

# IN THE HIGH COURT OF SINDH AT KARACHI

(Extraordinary Reference Jurisdiction)

## I.T.R.A. No. 316 of 2019

Date	Order with signature of Judge
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**Present:**

**Mr. Justice Aqeel Ahmed Abbasi  
Mr. Justice Mahmood A. Khan.**

### **Fresh Case**

1. For orders on Misc. No. 484/2019.
2. For hearing of Main Case.

**21.11.2019:**

Appellant Dr. Imdadullah Memon present in person.

### **ORDER**

1. Through instant Reference Applications, applicant appearing in person, has formulated following questions, which according to the applicant, are questions of law, arising from the impugned order dated 16.10.2019 passed by the Appellate Tribunal Inland Revenue of Pakistan, Karachi Bench, Karachi in ITA No.1312/KB-2017 [Tax Year 2016], and require opinion of this Court:-

*“(i). Whether in facts and the circumstances of this case the Income Tax Appellate Tribunal was legally justified in holding that a person/applicant deriving exempt income as declared under provision of Article 165(i) of Constitution of Islamic Republic of Pakistan 1973 and Section 49 of Income Tax Ord. 2001 which were applicable.*

*“(ii). Whether in facts and the circumstances of this case the Income Tax Appellate Tribunal was legally justified in holding that a person/applicant does not derive income/pay declared under provision of Article 165-A of the Constitution of Islamic Republic of Pakistan 1973 and Section 2(20) to (22), read with Section 12(2) of the Income Tax Ord. 2001.*

*“(iii). Whether in facts and the circumstances of this case the I. T. A. T was legally justified in holding that a person/applicant was receiving income/pay from the Government exchequer/treasury other than his employer is*

*assessable to I. Tax under the head Salary [Section 12] Income Tax Ord. 2001.*

*(iv). Whether in facts and the circumstances of this case the I. T. Appellate Tribunal was legally justified in holding that a person/applicant does not come within ambit of I. Tax Ord. 2001.*

*(v). Whether in facts and the circumstances of this case the I. Tax Appellate Tribunal was legally justified in holding that a person/applicant deriving exempted income/pay from the I. Tax as declared was liable to file Income Tax Return under Section 114 of Income Tax Ord. 2001.*

*(vi). Whether in facts and the circumstances of this case the Income Tax Appellate Tribunal was legally justified in holding that a person/applicant's income/pay was assessable by A.G. Sindh Karachi as the A. G. do not belong from Income Tax Authorities.*

*(vii) The applicant craves permission to add, amend and substitute any further ground at the time of hearing of Income Tax Reference Appeal by High Court of Sindh, Karachi.”*

2. The applicant, appearing in person, submits that he is a Doctor by profession and presently performing his duties as Chief Medical Officer, Police Hospital, Karachi in BPS-19, does not fall within the definition of employ as he is a Civil Servant, whereas, the amount being paid by the Government of Sindh does not fall within the definition of salary. It has been further submitted that the amount being paid by the Government of Sindh to him is exempt from the Income Tax in terms of Article 165(1) of the Constitution. It has been further argued by the applicant that the Accountant General Sindh is not entitled to withhold income tax on the amount being paid to him towards his pay, which is not salary.

3. We have heard the applicant appearing in person at length to appreciate his contention with regard to his claim, seeking exemption from the payment of income tax in terms of Article 165 of the Constitution read with the relevant provisions of Income Tax Ordinance, however, it transpires that the applicant appears to be

integral with certain definition of various laws relating to the term employer and employee, pay and salary remuneration etc., however, could not refer to any relevant provision of the Income Tax Ordinance, 2001, whereby, the amount of salary being received by him, could not be declared exempt in Ordinance. Similar contentions were made by the applicant before the Appellate Tribunal, who has decided the issue regarding taxability of the applicant income in the following terms:-

*“5. We have heard arguments of the rival parties and have perused the available case record. We have also gone through the Civil Servants Act, 1973 and the Income Tax Ordinance, 2001 as well. The appellant/taxpayer is Senior Medical Officer at Lyari General Hospital, Karachi and an employee of Government of Sindh. The applicant/taxpayer is a salaried individual who filed an application to the Taxation Officer for refund of Rs. 469,817/- on account of tax deducted from his salary and on refusal by the Taxation Officer the applicant/taxpayer filed appeal before the learned CIR (A) under section 170(5)(b) of the Income Tax Ordinance, 2001 to obtain orders for refund of income tax deducted at Rs.469,817/-. The learned CIR(A) advised the appellant to approach the Accountant General Sindh for redressal of his grievance regarding excess income tax deduction. Relevant portion of the learned CIR(A) order is reproduced as under:*

*“ The appellant is a Sr. Medical Officer in Sindh Government Lyari General Hospital, Karachi who has produced before the undersigned pay slips indicating tax deduction on salary much higher than is required under the law. For instance for the month of May and April 2016 tax of Rs.68,574/- has been deducted each month on payment of monthly salary of Rs.130,578/-. However salary pay slips for the month of June 2015 shows that gross salary amounting to Rs.670,110/- has been paid to the appellant which obviously is erroneous. It is observed that these prima facie are computer/software errors which can only be rectified by the relevant office at the Accountant General Sindh.*

Hence in view and circumstances of the case the appellant is advised to approach the Accountant General Sindh for redressal of his problem. The concerned officer Inland Revenue is directed to review the refund application of the appellant in the light of the provisions of the Income Tax Ordinance.”

6. *Perusal of order of the learned CIR(A) shows that the appellant had furnished copies of pay slips for the months of April, May and June 2016 from which the learned CIR(A) observed higher rates of income tax deduction and erroneously higher payment of salary hence the learned CIR(A) issued above advice to the appellant/taxpayer and gave directions to the Department to review refund application of the appellant in the light of provisions of the Income Tax Ordinance.*

7. *First we take up arguments of the appellant that his salary is not liable to tax as no such provision is available in the Civil Servants Act, 1973 and the Income Tax Ordinance, is not applicable to Civil Servants. We deem it appropriate to refer to sections 3 and 54 of the Income Tax Ordinance, 2001 which are reproduced as under:*

(3) **“Ordinance to override other laws:** The provisions of Ordinance shall apply notwithstanding anything to the contrary contained in any other law for the time being in force”

(54) **Exemptions and tax deductions in other laws:-** No provision in other law providing for –

- (a) an exemption from any tax imposed under this Ordinance;
- (b) a reduction in the rate of tax imposed under this Ordinance;
- (c) a reduction in tax liability of any person under this Ordinance; or
- (d) an exemption from the operation of any provision of this Ordinance,

8. *From perusal of the above provisions of the Income Tax Ordinance, 2001 it is clear that said ordinance overrides all other laws including the Civil Servants Act,*

*1973. Hence appellant's main arguments are based on misreading the Income Tax Law.*

*9. The Accountant General Sindh being a withholding agent under the Income Tax Ordinance, 2001 is under statutory obligation to deduct tax under section 149 of the Income Tax Ordinance, 2001, therefore, the plea of taxpayer to direct the deducting authority not to deduct income tax from pay of appellant in future is not tenable in eyes of law. The deducting authority is liable to deduct income tax from taxable salaries paid at average rate which is calculated on the basis of salary payable for the year and tax liable to be deducted thereon for each month. If there is short of excess deduction for any month then it is adjusted in coming months. If any excess deduction is made for any reason then the employee may claim such excess deduction as refund by filing his/her annual return. It is pertinent to mention that each salaried individual earning taxable salary is liable to file income tax return for each year under section 114 of the Income Tax Ordinance 2001. In case an employee earning salary income has got any refundable excess deduction from salary then the only way to claim such refund is to file return of income under section 114 and refund application under section 170 of the Income Tax Ordinance, 2001. The appellant is advised to follow said path if there is any excess deduction of income tax from his salary.*

*10. In the light of above discussion we find no merit in the appellant's contentions, therefore, the appeal is dismissed."*

4. Accordingly, we do not find any substance in the instant Reference Application, which is devoid of any merits, therefore, dismissed in limine alongwith listed application and to hold that income of the applicant towards his salary is liable to tax under the Income Tax Ordinance, 2001.

**JUDGE**

**JUDGE**

A.S.