

APPELLATE TRIBUNAL INLAND REVENUE OF PAKISTAN
DIVISION BENCH, MULTAN

ITA No.02/MB/2025
Tax Year: 2022

Mr. Muhammad Shahid,
Chah Rind Wala Basti Meeran,
Jampur.
Reg No: 3240214049219

...Appellant

Versus

The CIR, RTO, Multan

...Respondent

Appellant by: Mr. Muhammad Imran Ghazi, Adv
Respondent by: Mr. Muhammad Irfan Khan Tareen, DR

Date of Hearing: 12.12.2025
Date of Order: 12.12.2025

ORDER

MIAN ABDUL BASIT (MEMBER): Titled appeal has been filed at the instance of the appellant/taxpayer against the Impugned order dated 23.09.2024 of the Commissioner Inland Revenue (Appeals-I) Multan [CIR(A)], whereby the order passed under section 161(1) of the Income Tax Ordinance, 2001 (The Ordinance, 2001) was confirmed.

2. Brief facts of the case as per impugned order are that the taxpayer is an individual. During the course of monitoring of withholding taxes pertaining to tax year 2022, it was found that the taxpayer, being a Prescribed Person/Withholding Agent as defined u/s 153(7) of the Ordinance, 2001, did not discharge his legal obligation and failed to deduct and deposit withholding/advance tax in terms of Section 153(1)(a) and 236H of the Ordinance, 2001. Accordingly, proceedings were initiated against the taxpayer by issuing show cause notice on 31.03.2023 u/s 161(1A)/205 of the Ordinance, 2001 followed by reminders but the taxpayer did not respond to the notices. Therefore, the assessing officer finalized the proceedings by passing the



impugned order dated 15.08.2023 and charged withholding tax amounting to Rs. 10,383,427/- u/s 161 of the Ordinance and default surcharge amounting to Rs. 2,017,674/-u/s 205 ibid. Feeling aggrieved by the said order, the taxpayer preferred an appeal before the learned CIR(A). Vide order dated 23.09.2024, the learned CIR(A) confirmed the assessing officer's order. Being dissatisfied with the said appellate order, the taxpayer has preferred the present second appeal before this Tribunal giving rise to the instant proceedings.

3. On due date Mr. Muhammad Imran Ghazi, Advocate attended the proceedings on behalf of the appellant/taxpayer and Mr. Muhammad Irfan Khan Tareen, the learned Department Representative (DR) appeared on behalf of the respondent/department.

4. The learned AR submitted that the impugned order of the learned CIR(A) is unlawful, arbitrary and contrary to the facts of the case. It was argued that the entire proceedings are void ab initio as no mandatory notice under Rule 44(4) of the Income Tax Rules, 2002 was issued; therefore, the resultant demand is unsustainable in view of the judgment of the Hon'ble Supreme Court in *CIR v. MCB Bank Limited* (CA No.502 of 2017). The learned AR further contended that the learned CIR(A) confirmed the impugned orders without providing an opportunity of being heard, in violation of section 128(1) of the Ordinance, 2001. It was submitted that the assessing officer unlawfully created simultaneous demand under sections 153(1) and 236H on the same transactions, despite the fact that the show cause under section 161 was based on tax already deducted under section 236G, and without establishing the appellant's status as a withholding agent. The learned AR argued that the impugned order is silent



regarding the filing or non-filing of withholding statements; thus, in absence of essential findings, the proceedings are coram non judge and void ab initio, as held in *M/s Spun Yarn Research and Development Company (Pvt.) Ltd.* It was further contended that the demand under section 236H was confirmed without determining whether sales were made to end consumers or retailers, rendering the order under section 161 defective. Lastly, the learned AR submitted that default surcharge under section 205 was imposed without confronting the appellant, in violation of the principle of natural justice.

5. The learned DR supported the impugned order and submitted that the learned CIR(A) has rightly upheld the assessing officer's order. It was argued that the proceedings were lawfully initiated and the objection regarding Rule 44(4) is merely technical and does not invalidate the proceedings. The learned DR contended that sufficient opportunity of being heard was provided and there is no violation of section 128(1) of the Ordinance, 2001. It was submitted that the appellant was liable as a withholding agent and the demands under sections 153(1) and 236H were correctly raised, while deduction under section 236G does not negate such liability. The learned DR further argued that non-mentioning of withholding statements does not render the proceedings void once default is established. It was contended that applicability of section 236H was rightly invoked and the appellant failed to prove sales to end consumers. Lastly, the learned DR submitted that default surcharge under section 205 is automatic and consequential.

6. We have heard the learned AR and DR and have perused the record on appeal file. This appeal has been preferred against the order



passed by the learned CIR(A), whereby the order made by the Assessing Officer under section 161 of the Ordinance, 2001, along with default surcharge under section 205, was upheld. The appellant has assailed the impugned order on multiple legal and factual grounds.

The record has been examined and the relevant provisions of law have been duly considered. At the outset, it is observed that section 236H of the Ordinance, 2001 is a transaction-specific withholding provision, applicable only where supplies are made to retailers. The impugned orders neither determine nor demonstrate the identity and status of the recipients of supplies, which is a sine qua non for invocation of section 236H. In absence of such determination, the applicability of section 236H remains unsubstantiated.

7. Further, the Assessing Officer has charged tax on the entire purchase value without establishing whether corresponding payments were made, when such payments were made, and whether withholding was attracted at the relevant point in time. The law mandates deduction at the time of payment; therefore, charging tax merely on purchase figures, without linking them to actual payments, renders the computation legally untenable. Likewise, the sales value has been inferred and worked out from purchase figures and tax has been levied under section 236H without identifying the quantum of supplies made to retailers, if any. Such an approach is not sanctioned by law, as withholding liability cannot be presumed or inferred but must be based on definite findings supported by evidence.

8. It is also noted that simultaneous demands have been created under sections 153(1) and 236H without conclusively determining the nature of transactions and the legal status of the appellant as a withholding agent under the respective provisions. Such concurrent



application, without proper legal foundation, suffers from infirmity. Moreover, the impugned orders are silent on the issue of filing or non-filing of withholding statements and do not record any clear finding in this regard. Absence of such findings affects the validity of proceedings under section 161 and makes the orders vulnerable in law. The levy of default surcharge under section 205 is consequential in nature; however, where the principal demand itself is found to be based on defective assumptions and incomplete determination of facts, the consequential levy cannot survive independently. Additionally, it is evident that the appellate order lacks independent reasoning on the material legal issues raised and does not address the statutory requirements governing withholding obligations under sections 153 and 236H of the Ordinance, 2001 in a meaningful manner.

9. In view of the above, it is held that the impugned orders suffer from non-application of mind, incomplete fact-finding, and misapplication of law, and therefore cannot be sustained. The orders passed by the Assessing Officer and confirmed by the learned CIR(A) are hereby set aside. The matter is remanded to the Assessing Officer for fresh adjudication in accordance with law, after providing due opportunity of being heard to the appellant, with the following specific directions:

- i. *To determine and record clear findings regarding the nature of supplies and the identity and status of recipients, particularly whether supplies were made to retailers so as to attract section 236H.*
- ii. *To establish the actual payments made, dates of such payments, and to examine withholding liability strictly with reference to the timing of payments, as mandated by law.*
- iii. *To determine the actual quantum of sales, if any, made to retailers, instead of inferring sales figures from purchases.*



- iv. To examine the applicability of sections 153(1), 236G, and 236H independently and distinctly, after determining the legal status of the appellant as a withholding agent under each provision.
- v. To record explicit findings regarding the filing or non-filing of withholding statements, supported by evidence available on record.
- vi. To recompute tax liability, if any, strictly in accordance with law, and to levy default surcharge under section 205 only if the principal liability is lawfully established.
- vii. The fresh proceedings must align with the observations and findings contained in this order, and must also follow the legal principles laid down by the Honorable Supreme Court in Commissioner Inland Revenue, Zone-I, LTU v. MCB Bank Limited (2021 SCMR 1325), particularly regarding the scope and consequences of failure to withhold tax.
- viii. During the course of re-adjudication, if it is established that the recipients of the payments in question have duly discharged their tax liabilities for the relevant tax year, specifically Tax Year 2022, then no tax recovery shall be made from the appellant. However, in such cases, the appellant shall still be liable to pay default surcharge in accordance with Section 161(1B) of the Ordinance, 2001.
- ix. Pass a speaking and reasoned order, demonstrating clear application of mind to each disputed expense head.
10. This order consists of six (06) pages, and I have affixed my signature on each page.



[Handwritten Signature]

MIAN ABDUL BARI RASHID
Member

[Handwritten Signature]

MIAN ABDUL BASIT
Member