statements with those declared in the return of income, annexes, and other submitted documents. Additionally, under sub-rule (5), persons deducting tax under section 149 are obligated to submit an annual statement by 31st July following the end of the financial year. This rule ensures proper documentation and cross-verification of withholding compliance, forming the basis for proceedings under sections 161 and 205 where defaults are alleged. For the convenience, the Rule 44 is reproduced as under:

Division IV

44. Statement of tax collected or deducted.

(2) Pursuant to sub-section (2) of section 165, a person responsible for collecting or deducting tax under Division II or Division III of Part V of Chapter X of the Ordinance or under Chapter XII of the Ordinance shall furnish [or e-file] a 12[biannual] statement 13[] as set out in part X of the Second

> Schedule to these rules as per the following timelines, namely:-
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> (a) in respect of the half-year ending on the 30th June, on or before the 31st day of July; and
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> (b) in respect of the half-year ending on the 31st December, on or before the 31st January/.]
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> (3) The statement referred to in sub-rule (2) shall be accompanied by the evidence of deposit of tax collected or deducted to the credit of the Federal Government.
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> (4) A person required to furnish the [statement) under sub-rule [] (2) shall, wherever required by the Commissioner, furnish a reconciliation of the amounts mentioned in the aforesaid [] 4[biannual] [statement) with the amounts mentioned in the return of income, 1[statement), related annexes and other documents submitted from time to time.
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> (5) Pursuant to sub-section (6), a person responsible for deducting tax under section 149 shall furnish or e-file annual statement by the 31st day of the month of July after the end of a financial year in the form set out in Part IX of the Second Schedule to these rules.
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> 8. In instant case, the Taxpayer despite the notices, failed to file the required statement under Rule 44 (supra) and thereafter, once confronted with specific amounts (where against no withholding was deduced) no satisfactory response was filed viz a viz un-reconciled amount. It is further observed that similar was the situation in the case of Biltz - judgment of the Lahore High Court, which is reported as ***Bilz (Pvt) Ltd. v Deputy Commissioner of Income Tax and another 2001 PTD 2337*** and against which leave was refused by the Hon'ble Supreme Court **(2002 PTD 1)** - wherein It was specifically observed that the Tribunal had found, as a fact, that the assessee had deliberately withheld the particulars of the parties to whom payments had been made 1.e., the case of deliberate withholding of information regarding the payees by the assessee. This principle/ratio was also also discussed and appreciated in the subsequent judgment on the issue by the Hon'ble Supreme Court in the case of **MCB reported as Commissioner Inland Revenue Zone-I, LTU v. MCB Bank Limited [2021 SCMR 1325].**
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> 9. In view thereof and what has been observed at Para-5 supra, no indulgence can be extended on merits either and accordingly instant ITA is dismissed and the appeal is decided in the manner as indicated above."

Paragraph-8 of the impugned judgment clearly follows the binding precedent of the Hon'ble Supreme Court and no effort has been made by the learned counsel to distinguish or displace the same. The same is also not the

applicant's case that the conclusion could not be rested on the rationale invoked by the learned Tribunal. Under such circumstances, no infirmity could be demonstrated by the learned counsel before this Court insofar as paragraph-9 is concerned meriting determination in reference jurisdiction. Since no question of law has been articulated by the learned counsel before us, therefore, this reference application is dismissed *in limine*. Office to place a copy hereof in each connected reference.

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

Judge

Judge

Asif