

Form No: HCJD/C-121.
JUDGEMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

INCOME TAX REFERENCE NO. 04 OF 2017

Commissioner Inland Revenue (Zone-IV), Large Taxpayers Unit,
Islamabad.

Vs

M/s Pakistan Mobile Communication Ltd.

APPLICANT BY: Mr. Saeed Ahmed Zaidi, Advocate.

DATE OF Decision: 07.06.2022.

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BABAR SATTAR, J.- This is a reference filed under section 133 of the Income Tax Ordinance 2001 ("**Ordinance**") and the questions of law stated to have arisen out of order, dated 31.05.2016 passed by the learned Appellate Tribunal Inland Revenue ("**Tribunal**") are as follows:

- i) *Whether on facts and circumstances of the case, the learned Appellate Tribunal Inland Revenue was justified to hold that infrastructure provisioning fee falls within the ambit of services attracting the provision of section 153 of the Income Tax Ordinance, 2001 notwithstanding the fact that that the said amount was itself disclosed by the taxpayer in the audited accounts under the head of rent which attracted withholding tax u/s 155 of the Ordinance?*
- ii) *Whether on facts and circumstances, the learned Appellate Tribunal Inland Revenue was justified to hold that the income received by the host party cannot be characterized as income from property contrary to the fact that rent of BTS Tower erected on land for rendering telecommunication services fall within the ambit of property income in view of the principle laid down by the Honorable Sindh High Court in a case reported as (1992) 65 Tax 223 (H.C. Karachi.)*

2. The learned counsel for the applicant submitted that the Tribunal had found that the income in question did not qualify as rental income under Section 15(2) of the Ordinance and no withholding liability accrued in relation to such income under Section 155 of the Ordinance. He submitted that income related to charges collected by the Taxpayer for sharing of telecom tower and related infrastructure with other telecom companies which were tantamount to renting out such telecom tower. And that the learned Tribunal erred in concluding that the Taxpayer had no liability to collect withholding tax in relation to rent paid by other telecom operators to the Taxpayer.

3. The controversy relates to shared use of the telecom tower and the technology infrastructure installed at such tower by the Taxpayer with other telecommunication companies. The learned Tribunal after perusal of the Infrastructure Sharing Agreement between the Taxpayer and other telecom providers concluded that the contract related to hosting of infrastructure by the Taxpayer and such contract for use of telecom infrastructure by counter-parties for purpose of their telecom operations did not amount to a rental agreement.

4. Section 15(2) of the Income Tax Ordinance, 2001, defines rents as follows:

(2) Subject to sub-section (3), "rent" means any amount received or receivable by the owner of land or a building as consideration for the use or occupation of, or the right to use or occupy, the land or building, and includes any forfeited deposit paid under a contract for the sale of land or a building.

5. A plain reading of the Section 15(2) of the Ordinance unambiguously provides that rent is income received by an owner of land or a building as consideration for use of such land or a building. In the instant case, what is being provided by the Taxpayer for use by other counter-parties is neither land nor building but telecom infrastructure installed by the Taxpayer for its own use and for use of counter parties. Any income derived pursuant to such Infrastructure Sharing Agreement most obviously does not constitute rent for use of land or building consequently the learned Tribunal correctly concluded that the income being derived by the Taxpayer from the Infrastructure Sharing Agreement is contractual income chargeable to withholding tax under Section 153 of the Ordinance and not rental income attracting provisions of Section 155 of the Ordinance. The learned Tribunal has correctly appreciated the law in view of the relevant facts. The income derived by the Taxpayer under the Infrastructure Sharing Agreement is not rental income as defined under Section 15 of the Ordinance and provisions of Section 155 of the Ordinance are not attracted in the instant matter.

6. The questions listed above in Para No.1 are answered accordingly.

7. A copy of this order is directed to be sent to the Registrar of the learned Tribunal under the seal of this Court

(TARIQ MEHMOOD JAHANGIRI)
JUDGE

(BABAR SATTAR)
JUDGE

Shakeel Afzal/-