

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH AT KARACHI**  
**C.P. No. D - 6629 of 2017**

<b>Date</b>	<b>Order with signature of Judge</b>
-------------	--------------------------------------

**Present:**

**Mr. Justice Aqeel Ahmed Abbasi**  
**Mr. Justice Abdul Maalik Gaddi.**

1. For hearing of Misc. No.27522/17
2. For hearing of main case.

**Dated: 22.03.2019**

Mr. Ajeet Sunder, advocate for petitioner.  
Mr. Asif Ali, advocate for respondent  
a/w Ms. Samreen Razaque, Deputy Commissioner-IR.  
Ms. Lubna Perwez, Deputy Attorney General.

**ORDER**

Learned counsel for the petitioner has drawn the attention of this Court to order dated 26.11.2018 passed by this Court in the instant case, which reads as follows:-

“ *After hearing learned counsel for the parties, it appears that the legal controversy agitated through instant petition appears to have been decided by a Divisional Bench of Lahore High Court in the case of M/s. Asia Poultry Feeds (Pvt.) Ltd., versus Federal Board of Revenue and others, reported in 2016 PTD 270, wherein, it has been held that once an order has been passed under Section 161/205 of Income Tax Ordinance, 2001, in respect of a tax year, no subsequent order under Section 161/205 can be passed thereafter, whereas, in case of any inadvertent mistake, an order under Section 221 of Income Tax Ordinance, 2001 can be passed to rectify such order or mistake found in the earlier order passed under Section 161/205 of Income Tax Ordinance, 2001. It further appears that in the instant case, in the earlier round of proceedings, the petitioner has supplied details of all the purchase alongwith purchase register as well as exemption certificate in respect of such purchasers, who were*

*granted exemption from payment of withholding tax, whereas, in the impugned notice issued under Section 161/205 of the Income Tax Ordinance, 2001 for the same tax year, neither reference to earlier order passed by his predecessor-in-office on 21.05.2016 has been mentioned, nor any discrepancy in the aforesaid order has been pointed out, which could otherwise justify the re-opening or re-assessment under section 161/205 of the Income Tax Ordinance, 2001.*

*While confronted with hereinabove factual and legal position, learned counsel for the respondent requests for a short adjournment to examine the record of earlier proceedings in the instant case, so as to see whether all these aspects were taken into consideration or not.*

*As an indulgence, the matter is adjourned to 05.12.2018, when the concerned officer shall be in attendance with all relevant record relating to proceedings under Section 161/205 of Income Tax Ordinance, 2001 in the case of petitioner. No further adjournment will be granted in this regard.*

2. Learned counsel for the petitioner submits that despite an order dated 21.03.2016 already passed by the Deputy Commissioner, Inland Revenue under Section 161/205 of the Income Tax Ordinance, 2001 for the Tax Year 2013, Assistant Commissioner Inland Revenue has passed another order dated 09.09.2017 under section 161/205 of the Income Tax Ordinance, 2001, which is not permissible under law as held by a Divisional Bench of Lahore High Court in the case of *M/s. Asia Poultry Feeds (Pvt.) Ltd. v. Federal Board of Revenue and others* [2016 PTD 270].

3. Pursuant to Court directions to produce relevant record, Ms.Samreen Razaque, Deputy Commissioner-IR has shown appearance along with relevant record and the learned counsel for respondent has candidly stated that the impugned order dated 09.09.2017 under section 161/205 of the Income Tax Ordinance, 2001 for the tax year 2013 appears to have been passed due to inadvertence, and non-availability of the record of earlier proceedings for the Tax Year 2013, including the order

dated 21.03.2016 already passed against the petitioner under section 161/205 of the Income Tax Ordinance, 2001 for the same tax year, which is not permissible under law as held by the Hon'ble Lahore High Court in the above cited judgment.

4. In view of such candid statement of the officer present in Court alongwith learned counsel for the respondent, and without drawing any adverse inference against the Assistant Commissioner, Inland Revenue, who has passed subsequent order under Section 161/205 of the Income Tax Ordinance, 2001 for the same Tax Year 2013 without examining the record and earlier already passed under Section 161/205 of the Income Tax Ordinance, 2001 for the same Tax Year, on account of some bona fide mistake, we will dispose of instant petition by holding that the impugned order dated 09.09.2017 passed by the Assistant Commissioner (IR) under Section 161/205 of the Income Tax Ordinance, 2001, is illegal, without lawful authority, hence of no legal consequence.

Petition stands disposed of in the above terms along with listed application.

**J U D G E**

**J U D G E**

Iqbal Memon-PS/Nadeem