

ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

CP No.D-1899 of 2019

DATE

ORDER WITH SIGNATURE OF JUDGE(S)

Priority

1. For hearing of CMA No.8550 of 2019
2. For hearing of main case

17.11.2021

Mr. Mayhar Qazi, Advocate for the petitioner
Mr. Muhammad Taseer Khan, Advocate for the respondent No.3
Mr. Kafil Ahmed Abbasi, DAG

-0-0-0-

Learned counsel for the petitioner submits that the issue involved in this petition is super tax which by virtue of the judgment in the case of Commissioner Inland Revenue, Zone-IV, CRTO, Karachi & Others v. Messres MSC Switzerland Geneva & Others reported in 2021 PTD 885 would be a double taxation in terms of the covenants of the treaties and the exemption provided.

Learned DAG and learned counsel for the department have acknowledged conclusion drawn by the Division Bench of this court and its applicability in so far as the ratio and conclusion vide para 14 of the above judgment is concerned.

The petitioner is also a foreign resident and claims relief in terms of the tax levied as challenged in this petition to be identical to the levies existing at the time the Treaty was entered into. Apparently and as agreed this is a covered case vide para 14 of the above judgment.

We have also gone through the treaties and in terms of Article 10 (2) maximum of such taxation that could be levied is to the extent of 10% and beyond that would be contrary to the findings of the judgment referred above. Hence, in view of these findings, we deem it appropriate to allow this petition as per prayer clauses `II` & `III` thereof in terms of para 14 of the judgment which is reproduced hereinbelow :-

“14. In view of the binding pronouncement holding super tax to be a tax on income coupled with our finding that the present levy is identical / substantially similar to the levies existing at the time that the Treaty was entered into, we are of the considered view that tax-payers, who are otherwise qualified and fall within double taxation treaties between Pakistan and respective foreign countries are either exempt or, wherever applicable, liable to pay super tax at reduced rate(s) in terms of their respective treaties; hence, we had determined these references and petitions vide our short order dated 31.03.2021. These are the reasons for our aforementioned short order.”

The petition stands allowed in the above terms alongwith pending application[s].

J U D G E

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