

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

I.T.R. no.8 of 2023

Shahzad Saleem

versus

The Chief Commissioner Inland Revenue, Islamabad

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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20.03.2023	Syed Muhammad Imran, Advocate for the applicant Mr. Ghulam Qasim Bhatti, Advocate for FBR
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The reference emanates from an order of the Appellate Tribunal Inland Revenue (“**Tribunal**”) dated 20.10.2022 whereby, the learned Tribunal has confirmed the assessment order dated 31.12.2020 and the order of the Commissioner (Appeals) dated 26.09.2020. The question framed for our consideration is as follows:-

Whether under the facts and circumstances of the case order passed by the learned Appellate Tribunal merged with the first appellate order and assessment order under section 161 of the Income Tax Ordinance, 2001 is a speaking order in terms of Section 24-A of the General Clauses Act, 1897 and binding verdicts of judiciary?

2 Learned counsel for the applicant has submitted that there is no reasoning within the assessment order as to how a demand has been generated for a default on part of the taxpayer under section 161 of the Income Tax Ordinance, 2001 (“**ITO**”). He states that the contentions of the taxpayer have been recorded and a table has been produced reflecting the taxable amount in the estimation of the taxpayer and

second table has been produced reflecting the tax department's calculation without any reasoning as to how an additional demand has been generated. He states that the Commissioner (Appeals) has also endorsed the assessment order without reasoning while relying on a judgment of the august Supreme Court cited as *M/s BILZ (Private) Limited versus Deputy Commissioner of Income-Tax, Multan and another (2002 PTD 1)* for the proposition that the onus was on the taxpayer to establish that no default could be made out in relation to his obligation under section 161 of the ITO. He submits that the interpretation of the law laid down in *BILZ* was misconceived as subsequently also clarified by the august Supreme Court in *Commissioner Inland Revenue versus MCB (2021 SCMR 1325)* that the onus shifts from the tax department to a taxpayer in relation to a demand generated for default of withholding obligations under section 161 only where a taxpayer fails to produce relevant record where notice under section 161 has been issued. He states that where the taxpayer complies with the notice and submits the relevant record, it is for the tax department to scrutinize the same and identify the transactions in relation to which withholding obligation has not been discharged.

3 In view of the law laid down in *MCB*, it is evident that the assessment officer has not identified the transactions in relation to which withholding obligations under section 161 of the ITO have not been complied with. Learned counsel for the tax department has been unable to satisfy us that the assessment officer has scrutinized the record and passed a

reasoned order identifying the transactions in relation to which section 161 withholding obligations have not been complied with. We find that the Commissioner (Appeals) as well as learned Tribunal have not paid due attention to the fact that the assessment order is not a reasoned order. The law in relation to the onus of establishing a default for purposes of section 161 of ITO has been clarified by the apex Court in *MCB*, in view of which the assessment order is not sustainable.

4 In view of the above, we find that the assessment order, the order of the Commissioner (Appeals) as well as the order of the learned Tribunal in terms of the demand generated pursuant to section 161 are not sustainable and are liable to be set aside. The question of the taxpayer's obligation to deduct taxes under section 161 will be deemed pending before the Commissioner Inland Revenue who will determine the same in accordance with law laid down by the august Supreme Court in *MCB*.

5 Let a copy of this order be sent to the Registrar of the learned Tribunal under the seal of this Court.

(Sardar Ejaz Ishaq Khan)
Judge

(Babar Sattar)
Judge