

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

**ITA No.1216/LB/2015**

(Tax Year-2013)

**M/s Northern Power Generation Company Ltd,**

TPS Mehmood Kot Road, Muzaffargarh

NTN.3049717-5

...Appellant

**Versus**

**The CIR, RTO (Now LTO), Multan**

...Respondent

Appellant by : Mr. Kanwar Tanveer Anjum ITP.  
Respondent by : Mr. Nadeem Ahmad DR along with  
Dr. Sharafat Abbas Shah, DCIR &  
Mr. Zia Ahmed, IIR

Date of Hearing : 22.06.2023

Date of Order : 22.06.2023

**ORDER**



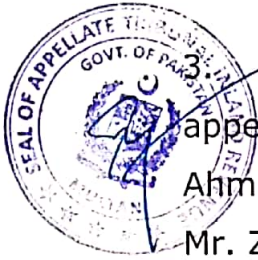
**Mian Abdul Basit (Judicial Member)**: The titled appeal has been filed by the appellant against the order dated 28-07-2015, passed by the learned Commissioner Inland Revenue (Appeals) Multan [**CIR(A)**], whereby the order made under section 161/205 of Income Tax Ordinance, 2001 (the ordinance, 2001) was confirmed by the CIR (A).

2. Brief facts leading to the instant appeal are that taxpayer company filed an appeal before CIR (A) contesting the order under section 161/205 of the Ordinance, 2001 for the tax year 2013 passed by the Deputy Commissioner Inland Revenue, WHT, Unit-01 Zone, Multan. As per record the appellant is a limited company and derived income by generating & transmitting electric power and a withholding agent in terms of sub section (7) of section 153 of the Income Tax Ordinance 2001. From the scrutiny of return of the Income Tax and withholding tax statements filed by the

appellant for tax year 2013, the concerned officer observed that the appellant had not fully deducted/deposited tax on payment made for various expenses such as stores/spares, addition in assets, repair/ maintenance, other expenses, travelling/conveyance, legal & professional charges, advertisement & publicity, rent rate & taxes, salaries & wages etc. as claimed in the accounts statement annexed with income tax return. Accordingly, proceedings u/s 161 of the Income Tax Ordinance 2001 were initiated by issuing show cause notice u/s 161/205 of Ordinance, 2001 vide No. 704 dated 24-04-2014 requiring certain details and documents by 08-05-2014. In response to said show cause notice the taxpayer company made a request on 08-05-2014 to depute an official to examine the scattered record. However, on 09-05-2014 another notice was issued to furnish reconciliation as per earlier Notice u/s 161. The taxpayer company instead of furnishing record/documents/details again requested on 17-05-2014 to depute an official to examine the record at spot. On 17-06-2014 a notice was issued to furnish formation-wise record alongwith breakup of expenses by 08-07-2014. On the request of the taxpayer company the case was adjourned/re-fixed for 15-07-2014 vide No. 08, 15-08-2014 vide No.17, 10-11-2014, vide No. 190 and 18-11-2014, vide No. 208 but no compliance was made. However, a final show cause notice was issued vide No. 514 dated 05-01-2015 for compliance on 15-01-2015. On the request of taxpayer/company the case was adjourned/re-fixed for 05-02-2015 vide No. 557, 08-04-2015 vide No. 952 and finally on 20-04-2015. The taxpayer through its A.R submitted written reply to the show cause notice but did not provide complete details. After examining the reply of the appellant, the DCIR finalized proceedings by passing order under section 161/205 of the Income Tax Ordinance 2001 dated 27-05-2015, whereby a tax demand of



Rs.255,399,665/- was created. Feeling dissatisfied with the treatment meted out by the learned assessing officer, the appellant filed an appeal before the learned CIR(A) which was dismissed vide order dated 28.07.2015. The appellant has assailed the order of learned CIR(A) through this appeal on the grounds raised in the memo of appeal, hence these proceedings.



On the date of hearing Mr. Kanwar Tanvir Anjum, ITP appears on behalf of the appellant company and Mr. Nadeem Ahmed DR along with Dr. Sharafat Abbas Shah, DCIR & Mr. Zia Ahmed, IIR represents the tax department

4. The learned AR appearing on behalf of the appellant argues that order of the CIR(A) and that of the assessing officer are bad in law and fact as both the orders have been passed without examining the record of the appellant. The learned AR further submits that the appellant/company is a government organization and abide by all the land laws including the Ordinance, 2001. The learned AR pleads that the company duly deduct the tax on the purchase made and expenses done wherever applicable and deposited the deducted tax amount in the coffer of government within due date. The learned AR submits that the company has in his possession the complete record with respect to expenses and deduction of tax on such expenses along with the CPR which both forums below did not consider at the time of finalizing the respective orders. The learned AR maintains that the assessing officer passed the order under section 161 of the ordinance merely on the basis of surmises without even discussing the reply and record provided to assessing officer which was confirmed by CIR(A) in an arbitrary manner. The learned AR states that the appellant company is ready to get the record verify form the tax department. On 07.04.2022,

Mr. Tariq Bhatti representing the tax department showed consent for reconciliation of the record of the appellant with the claim of appellant from the assessing officer. The departmental representatives appeared during the course of hearing of this case kept on seeking time to furnish the reconciliation report. The DR further states that the appellant had not provided the complete record which is being caused delay in finalizing the reconciliation report. On the last date of hearing i.e.22.06.2023 Mr. Nadeem Ahmed DR along with Dr. Sharafat Abbas Shah, DCIR & Mr. Zia Ahmed, IIR appeared on behalf of Respondent/Department and submit that due to non-provision of complete record by the appellant/company, the report has not been prepared and the officer fervently supported the order of learned CIR(A) with the prayer to uphold the same.

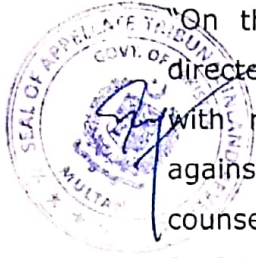


5. The case was fixed for hearing on 07.04.2022, and on the said dated with the consent of the parties the assessing officer was directed to prepare the reconciliation report based on the documents presented by the appellant. The short / interim order is being reproduced hereunder;

**“During hearing it is appraised that the record with respect to deduction of tax required u/s 153 read with section 161 of the Ordinance, 2001 was furnished to assessing officer, which was not properly examined and appreciated. Be that as it may, we deem it appropriate to direct the assessing officer to prepare a reconciliation report with respect to withholding of an expense done by the appellant. The appellant is directed to approach the assessing officer with complete record and explanation for preparing the report as directed above. The assessing officer shall associate the representative of the appellant company at the time of preparing the reconciliation report with respect to withholding of tax on payment made against purchases and expenses.”**

The case was again fixed for hearing on 26.05.2022 and on the said date the reconciliation report was not furnished. This court on the said date directed the tax authorities to

submit the report on the next date of the hearing i.e. 14.06.2022. The short order dated 26.05.2022 is being reproduced hereunder:



On the last date of hearing on 07.04.2022 the court directed the taxpayer to prepare the reconciliation report with respect to withholding of tax on payment made against purchases and expenses. Today, the learned counsel of the taxpayer has placed an application dated 27.04.2022 before the Bench and stated that the relevant details are submitted to the taxation officer. The learned DR is directed to verify the stance of the learned counsel regarding submission of reconciliation report and prepared the stance of the department. The report is directed to be submitted before this court on the next date of hearing i.e. 14.06.2022".

The departmental representative on the said date again requested for adjournment, which was allowed, and the case was adjourned to 17.08.2022. The departmental representative again sought the adjournment for furnishing the reconciliation report. The tax department, thereafter, kept on seeking the adjournments, but till the last date of hearing no reconciliation report was provided. We vide our order dated 19.06,2023 directed the concerned officer / unit in-charge to appear before this court on 22.06.2023 and on the said date Mr. Nadeem Ahmed DR along with Dr. Sharafat Abbas Shah, DCIR & Mr. Zia Ahmed, IIR appeared before the Court. The learned officer on query about the reconciliation report, submits that the report could not be prepared because of non-provision of complete record by the appellant. The learned AR, when confronted with this situation, placed on record the letter dated 27.04.2022 to show that the complete record had already been provided to the assessing officer.

The perusal of said letter discerns that the appellant had provided the following information / record.

- a) Party wise ledgers
- b) Withholding statements along with the CPR
- c) Detail of each head of accounts
- d) Purchase invoices along with the details.

Therefore, we asked about the record submitted by the appellant to the tax department from the learned officer, but he responded that he did not bring the record with him. The learned officer, when asked that what record the appellant had not provided, could not point out the lack of record in completing the reconciliation report. It is noted that despite a lapse of more than one year from the date of provision of record by the appellant company the tax department did not prepare the reconciliation report.



6. We are of the view that the tax department did pay heed to the orders of this tribunal which resulted in a wastage of time. It also appears from the record that the representative of the appellant made a number of visits to the office of tax authorities but to no avail. We, in order to save government revenue, are of the view that one chance should be provided to the tax authorities to establish their case. It is also an admitted fact that the case requires the complete examination of the record, and without examining the record the exact liability in respect of withholding of tax cannot be determined. It is also noted that the examination of the whole record regarding the withholding of the tax is not possible at this second appellate forum. We, therefore, set aside both, the assessment order passed under section 161 read with section 205 of the Ordinance, 2001 and the appellate order passed by the learned CIR(A), and remand the case back to the assessing officer being plenipotentiary for de-novo consideration of the facts and the law applicable in the case in hand. The record of the taxpayer / appellant is

already lying with the tax department and if the assessing officer finds that some record is short, he will summon the record in writing from the appellant by mentioning the complete detail of short record. If the appellant receives any notice of the provision of record, he shall provide the requisitioned record to the department. The record of the appellant shall be scrutinized in the presence of the representative of the appellant. The assessing officer if finds any discrepancy and shortcoming in the record of the appellant, he shall confront such defect in writing from the appellant before finalizing the remand proceedings. Needless to observe that a fair, proper and sufficient opportunity of hearing shall be granted to the taxpayer / assessee during the re-assessment proceeding. The assessing officer shall also take into consideration the law laid down by the honorable Supreme Court of Pakistan in a case reported Commissioner Inland Revenue, Zone-I, LTU Vs. MCB Bank Limited (**2021 SCMR 1325**) wherein the guideline of conducting the withholding proceeding under section 161 has authoritatively and comprehensively been settled. The fresh order in remand proceedings shall be made strictly in accordance with the law laid down in the case of MCB Bank supra.

7. The appeal stands disposed of as above.

8. This order consists of Seven (07) pages, and each page bears my signature.

Sd/-

**(MIAN ABDUL BASIT)**  
JUDICIAL MEMBER

Sd/-

**(DR. MUHAMMAD NAEEM)**  
ACCOUNTANT MEMBER

Copy of the bench order forwarded to  
1. The Appellant M/S Northern Power Generation Company Ltd,  
2. The Respondent M/c. arsh.

BY ORDER  
02/8/23  
ASSISTANT REGISTRAR  
Appellate Tribunal Inland Revenue  
Multan