

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Writ Petition No. 1830 of 2020

M/s CM Pak Limited.

VS

Federation of Pakistan, etc.

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
(1)	10.07.2020.	Mr. Ayyaz Shoukat, Advocate for the petitioner.

Through instant Petition, the petitioner seeks directions for Respondent No. 2 to decide their pending application filed u/s 152 (5) of the Income Tax Ordinance, 2001 (*hereinafter referred to as the Ordinance*).

2. Learned Counsel for the petitioner submitted that petitioner is a public limited company engaged in the business of providing telecommunication services. The petitioner for the purposes of business required to procure infrastructure equipment from non-resident supplier and as per agreement between them, payments are to be made after clearance of goods from customs authorities in Pakistan.

3. As per section 152 of the Ordinance, the petitioner is liable to deduct tax while making payments to the non-residents as per rate specified in the first schedule to the Ordinance. However, in terms of section 152 (5) of the Ordinance, if a person intends to make payment to a non-resident person without deduction of tax or at a reduced rate under relevant agreement for avoidance of double taxation such person have to furnish a notice to the concerned

Commissioner providing the details of nature and payment along with name and address of non-resident supplier. As such the petitioner filed application under e-filing system as prescribed, vide IRIS in accordance with provision of 152 (5) of the Ordinance, intimating the Commissioner for payment without deduction of tax u/s 152(2) of the Ordinance, with a request for issuing order authorizing the company to make the payments to non-residents without deduction of tax thereof.

4. As per provisions of section 152 (5A) of the Ordinance, such application/intimation notice is to be disposed of within 30 days, by passing an order accepting the contention or in terms of section 152 (6) of the Ordinance, the Commissioner may direct the person to deduct tax from the non-resident person by an order in writing incorporating reasonable grounds to believe that the non-resident is chargeable to tax.

5. Learned counsel for the petitioner submitted that the application has been filed under section 152 (5) of the Ordinance, filed online through prescribed IRIS web-portal on 18.07.2019, which is pending till date. The petitioner through their reminder has requested the Respondents for decision of the pending application, however, the application / intimation notice dated 18.07.2019, is still pending for decision by the Commissioner.

6. Learned counsel, however, submitted that since, a considerable time has been passed after e-filing of application/intimation notice under section

152 (5) of the Ordinance and petitioner would be satisfy if the direction is issued to the respondents for early disposal of the said application dated 18.07.2019.

7. In view of the above, Respondent No.2 is directed to decide the pending application/intimation notice e-filed by the petitioner through IRIS on 18.07.2019, within seven days from the date of receipt of copy of this order, positively.

8. Instant Petition is **disposed of** in above terms.

(LUBNA SALEEM PERVEZ)
JUDGE

M. Junaid Usman.