APPELLATE TRIBUNAL INLAND REVENUE OF PAKISTAN
(SPECIAL DIVISION BENCH, MULTAN)

ITA No.131/MB/2021
(Tax Year-2019)

M/s **Fatima Enterprises Limited**
487-A, Mumtazabad, Vehari Road,
Multan NTN # 0101073 — Appellant

Vs

The Commissioner Inland Revenue,
LTO, Multan — Respondent

Appellant By	Mr. M. Imran Ghazi, Adv
Respondent By	Mr. Arslan Qadoos Bukhari, DR
Date of Hearing	15.07.2022
Date of Order	15.07.2022

ORDER

MIAN ABDUL BASIT, JUDICIAL MEMBER: - Through the titled appeal the order dated 01.09.2021 passed in appeal barcode No. 100000102557266 by the learned Commissioner Inland Revenue (Appeals-II), Multan [**CIR(A)**] has been assailed. The learned CIR(A) has confirmed the order of assessing officer passed under section 161(1) of the Income tax Ordinance, 2001 (the Ordinance 2001). The appellant filed this appeal for the tax year 2019 on the grounds set forth in memo of appeal file.

2. Brief facts leading to the instant case are that the taxpayer a public limited company, deriving income from running a business of textile products and is a prescribed person as envisaged under sub-clause (j) of clause (i) of sub-section (7) of Section of 153 of the Ordinance, 2001. The taxpayer was, therefore, under legal obligation to deduct withholding tax as provided under clause (a) of sub-section (1) of Section 153 of the Ordinance, 2001 while making payments against purchases effected from the suppliers at the prescribed rates on the gross amount and having

deducted, deposit tax in the Government Treasury within the stipulated time. the tax department observed that the taxpayer filed the monthly withholding tax statements as required under section 165 of the Ordinance, 2001 for the tax year 2019 and deducted/ withheld an amount of Rs. 3,448,252/- against payments made on account of expenditure / purchases. The tax department noted that the appellant declared its purchases of Rs. 1,944,211,233/- during the period from July 2018 to February 2019 (tax year 2019) in the sales tax returns, therefore, the appellant did not make deduction / withholding of tax on remaining purchases of Rs. 1,599,385,859/-. The appellant declared purchases inclusive of sales tax at Rs 1,944,211,233/- in the sales tax returns filed for the period July, 2018 to February, 2019 relevant to the tax year under consideration effected from the various suppliers. In view of the aforementioned reasons, the taxpayer was confronted by issuing a show cause notice u/s 161(1) read with Section 153(1) & 205 of the Ordinance, 2001 for the tax year under consideration vide office letter dated 30.07.2019. The appellant despite proper service of notice chose not to reply, hence tax/ default surcharge was charged at Rs. 19,674,437/-. Being dissatisfied from the treatment meted out by the Assessing Officer, Taxpayer preferred appeal before the learned CIR (A), who vide impugned order dated 01.09.2021 confirmed the order of assessing officer. Hence, the instant appeal has been filed by the appellant/taxpayer.

3. In response to call notice Mr. Muhammad Imran Ghazi, advocate attended the court proceedings on behalf of the appellant/ taxpayer. On

the other hand, Mr. Arsalan Qadoos Bukhari, DR appeared to represent the department/ respondent.

4. The learned AR on behalf of taxpayer has submitted before us that the learned CIR(A) was not justified to uphold the order of the assessing authority without even understanding the fact that the matter was pertain to income tax. It is contended by the learned AR that the learned CIR(A) has given his finding on the issue of inadmissibility of input tax claimed in sales tax returns whereas the matter before him was of non-withholding of tax on payments made on account of expenditures. The learned AR maintained that there was no lawful justification for the assessing officer to proceed directly under section 161 without resorting to rule 44 of the Income Tax Ordinance, 2001. The learned AR contended that the case was framed by taking the figures from the sales tax returns of the appellant which is against the mandate of section 153 and 161 of the Ordinance, 2001. The learned AR stated that due tax on the payments made on account of different head of expenditures was properly withheld and deposited in the government exchequers by filing the monthly withholding statements as required under section 165 of the Ordinance, 2001. The learned AR closed with the prayer that the appeal may be accepted.

5. Conversely, the learned DR supported the orders of the authorities below and contended that the taxpayer has failed to put appearance before the assessing authority and opted not to provide the record. The learned DR further submitted that in absence of record regarding the deduction and withholding of tax, the assessing officer did not have any

option except to proceed under section 161 on the basis of purchase referred in sales tax returns. The taxpayer has rightly been treated as taxpayer in default as it has failed to deduct and deposit withholding tax on payments made under various heads of expenditures / purchases, the learned DR pleaded. The learned DR fervently supporting the orders of authorities bellow prayed for the dismissal of appeal.

6. We have heard the arguments of both sides and have perused the available record. The appellant as per the order, had failed to attend the office of assessing officer and no success was brought from learned CIR(A) as well in appeal. We, before going to decide this appeal on facts and merit, consider it apt to read out the order of learned CIR(A); the relevant portion of which is being reproduced hereunder:

> *The appeal is directed against the order in original whereby on the allegation that the* ***appellant claimed wrong input tax for the period under consideration*** *has caused the lesser payment of sales tax due. ---*
> *---*
>
> *I have examined facts of the case and it is manifest that the AO has not indicted on what transaction any inadmissible input tax has been claimed? Therefore,* ***the AO has failed to identify any "taxable event"****. Merely mentioning that any inadmissible input tax has been made without indicating the nature of transaction and on specific points, obtaining reply of appellant* ***the charge is totally unjustified and falls short of the legal mandate.*** *------*
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> *----------*
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> ***The AO has manifestly identified the said taxable event and the appellant could not rebut the same****, therefore there is no reason to interfere in the impugned order which is hereby confirmed.*

It is quite obvious from above paragraph of the impugned order that the leaned CIR(A) has rendered a very topsy-turvy findings on the matter. The learned CIR(A) recorded his finding with respect to inadmissible input tax under the Sales Tax Act, 1990 whereas the matter under appeal before him was of non-withholding of tax on payments made against the expenditures under the Income Tax Ordinance, 2001. Not only this but the learned CIR(A) on the one hand himself observed that the AO was failed to identify any taxable event and on the other hand totally reverted and canted his own finding by mentioning in the impugned order that the AO had manifestly identified taxable event. This being the blatant, glaring and apparent contradiction by the learned CIR(A) cannot be let to remain in the field. We are of the candid view that the learned CIR(A) has recorded his finding in a perfunctory and slap-dash manner which renders the impugned order as illegal and unwarranted by law.

7. The foremost important issue in connection to this appeal is to ascertain whether the proceedings of the assessing officer for creating demand of non-deducted; and, or non-payment of deducted withholding tax on purchases / expenses, were legally sustainable in contemplation to the provision of section 161 of the Ordinance, 2001. In order to attend this issue reading of the provision of section 153 and 161 of the Ordinance, 2001 will be of more beneficial. Section 153 of the Ordinance, 2001 explains the scope and criterion for deduction of tax on making payments for goods, services and contracts. The section 161 of the Ordinance, 2001 gives the rate of tax deduction on expenses incurred in different

categories, i.e. at what rate the tax is to be deducted on what type of expenditure. We, from the study of both the provision, are of considered opinion that the show cause notice u/s 161 of the ordinance, 2001 issued by the assessing officer should hold the following necessary ingredients:-

(a) The person against whom the proceedings U/S 161 is initiated must be a withholding agent as is defined U/S 153 (7) of the Ordinance 2001;

(b) The payments made should be exactly and specifically mentioned in the notice;

(c) The payments made as expense are fully covered under the provision of section 153(1) of the Ordinance, 2001;

(d) Bifurcation of the expenses qua making payments for goods or for services or for contracts should also be separately mentioned in the notice;

(e) The head-wise expenditure should be mentioned in the notice; and

(f) The rate of deduction of tax for each head of expenses should be specified in the notice.

The department, while initiating the proceedings has not mentioned the heads of expenses but the purchase figures were taken from sales tax returns filed by the appellant. It is an admitted position that the purchase mentioned in the sales tax return does not mean that the payment against such purchase is also made during the same tax period (July-2018 to Feb-2019). It is therefore without referring the payment made against the expenses incurred by the taxpayer, the provision of section 153 read with section 161 cannot be invoked.

8. In the instant case, the record shows that the no notice under Rule 44(4) of the Income Tax Rules 2002 for tax year under appeal was issued to the appellant; and in the notice u/s 161 only the purchase declared in sales tax returns was mentioned rather to seek reconciliation with respect to withholding statements of section 165, which as per the order passed under section 161, the appellant had filed. In other words, the assessing officer has not identified any un-reconciled amount before issuing the show cause notice under section 161 of the Ordinance, 2001. It is also noted that no deficiency and defect has been reported in respect of the statements filed by the appellant under section 165 of the Ordinance, 2001. The assessing officer did not give findings in his order to the effect of any deficiency in the statements filed under section 165 of the Ordinance, 2001 for the tax year under appeal.

9. We have also noted that the amounts of purchases given in the order passed under section 161 had been taken from the sales tax return filed by the appellant. It is simply mentioned in the notice and order that the appellant had made purchases for the period from July 2018 to February 2019 (tax year 2019) for which the appellant was required to deduct the tax under the relevant provisions of law. The notice then went on to require the appellant / taxpayer to furnish the evidence of tax deduction on account of purchases from different parties. The learned assessing officer mentioned in the order that the deduction to the extent of payments made to the tune of Rs. 344,825,374/- was done and deposited in the government exchequer. The learned CIR(A) did not consider the actual facts of the case; and dismissed the appeal in a cursory manner by stating the confused and irrelevant statements

of facts. In our considered opinion whole proceeding was faulty and legally defective because in the instant proceedings for the year 2019, parameters of sections 153 and 161 of the Ordinance, 2001 has been brushed aside; and the intention of making the inquiry to find out the withholding of tax on different expenses is apparent from the order of assessing officer. There is no scope and mandate, while proceedings under section 161 of the Ordinance, 2001, to make the inquiries from the taxpayer; but it is for the assessing officer to give in the notice the complete details of expenses along with the relevant provision of withholding tax with rate of tax to be deducted. The of withholding proceeding under section 161 has authoritatively and comprehensively settled by the august Supreme Court of Pakistan in a case reported as Commissioner Inland Revenue, Zone-I, LTU Vs. MCB Bank Limited (**2021 SCMR 1325**) wherein the Hon'ble Supreme Court of Pakistan has over ruled the finding in earlier case reported as Bilz (Pvt.) Limited Vs. Deputy Commissioner of Income Tax and others (**2002 PTD 1= PLD 2002 SC 353**) with following observations;

> *"It is therefore most unfortunate that the tax authorities have seized certain observations made in Bilz and, taking them out of context, been misusing a leave refusing order of this Court as a tool and instrument to harass taxpayers. This so-called "understanding and application of the decision must be strongly deprecated. It must be clearly understood that Bilz is not, and cannot be used as, a platform by the tax authorities to launch fishing expeditions and roving inquiries. It cannot, and does not, support or allow the issuance of show cause notices of deliberate vagueness and breathtaking generality. And it certainly does not shift the burden under s. 161, from the very inception, wholly and solely on the*

taxpayer by the expedient of simply identifying one or more payments, or a class or category of payments. It also follows that, with respect, the High Court misunderstood Bilz in the Islam Steel Mills case. The observations made in that case which are inconsistent with what is said in this judgment are therefore overruled.

The judgment at Para 13 further says;

13. When the notices issued in these appeals are considered from this perspective, it is clear that those relating to TY 2003 2006 were nothing but a blatant fishing expedition. These notices, without more, must stand condemned as such, as must be the attempt to justify their issuance on the basis of Bilz. It must be kept in mind that the key factual aspect in the Bilz litigation, namely the specific finding of fact that the taxpayer was deliberately withholding information regarding the payees, is entirely missing in these appeals."

In the sagacity of forgoing reasons and in allegiance to the judgment of the Honorable Supreme Court of Pakistan supra, the orders of both Authorities bellow are annulled.

10. It is however clarified that the tax department may proceed afresh, for correct determination of tax liability after seeking the reconciliation in terms of rule 44(4) of the Income Tax Rules 2002 and specifically confronting the taxpayer / appellant of deficiency and defect, if any, in the statements filed under section 165 of the Ordinance 2001. The assessing officer should confront in writing through a fresh show cause notice, if permissible under the law, the deficiencies and defects with respect to withholding or deduction of tax after examination of record and documents in this regard. The fresh

proceedings shall be undertaken strictly in accordance with the observation made hereinabove.

11. This order consists of ten (10) pages and each page bears my signature.

Sd/-

(MIAN ABDUL BASIT)
JUDICIAL MEMBER

Sd/-

(DR. MUHAMMAD NAEEM)
ACCOUNTANT MEMBER

Muhammad Asghar/ APS

Copy of the bench order forwarded to
1. The Appellant M/s Fatima Enterprises Ltd Multan
2. The Respondent

BY ORDER

23/08/2022

ASSISTANT REGISTRAR
Appellate Tribunal Inland Revenue
Multan