

SHC restrains Commissioner Inland from cancelling exemption certificate

A division bench of the Sindh High Court has restrained the Commissioner Inland Revenue from cancelling exemption certificate earlier issued by him (under section 159(1) and section 154(4A) read with clause (94) of Part IV of the Second Schedule of Income Tax Ordinance, 2001) on the basis that taxpayer is not paying advance tax as per calculation made by the department of turnover of taxpayer for providing human resource services.

In this regard, the court has issued an interim order in CP No D - 8165 of 2017. Details of the case revealed that the petitioner M/s Ask Development Pvt Limited is providing human resource services to other leading companies and those companies over and above salaries of staff provided by the petitioner further pay fee at the rate of 6.5% to the petitioner. As per section 153(1) (b) the clients of the petitioner is required to deduct income tax from gross amount paid to the petitioner. However section 153(4A) read with clause (94) provides a mechanism to service provider against deduction of excessive income tax. Commissioner can issue an exemption certificate for non-deduction of income tax under section 153(1)(b) where the service providers deposit advance income tax equal to two percent of the total turnover of the corresponding period of the immediately preceding tax year. For the purpose of turnover u/s 153 of the Ordinance, 2001 definition is provided in sub-section 7 (V) of section 153 of the Ordinance, 2001. According to definition "turnover" the gross fees for the rendering of services for giving benefits including commissions.

To claim the benefit under sub section (4A) of section 153 read with clause (94) the Petitioner deposited advance tax equal to two percent of the total turnover of the corresponding period of the immediately preceding tax year. After careful scrutiny by the Commissioner an exemption certificate was issued to the Petitioner allowing its clients to 'not' deduct withholding income tax on payments made to the Petitioner. The said exemption was granted by the concerned Commissioner u/s 159(1)/153 of the Ordinance vide order dated 02-08-2017 for the period 01-07-2017 to 31-12-2017. That on 20-11-2017 the Petitioner received a show cause notice from the learned Commissioner for cancelling/revoking of exemption certificate awarded to the Petitioner under section 159(1)/153 of the Ordinance on the basis that the Petitioner has not discharged its advance tax liability in accordance with law.

The petitioner filed a constitutional petition before LHC through Taimoor Ahmed Qureshi Advocate. It was argued by the counsel that the petitioner is engaged in providing of manpower services and the payment of salaries of the staff of the petitioner by the client is not its turnover rather petitioner turnover is over and above payment of 6.5% and on that turnover from providing of services the petitioner had paid the requisite 2% advance income tax. After hearing the counsel the Court passed the interim order that no order shall be passed by the Commissioner on the show cause notice and issued notice the Commissioner Inland Revenue and Deputy Attorney General for December 15, 2017.

Tax experts when contacted observed that the issue before the higher courts may have wide implication for service provider mentioned in clause (94) such as manpower outsourcing services, freight forwarding services, courier services, security guard services, engineering services, car rental services and hotel services etc.

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