

Form No: HCJD/C-121  
**JUDGMENT SHEET.**  
**IN THE ISLAMABAD HIGH COURT,**  
**ISLAMABAD.**

**Tax Reference No.08 of 2005**

Commissioner of Income Tax/Wealth Tax, Islamabad.

Versus

M/s Communication City (Pvt.) Limited, Islamabad.

**Applicants by : Mr. M.D. Shahzad and Ch. Talib Hussain, Advocates.**

**Respondents by : Mr. Tariq Aziz, Advocate.**

**Date of Decision : 30.10.2019**

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**AAMER FAROOQ, J. -** This reference application is under Section 133(4) of Income Tax Ordinance, 2001, requesting framing of questions of law arising out of the decision of the Appellate Tribunal Inland Revenue, dated 21.01.2004 and answering the same.

2. The facts, in brief, are that the respondent / assessee was engaged in the business of sale of licensed video films and pursuant thereto entered into different agreements with certain companies based in United Kingdom and United States and in this behalf made payments to them. At the time of making payments, no withholding tax was deducted under Section 50(3) of Income Tax Ordinance, 1979; consequently a notice was issued under Section 52 read with 86 of the Income Tax Ordinance, 1979. The stance of the respondent was that the payments were covered by Avoidance of Double Taxation Treaties executed between Pakistan, U.S.A. and

U.K. and for the said purpose, deduction under Section 50(3) of 1979 Ordinance was not made as exemption existed. The Taxation Officer decided the matter against the assessee. Feeling aggrieved and appeal was preferred, which was allowed. The department filed an appeal before the Income Tax Appellate Tribunal, which was dismissed. An application was filed for framing questions of law and referring the same to this Court, which was dismissed by the Income Tax Appellate Tribunal.

3. Learned counsel for the applicant, *inter-alia*, contended that in terms of clauses of Treaties, there did not exist any exemption, hence the respondent was required to make the deductions. In this behalf, it was contended that questions of law arises out of the decision and the relevant question is as follows:-

***iii) "Whether on the facts and circumstances of the case the ITAT was justified in holding that the assessee was under no obligation to withhold tax u/s 50(3) on royalties because of Avoidance of Double Taxation Treaties and having no PE in Pakistan ignoring the fact that in terms of Article 12 of the Treaty with U.K. and Articles VIII and 12 of the Treaty with U.S.A. royalties or rentals from motion pictures films are not exempt from Tax?"***

4. On the other hand, learned counsel for the respondent submitted that the provisions of Income Tax Ordinance, 1979, would have become applicable, if the respondent had its permanent place of business, which it did not. Moreover, it was submitted that the questions of fact have already been decided and the question proposed also pertains to one of facts.

5. Arguments advanced by learned counsel for the parties have been heard and the documents placed on record examined with their able assistance.

6. In order for the respondent to deduct the income tax under Section 50(3) of the Income Tax Ordinance, 1979, it was to be seen whether the respondent had a permanent establishment in Pakistan. All the fora below except the Taxation Officer had concluded that the entities with which the respondent had been dealing, did not have permanent establishment, hence payments made were covered under the Treaty. In the instant proceedings, this Court cannot enter into the fact finding mission regarding the place of establishment of the parties with whom the respondent had been dealing. Moreover, the learned Income Tax Appellate Tribunal has already refused to frame questions of law on account of the fact that they do not arise out of the decision and are not of public importance. The decision regarding refusal to frame questions, dated 21.01.2004, is well reasoned and does not suffer from any error of law.

7. In view of the above, no question of law arises in the fact and circumstances of the case to be framed and answered by this Court; hence the instant Tax Reference is **dismissed**. A copy of this order under the seal of the Court shall be sent to the Income Tax Appellate Tribunal as prescribed under the law.

**(MOHSIN AKHTAR KAYANI)**  
**JUDGE**

**(AAMER FAROOQ)**  
**JUDGE**