

ORDER SHEET  
**IN THE HIGH COURT OF SINDH AT KARACHI**

I.T.R. A. No.327 of 2019  
I.T.R. A. No.328 of 2019  
I.T.R. A. No.28 of 2020

M/s Telenor Micro Finance Bank Ltd----- Petitioner

Versus

Commissioner Inland Revenue----- Respondent

Mr. Shams Mohiuddin, Advocate for applicants.  
M/s Ammer Bakhsh Metlo & Imran Ahmed Mtlo and  
Fayaz Ali Metlo, advocate for respondents.

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**Date of hearing: 10.05.2022.**

**Date of order: 17.05.2022.**

**ORDER**

**MUHAMMAD IQBAL KALHORO J:** Applicant, a limited company engaged in the business of banking having branches in different parts of the country, being withholding agent was obligated to deduct tax at source u/s 151 of the Income Tax Ordinance, 2001 (the Ordinance, 2001) on payments of profit on debts. It was served with notices u/s 176 of the Ordinance, 2001 requiring it to submit details/documents in respect of tax deducted and deposited along-with Challan of payment for the years 2012, 2014 and 2015. As applicant failed to comply with was served with showcause notices u/s 161(A)/205 of the Ordinance, 2001 on 20.07.2017 which it duly replied. Notwithstanding, Orders u/s 161/205 of the Ordinance, 2001 were passed against the applicant. For the year 2012 total tax and penalty was worked out at Rs.11,255,173/-, for 2014 at Rs.933314, and for 2015 at Rs3039677/- which the applicant was directed to make good of. The applicant however challenged the Orders in appeals before the Commissioner Inland Revenue Karachi, who upheld the same spurring the applicant to file income tax appeals for each tax year separately before the Appellate Tribunal Inland Revenue of Pakistan

Karachi Bench Karachi have been dismissed through impugned Orders, hence these references.

2. Learned counsel for the parties have argued the case as set up in their respective pleadings. It is the main contention of learned counsel that the funds applicant collects fall within category of entries enumerated under clause 47B Part IV of the Second Schedule of the Ordinance, 2001, hence are exempted from advance tax deductions. And, in view of such legal position, requirement of obtaining valid exemption certificate u/s 159 (1) of the Ordinance, 2001 is not mandatory.

3. After hearing the parties and perusing the material following question is framed for determination.

Whether as per clause 47B of Part IV of the Second Schedule read with section 53 of I.t. Ord.2001 in the absence of Certificate of exemption u/s 159 of I.t. Ord. 2001 the applicant/Tax payer is liable to recovery of Tax u/s 161 of I.T Ord.2001?

4. Before starting discussion to examine relevant provisions and reply the proposed question of law, we would like to state that the same question in similar backdrop has already been considered by a Division Bench of this Court comprising one of us (Muhammad Iqbal Kalhoro J.) in the case of Meezan Islamic Fund and others Vs. D.G (WHT) FBR and others (2016 PTD 1204). In the said case several objections challenging a circular dated 12.05.2015 which require obtaining valid Exemption Certificate prior to availing benefit u/s 47B of Part IV of the Second Schedule of the Ordinance, 200, have been decided. Plea of the petitioners in that case was that they were the entity mentioned in clause 47B as such were exempted from advance tax deduction and to avail such concession they were not required to obtain a valid exemption certificate u/s 159 (2) of the Ordinance, 2001. Their plea stirred a discussion examining the circular along with the scheme u/s 47B, 159 of the Ordinance, 2001. What has been

observed and decided, reproduced herein under, is equally true and applicable *mutatis mutandis* in the case in hand.

“5. It can be seen that Clause 47B of Part IV to the Second Schedule of the Income Tax Ordinance, 2001 grants statutory exemption to certain category of entities whose payments are covered under the provision of sections 150, 151 and 233 of the Income Tax Ordinance. These payments are not liable to advance tax deduction. Clause 47B by itself, however, is not sufficient to avoid deductions. There is Section 159(2) which provides that a person who is required to make advance tax deductions from the payments that are covered under Division III of Part V of Chapter X or under Chapter XII, which include payments that are covered under Sections 150, 151 and 233, then it is obligatory on him to deduct withholding tax unless the withholder presents a valid exemption certificate issued under subsection (1) of Section 159. As it is made obligatory upon the withholder under Section 159(2) to make advance tax deduction from any payment that falls within the ambit of division III of Part V of chapter X as well as under Chapter XII, which includes Sections 150, 151 and 233, hence unless a valid exemption certificate issued under subsection (1) of Section 159 is presented to him, he will deduct withholding tax. It is only upon presentation of exemption certificate issued under Section 159(1) that the withholder stands discharged from its obligation to make advance tax deductions. It is an admitted position that provision of Sections 150, 151 and 233 fall within Division III of Part V of Chapter X and Chapter XII and for such payments, requirement of obtaining exemption certificate first has been specifically made mandatory under Section 159(2) before the concession under Clause 47B is availed

6. From the above, it is evident that in view of the provisions of Section 159(2), it is not left to the withholder to decide not to make advance tax deductions even when a person to whom he has to make payment claims that he is entitled to the exemption under Clause 47B of Part IV to the Second Schedule of the Income Tax Ordinance, 2001. The withholder is not to form his own opinion that a person's case falls within the ambit of Clause 47B unless a valid exemption certificate issued under Section 159(1) is presented. Even the person whose payments are otherwise liable for advance tax

deduction under Section 150, 151 and 233 cannot insist that he be extended the benefit of Clause 47B in absence of exemption certificate in the face of the provisions of Section 159(2). The entitlement of concession under Section 47B can therefore be availed only when exemption certificate is presented to the withholder and upon such presentation the obligation of the withholder to deduct advance tax as provided under Section 159(2) stand discharged. This was exactly the reason for issuing the impugned Circular dated 12.5.2015 which states "Legal position in this case is that any person required to withhold Income Tax may only allow exemption if a valid exemption certificate under section 159(1) of the Income Tax Ordinance, 2001 issued by the concerned Commissioner of Inland/Revenue is produced before him by the withholdee. Thus the impugned circular refers to the provisions of Section 159 of the Income Tax Ordinance which creates statutory obligation upon withholder to deduct advance tax from the payments falling under section 150,151 and 233 unless the requisite exemption certificate is presented to it. It is only upon such presentation, the mandate of the certificate is to be complied with.

7. From the above discussion, it is evident that the concession granted under Clause 47B of Part IV to the Second Schedule of the Income Tax Ordinance, 2001 cannot be out-rightly availed by the withholdee from the withholder on account of the bar contained in Section 159(2) unless the withholdee presents a valid exemption certificate issued to him under Section 159(1) of Income Tax Ordinance, 2001. There appears to be a sound logic behind this procedural requirement as the person who want to seek benefit under Clause 47B may be such person who is not entitled to the benefit or in the past may have been so entitled but for some reason had lost his entitlement. Therefore, it has been made mandatory for him under Section 159(2) to first demonstrate to the withholder that he holds a valid exemption certificate. In Clause 47B of Part IV to the Second Schedule of the Income Tax Ordinance, 2001 mere mention that the provisions of Sections 150,151 and 233 shall not apply to certain category of persons does not mean that to avail such concession the provisions of Section 159 have been made inapplicable. On the contrary requirement of obtaining exemption certificate has been made mandatory under Section 159(2) for all payments that fall

within the ambit of Division III of Part V of Chapter X of under chapter XII of the Income Tax Ordinance and Sections 150, 151 and 233 are part of said chapters. In the circumstances, the challenge to the impugned circular dated 12.05.2015 fails. All these 280 petitions are dismissed”.

5. As can be seen, above discussion and reasons articulated in support of findings comprehensively cover and reply adequately the question of law framed here. The question is therefore replied and decided in favour of the department and against the applicant. It is held that the concession envisaged under clause 47B of Part IV of the Second Schedule of the Ordinance, 2001 cannot be availed by withholdee out-rightly and directly from the withholder on account of bar contained in section 159(2) unless the withholding person has a valid exemption certificate issued to him u/s 159(1) of the Ordinance, 2001. A copy of this decision may be sent under the seal of this Court and the signature of the Registrar to the learned Appellate Tribunal Inland Revenue, as required per section 133(5) of the Income Tax Act, 2001. Office is directed to place a copy hereof in each connected references.

JUDGE

JUDGE

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