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HIGH COURT OF BALOCHISTAN

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COURT: Hon'ble C.J (A) Mr. Justice Ejaz Ahmed Sawathi BHC
SUBJECT: **Tax Law**
DATE: **March 22, 2025**
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Queries

1. *Does failure to deduct and deposit tax on salaries, bonuses, and other payments by QESCO, a withholding agent, trigger liability under the Income Tax Ordinance, 2001?*
2. *What are the essential requirements for a valid show-cause notice for reassessment or additional tax under the Income Tax Ordinance, 2001?*
3. *Does the Tariff Differential Subsidy (TDS) received by electric power companies constitute gross revenue and become subject to minimum tax under Section 113 of the Income Tax Ordinance, 2001?*
4. *Can penalty and default surcharge under Sections 33 & 34 of the Sales Tax Act, 1990, be imposed independently under Section 11(1), or must they be tied to an assessment order?*

Liability of QESCO as a Withholding Agent

The Supreme Court, in **2023 SCMR 1516**, addressed the liability of Islamabad Electric Supply Company (IESCO) for failing to deduct withholding tax. The ruling held that electric supply companies are withholding agents under **Section 161** of the Income Tax Ordinance, 2001, and are personally liable if they fail to deduct and deposit tax. By analogy, **Quetta Electric Supply Company (QESCO)**, being a similar entity, is equally obligated to comply. Failure to do so would result in liability under **Section 161**, along with default surcharge under **Section 205**.

Additional Judicial Precedents:

- **M/s Chawala Footwear v. Commissioner Inland Revenue** – Supreme Court ruled that a withholding agent failing to deduct tax is deemed in default under **Section 161**, making them liable for recovery proceedings.
- **2023 PTD 1046 (Lahore High Court)** – Reaffirmed that withholding agents must deduct tax at source under **Section 153(1)(a)**, with non-compliance leading to liability under **Section 161**.
- **Commissioner Inland Revenue, LTU, Lahore v. Messrs Adamjee Insurance Company Ltd. (2023 PTD 1628)** – Clarified that tax on directors' fees applies prospectively from 2014 under **Section 149(3)**.

Requirements for a Valid Show-Cause Notice

In **Commissioner Inland Revenue v. MCB Bank Limited (2021 SCMR 1325)**, the Supreme Court emphasized that **Section 161** liability is triggered by failure to deduct tax and that a show-cause notice must be **specific and objective**. The burden initially lies with the tax authorities to establish prima facie failure before shifting it to the taxpayer.

Judicial Guidance:

- **PLD 2002 SC 353 (Bilz Case)** – Supreme Court ruled that a show-cause notice is valid without naming recipients, as taxpayers must maintain records and justify non-deduction.
- **2021 PTD (Trib.) 47** – Tribunal ruled that failure to issue a proper show-cause notice violates natural justice (audi alteram partem), making adverse action void.
- **2016 PTD 596 (Islamabad High Court) – Section 122(5A)** reassessment requires a valid show-cause notice and proof that the assessment is erroneous and prejudicial to revenue.
- **2024 PTD 619 (Islamabad High Court)** – Reaffirmed that reassessment must meet due process requirements under **Section 122(5A)**.

Tariff Differential Subsidy (TDS) as Gross Revenue

In **2022 PTD 1844 (Balochistan High Court)**, the Court held that the Tariff Differential Subsidy (TDS) received by electric power companies is **not a subsidy but the balance price of electricity paid by the government on behalf of consumers**. Consequently, such amounts constitute **gross revenue** and are subject to **minimum tax under Section 113**, unless explicitly exempted under **Part IV of the Second Schedule**.

Additional Precedent:

- **2016 PTD 1393 (Supreme Court)** – Defined turnover under **Section 113(3)** as gross receipts from sales, services, commissions, and contracts, excluding other sources.

Imposition of Penalty and Default Surcharge Under Sales Tax Act, 1990

In **Deputy Collector, Central Excise & Sales Tax v. ICI Pakistan Ltd. (2006 SCMR 626)**, the Supreme Court held that additional sales tax and penalty under **Sections 33 & 34** are **not automatic** and require a determination of **intent and circumstances**.

Relevant Rulings:

- **2016 PTD 1256 (Sindh High Court)** – Ruled that an adjudicated matter cannot be reopened by a Collector under **Section 195 of the Customs Act, 1969**, without proving illegality or impropriety.
- **2015 PTD 1330 (Lahore High Court)** – Held that an **Appellate Tribunal** must provide justification before remanding a case, emphasizing its role as the final fact-finding authority.
- **2025 PTD 121 (Lahore High Court)** – Clarified that under **Sections 33 & 34**, penalty and default surcharge remain applicable **even if principal tax is paid voluntarily** before Section 11(1) proceedings.

Conclusion

1. **QESCO's Liability** – As a withholding agent, QESCO must deduct tax on salaries and bonuses under **Section 161**. Failure results in **personal liability** and **default surcharge under Section 205**.
2. **Show-Cause Notice Requirements** – A valid notice must be **specific, objective, and based on prima facie evidence** before shifting the burden to the taxpayer.
3. **TDS as Gross Revenue** – The **Tariff Differential Subsidy (TDS) qualifies as gross revenue**, making it subject to **minimum tax under Section 113**, unless explicitly exempted.
4. **Penalty & Default Surcharge** – Under **Sections 33 & 34 of the Sales Tax Act, 1990**, penalty and surcharge can be **imposed independently of an assessment order**, ensuring compliance enforcement.

The End