

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD. **JUDICIAL DEPARTMENT.**

W.P. No. 1069/2012.

M/s Hasnain Tanweer Associates (Pvt.) Limited

Versus

The Federation of Pakistan, through Secretary Law, Islamabad, etc.

Petitioner by: Mr. Ossama Shahid Khawaja, Advocate.

Respondents by: Hafiz Ahsan Ahmad Khokhar, Advocate.

Date of Decision: 17.06.2020.

MOHSIN AKHTAR KAYANI, J: Through this writ petition, the petitioner company has assailed the clarification regarding deduction on service charges dated 02.02.2012 issued by Federal Board of Revenue (FBR) mainly on the ground that same was given beyond the scope of Income Tax Ordinance, 2001.

2. Learned counsel for the petitioner contends that petitioner company is a management consultancy group incorporated in Pakistan since 2003 under the Companies Ordinance, 1984 and is dealing with human resource services; that petitioner have different services contract with various multinational and local companies whereby the are rendering or providing services for 11 months or yearly basis; that petitioner company prepares and send invoices/bills to its clients/companies on monthly basis containing amount of salary/wages including commission/incentive/bonus, etc. details of ESSI as well as education cess, group insurance, health insurance and EOBI; that petitioner while providing those services is only charging the commission as per schedule agreed with the companies or contractors; that service charges received by the petitioner company are subject to revenue receipts and two separate invoices are issued, one for service charges and other for reimbursement of expenses; that as per law,

the customers are required to withhold tax both on service charges and reimbursement of expenses (which mainly comprise of salary and allied expenses); that petitioner company is aggrieved with the approach adopted by the FBR, filed clarification regarding applicability of withholding tax on service receipts in the light of its business model of manpower outsourcing service and in response to that Board vide its clarification dated 02.02.2012 stated that receipts received in view of contractual obligations attract the provisions of Section 153(1)(b) of the Income Tax Ordinance, 2001 and no clarification was given on the reimbursement of expenses. The petitioner has relied upon 2001 PTD 1816 and 2016 PTD 1519 (Saudi Pak Industrial and Agricultural Investment Company Ltd. Vs. Commissioner Inland Revenue, Zone-I, LTU, Islamabad).

3. Conversely, learned counsel for respondents contends that U/S 153(1)(b) of the Income Tax Ordinance, 2001 every prescribed person making a payment in full or part including a payment by way of advance to a resident person or for the rendering of or providing of services shall, at the time of making payment, deduct tax from the gross amount payable (including sales tax, if any) at the rate of specified in Division III of Part III of the First Schedule; that the deduction of tax is to be made on gross amount payable and it cannot be bifurcated into components, which has been clarified by the FBR in its clarification dated 02.02.2012 and as such writ is not competent.

4. Arguments heard, record perused.

5. Perusal of record reveals that petitioner company is a service provider in the field of human resource to different organizations and is claiming the interpretation on the question of withholding tax on services as well as on expenditures, whereby they have taken a stance that petitioner company received only service charges @ 5%, 4%, 3% from different contractors as referred in Para-3(v) of instant petition and as such deduction of withholding tax is provided in Section 149 for salary and in Section 153(1)(b) for service charges

separately. The term income as claimed to be not defined in strict sense in the Income Tax Law and petitioner has heavily relied upon the concept of service charges on the basis of case law and contends that tax department has not considered the true spirit of law as referred in Section 153 of the Income Tax Ordinance, 2001.

6. While considering the provision of Section 153 of the Income Tax Ordinance, 2001 the FBR has given their clarification on the question raised in the following manner through the impugned clarification dated 02.02.2012:-

To,
Justice (R) Khawaja Farooq Saeed
Khawaja Law Associates
Lahore.

Subject: CLARIFICATION REGARDING DEDUCTION ON SERVICE CHARGES.

Kindly refer to your letter No.Nil dated 26.12.2011 on the above cited subject.

2. *I am directed to state that the receipts received by your clients M/s Hasnain Tanweer Associates (Private) Ltd (inclusive of amounts disbursed) in lieu of contractual obligations attract the provisions of Section 153 (1) (b) of the Income Tax Ordinance, 2001.*

7. I have gone through the legal scheme referred in Section 153 of the Income Tax Ordinance, 2001 as well as clarification rendered by the FBR and confronted the petitioner as to whether any show cause notice has ever been issued to the petitioner regarding deduction of any tax or charges/levy on their company, whereby it has been contended that no such show cause notice has ever been issued, therefore, the entire exercise adopted by the petitioner is only for academic purpose and as such this clarification could not be considered in terms of Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 under the review jurisdiction. The Income Tax Ordinance, 2001 has provided a complete hierarchy for settlement of issues and any question of law if arises will be considered in their respective spheres. Even otherwise the clarification rendered by the FBR is their point of view which they can apply on case to case basis, however, aggrieved party can agitate the matter as and when they were called by the relevant authorities under the law subject to show cause notice issued by the

relevant authorities of tax department. Hence, any clarification given by FBR at this stage could not be interpreted by this Court in terms of Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, therefore, instant writ petition is not maintainable and the same is hereby *dismissed*. However, petitioner company is at liberty to raise legal question before the tax authorities as and when any show cause notice is issued to it.

(MOHSIN AKHTAR KAYANI)
JUDGE

Zahid