



TAXPAK

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Tola Associates



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Chairman's Message



Assalam-o-alaikum and Eid Mubarak everyone! We would like to extend our heartfelt wishes for a joyous and blessed Eid. May this special occasion bring peace, happiness, and prosperity to you and your loved ones. We further hope this monthly issue of TaxPak finds you in good spirits and immaculate health! Tola Associates welcomes you to another edition of TaxPak, our monthly publication the purpose of which is to provide a monthly update on the ongoing tax related developments in Pakistan. Alhamdulillah, so far, we have been successful in our mission to educate about, and keep the public-at-large updated of these developments on a monthly basis.

Moreover, we would like to apprise the readers of what information you can expect in this document. This newsletter contains an elaboration of important Notifications and Circulars issued by the Federal Board of Revenue ("FBR") and its provincial counterparts. Moreover, Notifications from the Corporate regulatory body i.e., SECP are also discussed. As our main aim is to keep the masses updated regarding the developments in the Pakistani tax law, we usually discuss a (relatively) recent judgement passed by the courts of law. This edition of TaxPak consists a discussion of two judgments. The first one has been passed by the Hon'ble Lahore High Court ("LHC") wherein the Hon'ble LHC has discussed in detail the legality of show cause notice under section 52 of the Punjab Sales Tax on Services Act, 2012 and has set aside the said show cause and directed reconsideration under Sections 14 and 14A.

The second judgment discussed, was passed by the Hon'ble Supreme Court of Pakistan ("SCP"). This case highlights the importance of **taxpayer compliance** with withholding tax obligations under the Income Tax Ordinance, 2001.

All our readers are requested to visit our website www.tolaassociates.com , or download our mobile application in order to access previously published editions of TaxPak along with other publications, and to stay updated of future notifications. Lastly, we request our readers to circulate this e-copy within their circle, as our primary aim is to benefit the masses. Feedback is always welcomed.

Warm Regards,
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Chairman
Tola Associates.

FEDERAL BOARD OF REVENUE ("FBR") NOTIFICATIONS

A. INCOME TAX NOTIFICATIONS

1) Amendment in Sales Tax Rules, 2006

The Federal Board of Revenue (FBR), vide S.R.O. 364 of 2025, dated 14th March, 2025, has made amendments to the Sales Tax Rules, 2006, The following changes have been implemented:

1. Chapter XIV-BA –

- (1) In the heading of Chapter XIV-BA, for the words "VIDEO ANALYTICS RULES FOR ELECTRONIC MONITORING OF PRODUCTION OF SPECIFIED GOODS," the words "ELECTRONIC MONITORING OF PRODUCTION OF SPECIFIED GOODS" shall be substituted.

2. Amendments in Rule 150 ZQR:

- (2) (a) After the words "video surveillance," the comma and words "video analytics solution" shall be inserted.
- (b) In the proviso, after the word "analytics," the words "solution and digital eye" shall be inserted.

3. Substitution of Rule 150 ZQS:

For rule 150 ZQS, the following shall be substituted:

- "150 ZQS. Definitions. – In this Chapter, unless there is anything repugnant in the subject or context:
 - o "authorized vendor" means a person authorized by the Board under these rules;
 - o "approval committee" means a committee comprising officers notified by the Board for approving vendors of equipment to be installed at production lines of specified goods;
 - o "applicant" means any person applying for approval of equipment for electronic monitoring of production of specified goods under the rules;
 - o "CCU" means the Central Control Unit established by the Board;
 - o "digital eye" means Board's software used to identify specific objects, behaviors, or attitudes and can be used for recording and capturing production counts in video footage."
 - o "Person" means person as defined in the Income Tax Ordinance, 2001

4. Substitution of Rule 150 ZQT – Goods to be Monitored Electronically:

- (1) Production of specified goods manufactured in Pakistan shall be monitored through video surveillance, video analytics solutions, and digital eye by installing production monitoring equipment at production lines, as approved by the Board. This includes:

- o Real-time capture of production process;
- o Real-time collection of data showing production through object detection and counting;
- o Transmission of data to Central Control Unit (CCU) at Board in real-time;
- o Detection of unexpected stops;
- o Quantitative analyses of production;
- o Data analytics for required legal actions.

- (2) No person engaged in manufacturing specified goods shall remove the production from their premises unless it has undergone the process of production monitoring under these rules.

5. Amendments in Rule 150 ZQU (Sub-rule Modifications):

- In sub-rule (1), for the word "video," the word "production" shall be substituted, and "excluding digital eye" shall be deleted.
- In sub-rule (2), for the word "video," the word "production" shall be substituted, and "excluding digital eye" shall be deleted.

6. Omission of Rule 150 ZQV – Sub-rule (4):

- Rule 150 ZQV, sub-rule (4), is omitted.

This entails that the provisions of sub-rule (1) to (3) shall also apply in case of procurement of digital eye by the Board.

7. Amendments in Rule 150 ZQW – Vendor Application Process:

- For sub-rule (1), the following shall be substituted:
 - o "(1) A person shall file an application for approval as an authorized vendor under these rules in duplicate to the Board."
- (b) For sub-rule (2), the following shall be substituted:
 - o "(2) An application under sub-rule (1) shall be accompanied by all relevant documents, including:
 - Comprehensive profile of the person;
 - Managerial and technical personnel details;
 - Pre-qualification based on evaluation criteria;
 - Technical documents showing the capacity of video equipment, etc."
 - Current commitments and status of in-hand projects;
 - National Tax Number (NTN) and Sales Tax Registration (STRN) certificate;
 - Audited accounts of the last three financial years;
 - Computerized National Identity Cards (CNICs) of the directors and members;
 - Undertaking that the person has never been blacklisted by any Government or private department or organization and has not been involved in fiscal fraud;
 - and any other document required by Board."

In the Amendment, the wording of sub-rule (1) has been changed to a "A person shall file an application" The term "comprehensive profile of the company" in the Previous rule is changed to "comprehensive profile of the person" in the Amendment, which broadens the scope to include individuals or entities. Additionally, the Amendment requires "technical documents showing relevant capacity of the video equipment" rather than simply "documents showing relevant capacity of the video equipment." The Previous rule only required CNICs of the directors, while the Amendment expands this requirement to include CNICs of both directors and members. Furthermore, the Amendment specifies that both National Tax Number (NTN) and Sales Tax Registration (STRN) certificates are required together, consolidating the document requirements. Lastly, sub-rule (3) from the Previous rule, which mentioned exceptions related to the procurement of "digital eye" by the Board, is omitted in the Amendment.

8. Amendment in Rule 150 ZQX – Criteria for Grant of Authorization:

- Rule 150 ZQX shall be substituted with:
 - o "150 ZQX. Criteria for grant of authorization. – The authorized vendor must demonstrate the working of production monitoring equipment as specified by the Board."

This amendment replaces previous feature requirements that were a prerequisite that a vendor was required to have in the previous rule.

9. Amendment in Rule 150 ZQY – Functions and Responsibilities of IT Team:

- Rule 150 ZQY shall be substituted with:
 - o "150 ZQY. Functions and responsibilities of IT team of Board. – The IT team shall perform functions as specified by the Board."

Amended rule removes requirement that a vendors equipment shall perform following functions after integration with FBR software.

10. Amendment in Rule 150 ZQZ – Fee and Charges:

- In sub-rule (5), for the word "thirty," the word "sixty" shall be substituted;
 - o In sub-rule (6), for the word "licensing," the word "approval" shall be substituted.
 - o In sub-rule (8), the following shall be substituted:
 - "(8) The qualified applicant must deposit an unconditional bank guarantee equivalent to five percent of the project cost or rupees five million, whichever is lower, before receiving authorization."
 - o In sub-rule (9), the following shall be substituted:
 - "(9) The bank guarantee shall remain valid for the entire duration of the authorization and may be encashed in case of violations of these rules."

The amendment specifies that the bank guarantee must be **unconditional** and that the guarantee is encashable for both **violations of rules** and **breaches of the authorization**

11. Amendment in Rule 150 ZQZA – Vendor Responsibilities:

- After sub-rule (3), a new sub-rule (3A) is added:
 - o“(3A) The vendor shall be responsible for the procurement, installation, and maintenance of production monitoring equipment at production lines.”
- For sub-rule (4), the following shall be substituted:
 - o“(4) The vendor must specify the expected delivery and installation time for production monitoring equipment, which shall not exceed ninety days from the date of the purchase order.”

12. Omission of Rule 150 ZQZB:

- Rule 150 ZQZB is omitted.
- The omitted rule pertained to requirements to be met at the factory premise.

13. Substitution of Rule 150 ZQZC – Technical and Training Support:

Rule 150 ZQZC shall be substituted which entails the technical and training support an authorized vendor must provide:

- 150 ZQZC. Technical and training support. – The authorized vendor must:
 1. Upgrade the installed IT infrastructure as per new technological requirements;
 2. Provide technical and operational training to relevant officers;
 3. Conduct appraisal reviews of the equipment's functioning as required by the Board.”

14. Amendment in Rule 150 ZQZD – Fee Structure and Charges:

Rule 150 ZQZD shall be substituted. The following changes will be made :

The provisions on **fees and charges** specify that the authorized **vendor** will charge the **manufacturer** for the purchase, installation, operation, and maintenance of production monitoring equipment, while no fees will be charged to any **field formations** or the **Board**. The **approval committee** can determine the maximum fee that vendors can charge and will publicly notify these fees. Normally, these fees will not be revised during the authorization period, but if there is a **significant change** or **economic disruption**, the vendor can petition the committee for a revision. If a fee increase is proposed, manufacturers will have the opportunity to present their views. If a petition for upward fee revision is denied, the vendor may request the cancellation of their authorization, which the approval committee may grant.

15. Amendment in Rule 150 ZQZE

The amendments in **Rule 150 ZQZE** are as follows:

- In **sub-rule (1), Clause (a)** replaces "FBR" with "Board," and a new **Clause (aa)** is added, requiring the **setting up and maintenance of IT infrastructure**, including the internet, as specified by the Board.
- In **Clause (b)**, the term "intelligent video analytics or digital eye" is substituted with "production monitoring equipment."
- **Clause (c)** removes the phrase "excluding digital eye solution," while
- **Clause (d)** replaces "intelligent video analytics and digital eye solution" with "production monitoring equipment." In
- **Clause (e)**, "and" is replaced with "CCU," "twenty-four hours" is changed to "one hour," and "intelligent video analytics and digital eye solution" is replaced with "installed system."
- **Clause (f)** also replaces "FBR" with "Board," and
- **Clause (h)** changes "Commissioner Inland Revenue" to "Commissioner Inland Revenue or Board."
- In **Clause (i)**, "twenty-four hours" is replaced with "one hour," and ", CCU" is added after "Commissioner Inland Revenue."

In **Rule 150 ZQZG**, "FBR" is replaced with "Board."

For further reading: [FBR](#)

CORPORATE NOTIFICATIONS

A. SECURITIES EXCHANGE COMMISSION OF PAKISTAN ("SECP")

1. Notification for issuance of shares in Book entry Form by unlisted Companies

The Securities and Exchange Commission of Pakistan, vide S.R.O. 246(I)/2025, dated 27th February, 2025, has, notified that all newly incorporated unlisted companies shall hold and issue shares in book-entry form only, in the following manner:

Book-Entry Shares Requirement:

- All unlisted companies, having share capital, incorporated on or after March 03, 2025, shall hold and issue shares in book-entry form only, from the date of their incorporation. No such company shall maintain its shares in physical form, and the replacement of shares from book-entry to physical shares shall not be permitted.

Subscriber Consent to Contractual Arrangements:

• At the time of incorporation, the subscribers of the company shall provide consent to the contractual arrangements, including its terms and conditions, with the Central Depository for directly crediting and maintaining its shares in book-entry form, along with payment of the annual fee and security deposit.

Compliance with Central Depository Requirements:

• All unlisted companies shall also comply with the requirements of the Central Depository for issuing shares in book-entry form.

Additional Documents for Unlisted Companies:

• All unlisted companies, having share capital, upon induction of their shares in book-entry form at the time of incorporation shall attach the following additional documents issued by the Central Depository, along with the relevant return(s) on the prescribed form notifying the detail of or change in shareholding under the Companies Act, 2017, as and when due:

Sno	Relevant Form	Additional Document
01	Form-A (Annual return of a company)	Complete list of shareholding / CDS list of shareholders. Complete CDS list of transfer of shares, if applicable.
02	Form-3 (Return of allotment of shares & change of more than twenty-five percent in shareholding or membership or voting rights)	In case of allotment of shares: Statement of allotment of shares / CDS list of allottees. In case of transfer of shares: Statement of transfer of shares / CDS Account Activity report.
03	Form-27 (Final return for buy back of shares of unlisted companies)	Statement of buy back of shares / CDS Account balance statement where buyback shares are parked.

Penal Action for Non-Compliance:

• Any person who contravenes or does not comply with the requirements of this notification shall be liable for penal action as provided under sub-section (2) of section 510 of the Companies Act, 2017. For further insight: [SECP](#)

2. Notification for Amendments to the Seventh Schedule of the Companies Act, 2017

The Securities and Exchange Commission of Pakistan, vide S.R.O. 247(I)/2025, dated 27th February, 2025, has made amendments to the Seventh Schedule of the Companies Act, 2017, which shall come into effect from 3rd March, 2025. The following amendments have been introduced to update the fees associated with filing, registering, or recording certain documents and activities required under the Companies Act.

1. Amendment to Item No. I (Company Incorporation and Document Filing)

o New Sub-Item (7B) has been added under Item No. I.

- This introduces a fee of PKR 100 for filing, registering, or recording the particulars related to the application for company incorporation required under the Act.

o Existing Sub-Item (8) has been substituted with a revised fee structure.

- The new fee for filing, registering, or recording any document (other than specified in previous sub-items) required under the Act has increased from **PKR 1,000 to 1,500**, with a **10% increase** after one year from the date of notification.

2. Amendment to Item No. II (Filing, Registering, or Recording Documents)

o New Sub-Item (6B) has been introduced under Item No. II.

- This adds a **fee of PKR 100** for filing, registering, or recording the particulars related to the application for company incorporation under the Companies Act.

o Existing Sub-Item (7) has been amended.

- The revised fee for filing, registering, or recording any document (other than those in sub-items (4), (5), (6), (6A), and (6B)) has been raised from **1,000 to 1,500**, with a **10% increase** after one year from the date of the notification.

3. Amendment to Item No. III (Company Incorporation, Document Filing, and Record Keeping)

o New Sub-Item (6B) has been introduced under Item No. III.

- This introduces a **fee of PKR 100** for filing, registering, or recording the particulars related to the application for company incorporation under the Act.

o Existing Sub-Item (7) has been substituted with a revised fee structure.

- The new fee for filing, registering, or recording any document (other than those in sub-items (4), (5), (6), (6A), and (6B)) required under the Act has been raised from **1,000 to 1,500**, with a **10% increase** after one year from the date of the notification.

Summary of Changes in Fees and Provisions:

Item No.	Service/Activity	Fee Before Amendment	Fee After Amendment
Item No. I	Filing, registering, or recording particulars related to the application for company incorporation	100	100
Item No. I	Filing, registering, or recording any document (other than sub-items (5), (6), (7), (7A), and (7B)) required under the Act	1,000	1,500 (after 1 year)
Item No. II	Filing, registering, or recording particulars related to the application for company incorporation	100	100

Item No. II	Filing, registering, or recording any document (other than sub-items (4), (5), (6), (6A), and (6B)) required under the Act	1,000	1,500 (after 1 year)
Item No. III	Filing, registering, or recording particulars related to the application for company incorporation	100	100
Item No. III	Filing, registering, or recording any document (other than sub-items (4), (5), (6), (6A), and (6B)) required under the Act	1,000	1,500 (after 1 year)

For further reading: [SECP](#)

3. Amendments to Insurance Accounting Regulations, 2017

The Securities and Exchange Commission of Pakistan, vide S.R.O. 312(I)/2025, dated 3rd March 2025, has made amendments to the Insurance Accounting Regulations, 2017, by inserting a new regulation 11A regarding the recording of advance, withholding, or refundable tax for life insurers. The amendments are as follows:

Recording of Advance, Withholding, or Refundable Tax:

- Advance, withholding, or refundable tax attributable to the shareholders' fund of a life insurer shall be recorded in the books of the shareholders' fund.
- Advance, withholding, or refundable tax attributable to a statutory fund of a life insurer shall be recorded in the books of the respective statutory fund.
- It shall be permissible for the shareholders' fund to purchase the full amount of adjustable advance, withholding, or refundable tax recorded in the books of the statutory fund(s) against cash, cash equivalents, or government securities.
- The shareholders' fund is mandated to purchase advance, withholding, or refundable tax related to the statutory fund(s), which is adjustable within a year, in cash, cash equivalents, or government securities.

For further reading: [SECP](#)

4. Amendments to General Takaful Accounting Regulations, 2019

The Securities and Exchange Commission of Pakistan, vide S.R.O. 311(I)/2025, dated 3rd March 2025, has been please to make certain amendments to the General Takaful Accounting Regulations, 2019.

For further reading: [SECP](#)

5. Amendments to the Insurance Rules, 2017

The Securities and Exchange Commission of Pakistan, vide S.R.O. 310(I)/2025, dated 3rd March 2025, has made amendments to the Insurance Rules, 2017 where for rule 11, the following shall be substituted: **“11. Minimum paid-up capital requirement for insurers.”**

For further reading: [SECP](#)

6. Amendments to the Insurance Rules, 2017

The Securities and Exchange Commission of Pakistan, vide S.R.O. 309(I)/2025, dated 3rd March 2025, has made amendments to the Insurance Rules, 2017 . After rule 13, the following new rule 13A and 13B shall be inserted, namely:

“13A. Valuation of subordinated debt securities for solvency purpose” and “13B. Characteristics of subordinated debt securities.”

For further reading: [SECP](#)

Case Law I : Commissioner Punjab Revenue Authority vs. Hafiz Muhammad Idris: Legality of Show Cause Notice under Section 52 of the Punjab Sales Tax on Services Act, 2012

Background:

This case concerns a writ petition filed by the Petitioner under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, ("Constitution") challenging the impugned show cause notice issued by the Punjab Revenue Authority ("the Authority") under Section 52 of the Punjab Sales Tax on Services Act, 2012 (the "Act"). The notice, dated 06.09.2024, was issued for the alleged failure of the Petitioner to pay due tax under the Act, a matter that the Petitioner argues was wrongly invoked under Section 52, when Section 14 was the appropriate provision.

Key Legal Issues/Questions Before the Court:

1. Whether the issuance of the impugned show cause notice under Section 52 of the Act is legally justified, or should it have been issued under Section 14 of the Act?

Arguments of the Petitioner's Counsel:

The Petitioner's counsel, argued that the impugned show cause notice was issued without lawful authority. According to the counsel, Section 14 of the Act should have been invoked instead of Section 52, as the Petitioner's role was that of a withholding agent, not a direct taxpayer. The counsel emphasized that Article 10-A of the Constitution guarantees the right to a fair trial, and Article 4 ensures that no action detrimental to a citizen's rights is taken except as per law. The counsel requested the Court to set aside the show cause notice, asserting that its issuance was legally flawed.

Arguments of the Respondent's Counsel:

The Authority's counsel did not directly argue in this judgment, but it was noted that the impugned notice relied on Section 52 of the Act, which relates to tax recovery procedures after non-payment or short-payment. However, it was contended by the Petitioner's counsel that the proper legal framework for the case fell under Section 14 of the Act, which governs withholding agents, as opposed to Section 52, which addresses penalties and tax recovery mechanisms.

Court's Analysis:

The Court examined the provisions of the Punjab Sales Tax on Services Act, 2012, specifically Section 52, which falls under Chapter VIII of the Act, concerning offences and penalties. Section 52 deals with the recovery of short or non-levied taxes and penalties. In contrast, Section 14 of the Act, located under Chapter II, outlines procedures related to withholding agents and the special tax collection

procedures. The Court highlighted that Section 14, a provision specifically dealing with withholding agents, should have been invoked before Section 52 could be considered.

The Court also referred to previous judgments, including *Rahat Café, Rawalpindi vs. Government of Punjab* (2024 PTD 898) and *Reliance Commodities (Private) Ltd. vs. Federation of Pakistan* (PLD 2020 Lahore 632), where it had been emphasized that a show cause notice must comply with the relevant statutory provisions. The Court underscored that Section 52 was not the correct provision for this matter, as it pertains to tax recovery procedures, not withholding agent liabilities.

Conclusion:

The Court ruled in favor of the Petitioner, acknowledging the validity of the Petitioner's argument that Section 14 should have been invoked instead of Section 52. It set aside the impugned show cause notice, citing the principles of fair trial and due process under Articles 10-A and 4 of the Constitution. The Court ordered that the matter be reconsidered by the Authority, who would now treat the petition as a representation and issue a decision in accordance with the relevant provisions of Sections 14 and 14A of the Act, after providing a fair hearing within four weeks from the receipt of the certified copy of this order.

The petition was allowed, and the show cause notice was set-aside.

Case Law II: M/s Chawala Footwear, Lahore Versus Commissioner Inland Revenue, Lahore – A Dispute Over Withholding Tax Obligation:

Background:

M/s Chawala Footwear, a Lahore-based manufacturer of plastic shoes and chappals, found themselves in a legal dispute with the Commissioner Inland Revenue regarding a tax demand issued under section 161 of the Income Tax Ordinance, 2001 ("ITO" or "the Ordinance"). The Department alleged that the company had failed to withhold tax on various payments made during the 2012 tax year. Chawala Footwear contended that the notice issued by the taxation officer was flawed as it did not identify the specific parties from whom tax was allegedly not deducted. The company argued that without these details, the tax demand was baseless and unfair. The core legal issue that was before the Hon'ble Supreme Court of Pakistan ("SCP") whether the taxpayer has successfully discharged its burden of proof to show that it was not a taxpayer in default of Section 161 of the ITO.

Key Legal Issues/Questions:

1. Whether the taxation officer's notice issued under section 161 was valid despite failing to identify the specific parties from whom the taxpayer allegedly failed to withhold tax.
2. Does the legal principle established in the case of MCB Bank Limited (2021 SCMR 1325), which requires objective information for initiating withholding tax proceedings, apply in this case?
3. Is the taxpayer required to prove that tax was withheld once it is established that payments were made subject to withholding tax?
4. Whether the Department's tax demand was lawful, despite the petitioner's contention that the notice lacked sufficient detail.

Arguments by the Petitioner's Counsel:

The counsel for M/s Chawala Footwear argued that the taxation officer's notice was invalid because it did not specify the names of the parties from whom tax was allegedly not deducted. They emphasized that according to the principles established in the MCB Bank case (2021 SCMR 1325), there must be an objective basis for initiating proceedings under section 161, and the lack of details regarding specific recipients undermined the fairness of the proceedings. The petitioner's counsel further contended that, without knowing the specific transactions or parties involved, it was impossible for the company to adequately defend itself or remedy the alleged defaults. The defense stressed that the Departments actions violated the principles of fairness and transparency.

Arguments by the Respondent's Counsel (Department):

The **Department's counsel** argued that once it was established that **M/s Chawala Footwear** had made payments subject to withholding tax, the **onus of proof shifted to the taxpayer** to demonstrate compliance. The counsel relied on the **Bilz (Pvt.) Ltd. case** (2002 PTD 1 = PLD 2002 SC 353), which held that the taxpayer had the responsibility to prove that tax had been deducted, regardless of whether specific parties were named in the notice. The **Department's counsel** further argued that the **failure to specify recipients in the notice** was not a material issue, as the **taxpayer was obligated to disclose all payments** made throughout the year under **section 161 of the Income Tax Ordinance**. Therefore, the notice was issued in line with the law, and the tax demand should be upheld.

Court's Analysis:

The court carefully analyzed the arguments from both parties and examined the relevant legal principles, including the **MCB Bank case** and the **Bilz case**. The court noted that **section 161** of the Income Tax Ordinance required the taxpayer to **disclose all payments made** and show that tax was properly deducted. It was highlighted that the **failure to deduct tax** was a clear default under the law, regardless of the absence of specific recipient details in the notice. The court also referred to the legal requirement for the taxpayer to demonstrate non-default once the tax authorities had determined that withholding tax applied to the payments. The court concluded that the absence of detailed recipient names did not invalidate the tax demand, as the taxpayer had **clear obligations** under the **Ordinance** to comply with tax withholding requirements.

Conclusion:

The **court dismissed the appeal** of **M/s Chawala Footwear**, finding that the **tax demand issued by the Department** was **legally valid**. The court ruled that the taxpayer was obligated to **disclose all relevant payments** under **section 161** of the **Ordinance**, even those payments on which tax was not withheld / deducted, and that reasons for non-deduction of tax thereon must be given. Further, the Court held, citing the MCB Bank case, that there must, at least initially, be some reason or information available with the Commissioner for him to conclude that there was, or could have been, a failure to deduct. That reason or information must satisfy the test of objectiveness, i.e., must be such as would satisfy a reasonable person looking at the relevant facts and information in an objective manner. The threshold is not so stringent as to require "definite information" (using this term in the sense well known to income tax law), but it is also not so low as to be bound merely to the subjective satisfaction of the Commissioner. Moreover, the Court further held that it is only after the aforesaid threshold is crossed, can the tax officer issue a notice under Section 161 of the ITO and the burden of proof shifts on the taxpayer to show that he or she is not in default.

The court dismissed the appeal of M/s Chawala Footwear, finding that the tax demand issued by the Department was legally valid. The court ruled that the taxpayer was obligated to disclose all relevant payments under section 161 of the Ordinance, even those payments on which tax was not withheld / deducted, and that reasons for non-deduction of tax thereon must be given. Further, the Court held, citing the MCB Bank case, that there must, at least initially, be some reason or information available with the Commissioner for him to conclude that there was, or could have been, a failure to deduct. That reason or information must satisfy the test of objectiveness, i.e., must be such as would satisfy a reasonable person looking at the relevant facts and information in an objective manner. The threshold is not so stringent as to require “definite information” (using this term in the sense well known to income tax law), but it is also not so low as to be bound merely to the subjective satisfaction of the Commissioner. Moreover, the Court further held that it is only after the aforesaid threshold is crossed, can the tax officer issue a notice under Section 161 of the ITO and the burden of proof shifts on the taxpayer to show that he or she is not in default.

In light of the above analysis of the Notice, the Hon’ble SCP held that the proceedings conducted by the tax officer was not a fishing expedition, and that the threshold / test mentioned above has been met. As such, the Hon’ble SCP held that the tax demand raised against the taxpayer was well-founded, and therefore, dismissed the appeal of the taxpayer.

Key Takeaway:

This case highlights the importance of taxpayer compliance with withholding tax obligations under the Income Tax Ordinance 2001, and at the same time, upholds the test given in the MCB Bank case for the tax officer to invoke Section 161 of the ITO. It is only after that threshold / test has been met can the officer invoke Section 161 against the taxpayer. The court chose to overlook the previously decided principle that the tax officer must identify the specific names of the parties to whom payments were made and tax thereon was not deducted in accordance with the ITO, as it held that disclosing all payments, including those on which tax was not deducted were an obligation of the taxpayer u/s 161 of the ITO.

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