

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Income Tax Reference Application No. 13 of 2025

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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- 1. For orders on office objection Nos. 26 & 27.
- 2. For orders on CMA No. 107/25.
- 3. For hearing of main case.

20.10.2025

Mr. Faheem Ali Memon, advocate for applicant.

On the last date, following order was passed:-

“13.10.2025.
Mr. Faheem Ali Memon, advocate for applicant.

Learned counsel is confronted as to whether there is any infirmity in the order impugned when it follows earlier judgment of the learned Tribunal. Specific attention is drawn to the observations in paragraphs 6 and 8 of the impugned order. Learned counsel seeks time to obtain instructions. At his request, adjourned to 20.10.2025.”

Today learned counsel is present and has not been able to displace or distinguish the observation. In addition thereof, learned counsel is confronted with paragraph-4 of the impinged judgment, which reads as under:-

“4. The taxpayer filed an appeal before the learned CIR(A) which was decided vide impugned appellate order dated 29.07.2016, whereby the learned CIR(A) deleted the tax demand u/s 161/205, while observing as under: -

“Since, the receipts of the ;NR recipient of payment made by the appellant was held as business receipts in all past years and recently the Honourable Chief Commissioner has reiterated the earlier stance in his order passed u/s 122B dated 01.07.2015 regarding nature of payment received by the N.R. Company, therefore, the nature of payment on account of payer cannot be held otherwise. But the officer has treated the said payment as "fee for technical services" for the reasons best known to him only. Such action of the officer in view of above discussed factual position has no legs to stand upon and wrong treatment accorded to the transaction is liable to be struck down. The payment so made by the appellant is therefore held as outside the purview of deduction u/s 152 of the Income Tax Ordinance, 2001, because it is an admitted position that business receipts of NR company having no permanent establishment in Pakistan is not taxable in term of Section 107 read with tax treaty for avoidance of double taxation having overriding effect to the provisions of Income Tax Ordinance, 2001. Hence question of deduction of tax on such payment does not arise. The learned ITAT in a case law reported as 2009 PTD 803 (Trib.) has held that the assessee was required to deducted tax u/s 50(3) of the repealed Ordinance, 1979 only if the payment gave rise to income which was liable to tax in Pakistan. In another case law reported as 2010 PTD 1159 (H.C. Kar.) the Honourable High Court has held that unless it is established that the payment received by recipient is chargeable to tax in Pakistan, action under section 161 of the Ordinance cannot be taken merely for the reason that the payer has not obtained prior approval from the Commissioner in terms of Section 152(5) of the Income Tax Ordinance, 2001.

In view of above and the clear cut decision of higher for a and facts and circumstances of the case, the impugned demand of tax raised by the officer, therefore, directed to be deleted."

Being aggrieved, the Department filed the instant appeal before this Tribunal on the ground as narrated supra."

Once again learned counsel remains unable to displace or distinguish the observation as aforesaid. Under such circumstances, no question of law for determination could be articulated before this Court, therefore, the reference is dismissed in *limine*.

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, as required per section 133(8) of the Income Tax Ordinance, 2001.

Judge

Judge

Ayaz p.s.