APPELLATE TRIBUNAL INLAND REVENUE, LAHORE
SPECIAL SINGLE BENCH **(Camp Multan)**

ITA No. 1350/LB/2015
(Tax Year-2013)

The Commissioner Inland Revenue,
Withholding Taxes Zone,
RTO, Multan ....Appellant

Versus

M/s.Shah Sons Pakistan (Pvt) Ltd
Industrial Estate Multan ..... Respondent

For Appellant / Department	:	Mr. Muhammad Arshad, DR
For Respondent / Tax payer	:	Mr. Riaz Ahmed Raja, ITP
Date of Hearing	:	22.06.2020
Date of Order	:	22.06.2020

ORDER

MIAN ABDUL BAIST, JUDICIAL MEMBER: Through the instant appeal the department has assailed the order dated 06-03-2015 passed in appeal No.332 pertaining to tax year 2013 by the Learned Commissioner Inland Revenue (Appeals), Multan under Section 129 of the Income Tax Ordinance, 2001 on the grounds set forth in the appeal memo.

2. That the brief facts, I find from the perusal of the appeal file, are that the respondent taxpayer is a private limited company derived income from manufacturing of Agricultural and Forestry MACI products. Proceedings under section 161 of the Income Tax Ordinance, 2001 were initiated against the taxpayer, stately to monitor the compliance as withholding agent. In response to show cause notice the taxpayer furnished details & documents such as purchase invoices, copies of ledger accounts and proof of tax deduction / exemption certificate wherever applicable. The IRAO found portion of payments to some extent as below taxable limit, however, details of payments made for purchase of some items were not accepted by the officer concerned. Therefore, the IRAO proceeded to hold the taxpayer as personally liable under section 161 of the Ordinance, 2001 to deduct the tax and paid the same to government exchequer vide order dated 09-09-2014.

Scanned with CamScanner

Hence the tax payer filed appeal against order, passed u/s 161/205 of the Income Tax Ordinance, 2001, under section 127 of the Ordinance, 2001 before the learned CIR (Appeals), Multan who annulled I the assessment order and remand the case in the following manner:-

> *"The arguments adduced by the AR have been considered. Although IRAO has given some reasons for holding the appellant taxpayer as personally liable, yet it is observed that learned Tribunal in judgment cited as 2012 PTD (Trib) 122 has held that withholding default cannot be established unless the exact names and addresses of the persons to whom payments attracting the withholding provisions of law under the ordinance are made. The amount of payment and tax to be withheld thereon is also to be established. In view of above, it is deemed appropriate to annul the impugned order. The officer may call for record to determine exact amount of default under the law after providing adequate opportunity of hearing"*

3. The case was taken up for hearing on 22.06.2020, the Departmental Representative as well as counsel for taxpayer's company appeared on behalf of appellant and respondent respectively.

4. I have gone through the record of appeal file and considered the arguments of the rival parties. It is noted that the case relates to non-deduction/ nonpayment of withholding tax which surfaced the violation of the provision of section 153 and 161 of the Ordinance, 2001. The learned CIR (Appeals) has observed that the assessing officer while framing the assessment order chosed the figures at random from the details provided by the respondent / tax payer without assigning any reasons and assessing officer did not refer the documents not acceptable to him. The approach of the assessing officer is not in consonance with the practicing proceedings because a tax is to be levied and charged on a clear and definite verdict and ascertainment. The learned CIR(A) has rightly observed that the department should give the detail of documents alongwith the party name which was on default in view of the provision of section 153 and 161 of the Ordinance, 2001 which he failed to comply with. The CIR (Appeals) despite of the fact of observing legal flaw in framing the assessment order, give a fair chance to the department to establish the default against the taxpayer/ respondent by giving a

Scanned with CamScanner

chance of audience to tax payer and examining of record of the tax payer/ respondent before creating a demand. It is, therefore, filing an appeal against such order is misconceived and against the fact particularly when the department has nothing to rebut the observation rendered by the CIR (A) through an acceptable piece of evidence/ documents.

5. In the wake of above there is no merit in the instant appeal which is accordingly dismissed.

6. This order consists of 3 (three) pages and each page bears my signature.

Sd/-
(MIAN ABDUL BASIT)
JUDICIAL MEMBER
(Empowered u/s 130 (8AA) of the Income Tax Ordinance, 2001 to exercise powers and functions of the Appellate Tribunal sitting singly).

Copy of the bench order forwarded to
1. The Appellant
2. THE CIR. M/S. Shah Sons Pakistan
By order (Punjab MN.
Appellate Tribunal Inland Revenue
Lahore.
29/20