

**ORDER SHEET  
IN THE HIGH COURT OF SINDH AT KARACHI**

Income Tax Reference Application No.49 of 2021

M/s Civil Aviation Authority

Versus

The Appellate Tribunal Inland Revenue

Date	Order with signature of Judge
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1. For orders on objection No.26 and 28.
2. For orders on CMA 95/21
3. For hearing of main case.

**Dated: 07.09.2021**

Mr. Abdul Rahim Lakhani along with Mr. Abdul Jabbar Mallah for applicant.

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The two questions of law, as proposed by the applicant in this Income Tax Reference Application, are reproduced as under:-

1. Whether on the facts and circumstances of the case the learned Appellate Tribunal Inland Revenue was justified in confirming that the appellant is required to collect withholding tax under section 236A of the Income Tax Ordinance, 2001?
2. Whether on facts and circumstances of the case the learned Appellate Tribunal Inland Revenue was justified in holding that explanation inserted in Section 236A of the Income Tax Ordinance, 2001 through Finance Act, 2020 was effective retrospectively?

We have heard learned counsel for applicant on the proposed questions and perused the record.

Brief facts are that the applicant, being a statutory authority, derives income from service activities, which are incidental to air-transportation and maintenance of infrastructure for air transport services including airports throughout Pakistan. The applicant being withholding agent was required to collect tax at the time of leasing or licensing the properties within their territorial limits of work, which are

primarily airports. Such exercise of deduction of tax is required under section 236A of the Income Tax Ordinance, 2001 at the rates specified in Division VIII of Part-IV of First Schedule to the Ordinance. However, for a period, as reflected from the withholding statement, tax was not collected.

The Deputy Commissioner Inland Revenue ruled that the applicant failed to collect tax on account of such transactions which include leasing and licensing of the properties from different individuals/bidders/licensee/lessees at different airports. This observation was then followed by show-cause notice which culminated in passing of an order under section 161 of Income Tax Ordinance, 2001 by determining the amended tax liability for the year 2013. The assessing officer separately passed order under section 205 of Ordinance 2001 for the demand of default surcharge for the said year. The Commissioner Inland Revenue, before whom an appeal was preferred, concurred with the views of the amended tax liability followed by dismissal of appeal by the Appellate Tribunal Inland Revenue vide impugned order.

Section 236A of Income Tax Ordinance, 2001 requires a person, making sale by public auction or auction by a tender of any property or goods (including property or goods confiscated or attached, either belonging to or not belonging to the Government, local Government, any authority, a company, a foreign association declared to be a company under sub-clause (vi) of clause (b) of subsection (2) of section 80, or a foreign contractor or a consultant or a consortium or Collector of Customs or Commissioner Inland Revenue or any other authority, shall collect advance tax, computed on the basis of sale price of such property and at the rate specified in First Schedule, from the person to whom such property or goods are being sold. This provision is as clear as crystal however it is followed by an explanation inserted by Finance Act

2020 for the removal of doubt that the expression of sale of public auction or auction by tender include renewal of license previously sold by public auction or auction by a tender and where payment is received in installments, advance tax is to be collected with each installment. As we observe that there is no necessity of any explanation or any clarification as section 236A is clear in its entirety.

Notwithstanding the above, even the explanation of clarificatory nature operates retrospectively as it only provides an assistance in interpreting the provisions correctly in terms of intention of the legislature, subject to however if a contradictory situation is reached by the Court interpreting the basic provisions as against explanation. We are, therefore, of the view that the applicant described as an agent collecting advance tax from the bidders/occupants/lessees/ licensees etc. to whom the premises/property was given either by way of public auction or tender or by any other mode and includes renewal of such document.

Thus, the instant Income Tax Reference Application has no force and the proposed questions are answered in affirmative i.e. the Tribunal was justified in observing that the applicant is required to collect withholding tax under section 236A of the Income Tax Ordinance and the explanation to the basic provision of the Ordinance caters for a retrospective effect as it is only clarificatory in nature. The Income Tax Reference Application as such is dismissed in limine along with listed application.

A copy of the order be sent under the seal of the Court and the signature of the Registrar to the Appellate Tribunal Inland Revenue Karachi in terms of Section 133(12) of Income Tax Ordinance, 2001.

**Judge**

**Judge**