

IN THE HIGH COURT OF SINDH AT KARACHI

Income Tax Reference Application (“ITRA”) Nos.46 & 47 of 2024

Date	Order with signature of Judge
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PRESENT:
Mr. Justice Muhammad Junaid Ghaffar, ACJ
Mr. Justice Muhammad Jaffer Raza, J

- HEARING OF CASE:
- 1. For order on CMA No.421/2024.
 - 2. For order on office objection No.1, 9 & 10.
 - 3. For hearing of CMA No.423/2024.
 - 4. For Regular Hearing.

Dated; 10th April 2025

Mr. Vishwa Mittar, Advocate for Applicant in both Reference Applications.

Mr. Muhammad Bilal Bhatti, Advocate for Respondent in both Reference Applications.

ORDER

Muhammad Junaid Ghaffar, ACJ: - Through both these Reference Applications the Applicant has impugned a common Order dated 19.09.2023 passed in ITA Nos.1687/KB/2023 and 1694/KB/2023 by the Appellate Tribunal Inland Revenue of Pakistan, Karachi; proposing following two questions of law: -

- (i) *Whether under the facts and circumstances of the case, the Learned Appellate Tribunal Inland Revenue, Karachi has urged in confirming proceedings under three simultaneously initiated sections 161, 205 and 182 of Income Tax Ordinance, 2001, without first establishing default under section 161 of Income Tax Ordinance, 2001?*
- (ii) *Whether under the facts and circumstances of the case, the Learned Appellate Tribunal Inland Revenue, Karachi was justified in holding failure to collect/deduct tax under section 161 of Income Tax Ordinance, 2001, on the basis of expenses instead of party wise transaction as envisaged under section 161(2) of Income Tax Ordinance, 2001?*

2. Heard learned counsel for the parties and perused the record.

3. The issue in hand is in respect of proper application and interpretation of Section 161 / 205 of the Income Tax Ordinance, 2001 and perusal of the order of the Tribunal reflects that the Tribunal has considered two judgments of the Hon'ble Supreme Court of Pakistan i.e. **Bliz (Pvt.) Limited¹ & MCB Bank Limited²**. However, after passing of the impugned order of the Tribunal the Hon'ble Supreme Court of Pakistan in the case of **Chawala Footwear, Lahore³** has considered both these judgments and has arrived at a conclusion, whereby in respect of withholding tax and its deposit in the Government treasury, the responsibilities of the taxpayer as well as the department have been highlighted. Since in the instant matter, original order is an *ex-parte* order, whereas the Tribunal has given its findings on the basis of the judgments in the cases of **Bliz and MCB Bank Ltd. (Supra)**, whereas, the judgment in **Chawala Footwear, Lahore (Supra)** has been passed subsequently, therefore, it would be appropriate that the matter is remanded to the original authority for deciding the issue afresh in accordance with law and in the light of the recent judgment of Hon'ble Supreme Court in the case of **Chawala Footwear, Lahore (Supra)**. On this very ground as well, the delay in filing both these Reference Applications also stands condoned.

4. Accordingly, the orders of the forums below are hereby **set-aside** and the matter **stands remanded** to the original authority, who shall proceed further, as noted hereinabove. At the same time the Applicant is also directed to be vigilant and on its own approach the concerned officer along with copy of this order and all relevant materials to discharge the onus, if any, regarding withholding of tax and its deposit in

¹ M/s. Bliz (Pvt.) Limited v. Commissioner Inland Revenue [2002 PTD 1]

² Commissioner Inland Revenue Zone-I, LTU v. MCB Bank Limited [2021 SCMR 1325].

³ M/s. Chawala Footwear, Lahore v. Commissioner Inland Revenue, Lahore, etc. vide Order dated 14.01.2025 passed in Civil Appeal No.16 of 2022

the Government treasury. Let copy of this order be sent to the Appellate Tribunal Inland Revenue of Pakistan, Karachi in terms of Subsection (5) of Section 133 of the Income Tax Ordinance, 2001 and the Original Authority i.e. Assistant/ Deputy Commissioner (Withholding Tax), Inland Revenue, Unit-I, Range-III, Zone RTO-I, Karachi for compliance.

ACTING CHIEF JUSTICE

JUDGE

Farhan/PS
