

APPELLATE TRIBUNAL INLAND REVENUE LAHORE BENCH LAHORE

ITA NO.2308/LB/2014
(Tax Year 2009)

M/s U S Apparel & Textile (Pvt) Ltd., Lahore .. Appellant
Versus
The CIR (Appeals-II), Lahore .. Respondent

Appellant by: Mr. Muhammad Awais, FCA
Mr. Aqeel Ahmad, Advocate

Respondent by: Mr. Asim Halim, DR

Date of hearing: 21-09-2016

Date of Order: 28-11-2016

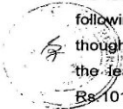
ORDER**Raana Ahmed (Accountant Member):**

Brief facts of the case are that appellant, being a prescribed person within the meaning of section 153(7) of the Income Tax Ordinance, 2001, submitted statement u/s 165. Notice u/s 161/205 was issued for compliance on 15.02.2013. The OIR, after going through the details and evidence produced by the appellant, passed an order u/s 161/205 of the Ordinance, creating a demand of Rs.31,071,622/-.

2. Being aggrieved, the taxpayer filed appeal before the learned CIR(A) who vide order u/s 129 dated 29.08.2014 upheld the order of OIR, against which the titled appeal has been filed by the appellant, on the following grounds:

- 1) That the impugned order dated 29 August 2014 issued by the learned Commissioner Inland Revenue, Appeals-II, ["CIR-Appeals-II"] Lahore under section 129 of the Income Tax Ordinance, 2001 ("the Ordinance") is illegal, bad in law, unjust, unfair and against the facts of the case.

- 2) That the learned CIR Appeals-II has erred in not accepting the ground that impugned order has been passed by the learned DCIR without having lawful jurisdiction.
- 3) That the learned CIR Appeals-II has erred in not accepting the ground that the learned DCIR has erred in charging tax under section 161 of the Ordinance in a sweeping manner without first indentifying the parties to whom the payments were made without deduction of tax under various heads of accounts.
- 4) That the learned CIR Appeals-II has erred in remanding back the levy of tax under section 161 of the Ordinance under the following heads to the learned DCIR instead of deleting it, though he has agreed with the contention of the Appellant that the learned DCIR has erred in including the local sales of Rs.101,576,881/- made to indirect exporter's, which is treated as export sales under section 154(3) of the Ordinance read with Circular No.24 of 1999 dated 17 September 1999.



Heads of Account	Payment made	Deductible payments @ 6.748% (Local Sales)	Tax Liabe to be deducted	Applicable rate	Difference shortfall
Cost of Sales					
Local Raw Material	1,439,769,060	97,155,616	3,400,447	3.50%	3,400,447
Readymade Garments	42,015,324	2,835,194	992,314	3.50%	992,314
Stitching Charges	42,934,311	2,897,207	173,832	6.00%	173,832
Freight & Octroi	35,926,288	2,424,306	48,486	2.00%	48,486
Store Consumed	24,893,150	1,661,368	58,147	3.50%	58,147
Repair & Maintenance	1,932,372	130,396	4,563	3.50%	4,563
Miscellaneous (Cost of Sales)	2,104,307	141,999	4,970	3.50%	4,970
Miscellaneous (Selling Expenses)	1,667,674	112,535	3,938	3.50%	3,938
Administrative Expenses					
Repair & Maintenance	4,216,689	285,892	9,959	3.50%	9,959
Vehicle Running & Maintenance	5,804,617	393,553	13,709	3.50%	13,709
Printing & Stationery	1,440,568	97,210	3,402	3.50%	3,402

Travelling & Conveyance	41,138,422	2,776,021	97,160	3.50%	97,160
Selling Expenses	1,667,674	112,534	6,752	6.00%	6,752
Entertainment	5,101,142	345,857	20,751	6.00%	166,750
Fees & Subscription	1,565,278	106,125	6,368	6.00%	18,598
Auditor's Remuneration	500,000	33,900	2,044	6.00%	2,024
Advertisement	927,181	62,863	3,772	6.00%	3,754
Miscellaneous (Selling Expenses)	3,184,622	215,917	7,558	3.50%	7,521

- 5) That the learned CIR Appeals-II has erred in remanding back the levy of tax under section 161 of the Ordinance under the following heads to the learned DCIR instead of deleting it:

Description	Closing Balance as on 30.06.2008	Closing Balance as on 30.06.2009	Difference (Paid during the year)	Deductible Payments @ 6.748% (Local Sales)	Tax liable to be deducted @ 3.5%
Creditors	141,921,113	129,848,501	12,072,612	814,660	28,513
Accrued Liabilities	62,513,368	48,416,018	14,097,350	951,289	33,295
		Total			61,808

- 6) That the learned CIR Appeals-II has erred in confirming the tax amounting to Rs.10,192,098/- charging under section 161 on the value of commission aggregating to Rs.101,920,986/- paid to non-resident persons.

- 7) That the learned CIR Appeals-II has erred in confirming the levy of tax amounting to Rs.10,192,098/- under section 161 on the plea that mandatory requirements for filing of notices under section 152(5) of the Ordinance before the Commissioner, for getting order to remit the amount without deduction of tax, have not been fulfilled before madding payments to non-residents, though he has accepted the contention of the Appellant that income of the non-resident persons is not a Pakistan Source

income and also exempt under the Double Taxation Agreement, Pakistan has with the countries where the non-resident persons resides.

- 8) That the learned CIR Appeals-II has erred in not following the judgment of the honorable Sindh High Court reported as 2101-PTD-1159, wherein it has held that filing of notice under section 152(5) of the Ordinance is not mandatory, hence exemption cannot be denied, merely on the basis of non filing of notice under section 152(5) of the Ordinance.
- 9) That the learned CIR Appeals-II has erred remanding back the levy of tax amounting to Rs.2,419,828/- to the learned DCIR instead of deleting it, though he has accepted the contention of the Appellant that the learned DCIR has erred in charging tax amounting to Rs.2,419,828/- on the value of addition in fixed assets, which was payable as on 30 June 2009.
- 10) That the learned CIR Appeals-II has erred in not deciding the ground taken before him that the learned DCIR has erred in not appreciating the fact that the vendors had already discharged their tax liability by filing their income tax returns for the tax year 2009, therefore, tax cannot be levied under section 161 of the Ordinance on the taxpayer company considering provisions of under sub-section 1B of section 161 of the Ordinance.
- 11) That the learned CIR Appeals-ii has erred in not deciding the ground taken before him that the learned DCIR has erred in levying default surcharge of rs.13,316,409/- under section 205 of the Ordinance.

3. Both the parties have been heard and relevant orders perused. The learned counsel of the appellants challenged charge of tax under section 161 of the Ordinance, without identifying the parties to whom the payments were made without deduction of tax under various heads of accounts.

4. After hearing both the parties, we are of the view that this case needs further probe. Therefore, the orders of the authorities below are vacated and the case is remanded to the learned OIR with the direction to specify each and every transaction on which default was committed by the appellant in deduction of tax at source. The appellant should also be provided an opportunity of being heard.

5. Ordered accordingly.


Sd/-
(CH. SHAHID IQBAL DHILLON)
JUDICIAL MEMBER

Sd/-
(RAANA AHMED)
ACCOUNTANT MEMBER

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