

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Income Tax Reference Application ("ITRA") No. 598 / 2024

Date

Order with signature of Judge

FRESH CASE

- 1) For orders on CMA No. 728/2025.
- 2) For orders on office objection No. 01.
- 3) For orders on CMA No. 4839/2024.
- 4) For orders on CMA No. 4840/2024.
- 5) For hearing of main case.

07.03.2025.

Mr. Basil Nabi Malik, Advocate for Applicant.

- 1) Granted.
- 2) To be satisfied before the next date.
- 3) Granted subject to all exceptions.
- 4 & 5) Through this Reference Application, the Applicant has impugned Order dated 11.10.2024 passed in ITA No. 94/KB/2024 (Tax Year 2021) by the Appellate Tribunal, Inland Revenue, Karachi proposing the following Questions of law:-

- A. Whether expenses incurred in the nature of hotel accommodation, including meals, as well as airline tickets, and other travelling expenses, are exempt from the application of Section 153 of the Income Tax Ordinance, 2001, and hence, no deduction of tax as a withholding agent is mandated by law?
- B. Even if it is assumed for the sake of argument without conceding the same that the expenses incurred in the nature of hotel accommodation, including meals, as well as airline tickets, and other travelling expenses, are not exempt from the application of Section 153 of the Income Tax Ordinance, 2001, even then, the said payments/ expenses shall not be liable to a rate of withholding tax of more than 3%?
- C. Whether the Applicant was liable to deduct tax at the rate of 4.5% for indirect expenses incurred in terms of Section 153(1)(a) of the Income Tax Ordinance, 2001, read with Clause 1(b)(ii) of Division III of Part III, Schedule 1 thereof, or whether tax was to be deducted at the rate of 9% (as held by the Respondent No. 1)?
- D. Whether default surcharge was unlawfully imposed on the Applicant in violation of Section 205 of the Income Tax Ordinance, 2001, and specifically, without rendering any assessment, without determining any willful default, or calculating the days for which such default surcharge was being imposed?
- E. Whether the Respondents have failed to provide to the Applicant an opportunity to be heard?

- F. Whether payments made on account of petty expenses/ reimbursements are not liable to deductions of tax as a withholding agent as the same are below the taxable limits as prescribed in Section 153 of the Income Tax Ordinance, 2001?"

Learned Counsel for the Applicant submits that in the Show Cause Notice various objections were raised; however, after reply of the Applicant except the objection regarding withholding of tax on traveling and other indirect expenses the other issues have been decided in favor of the Applicant. He submits that in the impugned order after partly accepting the contention of the Applicant in respect of these expenses, an order has been passed by directing the Applicant to deposit 20% tax on the remaining amount, whereas, no such rate of tax is provided in respect of withholding of tax. According to him, at best it is only 3% which could be demanded in terms of Division III of Part III, of the 1st Schedule of the Income Tax Ordinance 2001, whereas it is the case of the Applicant that no such tax was required to be deducted on these expenses. Per learned Counsel, the Commissioner (Appeals) as well as the Tribunal have failed to give any independent finding as to the issue raised by the Applicant and have merely affirmed the order of the Assessing Officer which had failed to cite any provision of law under which Applicant was asked to pay 20% tax as withholding on the expenses so incurred. He submits that even otherwise, in terms of section 153(1) of the Ordinance, no such rate of tax as determined has been provided and at best the withholding tax rate was 3% and not beyond that; hence, the forums below have failed to appreciate the law.

Let notice be issued to Respondent No. 3 only for **18.04.2025**. Till then, Respondent No. 3 shall not any coercive measures against the Applicant pursuant to the impugned order(s).

ACTING CHIEF JSUTICE

J U D G E

Arshad/