2010 SLD Equiv. Citation: **102 TAX 443** = **2010 PTD 1975** = =

APPELLATE TRIBUNAL INLAND REVENUE

I.T.A. No. 565/IB of 2010, decided on 8th June, 2010

Before Munsif Khan Minhas, Judicial Member

Sardar Zafar Mehmood, D.R. for Appellant. Arif Afzal for Respondent

Law: Income Tax Ordinance (XLIX of 2001)
Sections: 205(1)(b), 147(4) , 168

ORDER

MUNSIF KHAN MINHAS, JUDICIAL MEMBER.---This appeal has been filed by the department against the order dated 9-3-2010 passed by C.I.R. (Appeals) on the following ground;-

"That the learned CIR (A) was not justified to annul the order with the observation that when determined refunds are available on record, the additional tax under section 205(1)(B) is not chargeable."

2. Brief facts leading to this appeal are that the taxpayer, a public limited company, is engaged in the business of providing services for investment. The taxpayer e-filed return of total income for the year under appeal showing net income of Rs.51,745,079. The Taxation Officer required to file estimate for payment of advance tax for the year under review or to pay amount of instalment of advance tax not less than 90% of the tax chargeable but the taxpayer failed to do so. Therefore, the Taxation Officer charged addition tax under section 205(1)(B). Being dissatisfied with the treatment meted out by the Taxation Officer, the taxpayer went in appeal before the learned first appellate authority who vacated the order of the Taxation Officer with the observation that when determined refunds were available on record, the additional tax was not chargeable. Being aggrieved with the treatment accorded by the learned CIR(A), the Department has come up in appeal before this Tribunal as per ground raised supra.

2. During the arguments, learned DR has contended that no determined refunds were available on record as per detail provided by the taxpayer as the same were already adjusted against demands payable for the different years. The learned DR has further contended that as per provision of section 147(4) of the Income Tax Ordinance, 2001 against advance tax liability; the tax paid in quarter for which credit is allowed under section 168 of the Income Tax Ordinance, 2001, can only be adjusted. For ready reference section 168 is reproduced as under:

168. Credit for tax collected or deducted.---(1) For the purposes of this Ordinance.---

(a) the amount of any tax deducted from a payment under Division III of this Part [or Chapter XII] shall be treated as income derived by the person to whom the payment was made; and

(b) the amount of any tax collected under Division II of this Part [or Chapter XII] or deducted under Division III of this Part [or Chapter XII] shall be treated as tax paid by the

person from whom the tax was collected or deducted. (2) Subject to subsections (3) and (4), where an amount of tax has been collected from a person under Division II of this Part [or Chapter XII] or deducted from a payment made to a person under Division III of this Part [or Chapter XII], the person shall be allowed a tax credit for that tax in computing the tax due by the person on the taxable income of the person for the tax year in which the tax was collected or deducted.

(3) No tax credit shall be allowed for any tax collected or deducted that is a final tax under clauses (a), (b) and (d) of subsection (1) of section 151, subsection (1B) of section 152, subsection (6) of section 153, subsection (4) of sections 154, section 155, sub-section (3) of section 156, subsection (2) of section 156A, section 233, clauses (a) and (b) of subsection (1) of section 233A or subsection (5) of section 234 or section 234A.

(4) A tax credit allowed under this section shall be applied in accordance with subsection (3) of section 4.

(5) A tax credit or part of a tax credit allowed under this section for a tax year that is not able to be credited under subsection (3) of section 4 for the year shall be refunded to the taxpayer in accordance with section 170.

(6) Notwithstanding anything contained in any other law or any rules for the time being in force, no amount shall be deducted on account of service charges from the tax withheld or collected by any person under the provisions of this Ordinance. (7) In case any amount is deducted on account of service charges, by the person, this said person will be liable to pay the said amount to the Federal Government and all the provisions of this Ordinance shall apply insofar as they apply to the recovery of tax.

On the other hand learned AR has argued that the Taxation Officer has not appreciated the fact that certain unadjusted refunds were due from the department at the time of alleged default, hence the assessing officer was not justified to charge additional tax under section 205(1B) of the Income Tax Ordinance, 2001.

3. I have heard the arguments of both the rival parties and perused the relevant record available on file. It is pertinent to mention here that point in issue is levy of additional tax and not the payment of Advance Tax. Advance Tax has been ,subsequently paid. Only levy of additional tax is under cloud. Concept of additional tax is that if one uses the money of Government then he has to compensate the Government. Here Government on one hand is collecting tax in advance, and on the other hand determined refunds of taxpayer are still to be adjusted. On fact learned DR has failed to prove on record that determined refunds have already been adjusted. The findings of learned CIT (A) is very clear and specific that demand note and consolidated order under section 124 of the Ordinance dated 30-1-2010 for assessment years 1995-1996, 1996-1997, 1998-1999 and 1999-2000 showed that at the time of levy of additional tax unadjusted refunds were due from the department. However department can again verify its own record. I am of the considered view that when determined refunds are available on record, the additional tax is not chargeable. I am in agreement with the finding of the learned CIR(A). I uphold the order of the learned CIR (A). Consequently, the departmental appeal being devoid of any merit is dismissed.

Appeal dismissed