

SINDH HIGH COURT JUDGMENT DATED 24.07.2020 Part-II

24/7/2020 v-11

Total Words= 380+

Dated: /12/2020

@PSTC Academy, Peshawar

16-12-2020

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ENGLISH

SHORTHAND

It has been argued by the learned counsel for the petitioners that from perusal of definition of the term salary given under Section 12 of the Income Tax Ordinance, 2001, and bare reading of Entry No.39 as referred to hereinabove, it is clear that exclusion provided under Section 12(2)(c) of the Income Tax Ordinance, 2001, reflects the clear intention of the legislature not to include the aforesaid Judicial Allowance and Special Judicial Allowance in the salary for the purposes of charging tax thereon, therefore, according to learned counsel for the petitioners, withholding of amount of income tax by treating the Judicial Allowance and Special Judicial Allowance as part of taxable salary income is illegal and without lawful authority.

2. In support of their contention, learned counsel for the petitioners have placed reliance in the recent judgments of Peshawar High Court in the case of Muhammad Asif and others v. Federation of Pakistan and others (2018 PTD 806) as well as judgment of the Lahore High Court in the case of Syed Shabbir Shah v. Federation of Pakistan and others in W.P. No.243868/2018, whereby, according to learned counsel for the petitioners, it has been held that deduction of income tax on the Judicial Allowance and Special Judicial Allowance from the salary of the Members of District Judiciary and Members of Establishment of Lahore High Court and Peshawar High Court, is illegal and without lawful authority.

3. Conversely, learned counsel for the respondent has opposed the above contention of the learned counsel for petitioners and submitted that every income is chargeable to tax unless exempted. According to learned counsel for the respondent, keeping in view the exhaustive definition of the term salary given under Section 12 of the Income Tax Ordinance, 2001, it is clear that all the benefits and the allowances are part of salary income, therefore, rightly subjected to withholding of income tax by Accountant General of Sindh. It has been further argued by learned counsel for the respondents that claim of exemption of both these allowances is not available under the 2nd Schedule to the Income Tax Ordinance, 2001, whereas, burden is upon petitioners to prove that such amount is exclusively used and spent for the performance of their duties.

Handwritten shorthand notes corresponding to the English text, including case references like (2018 PTD 806) and (W.P. No.243868/2018).

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## **Table of Contents English Short Hand Dictation Question Paper**

1. Understanding the eBook English Short Hand Dictation Question Paper
  - The Rise of Digital Reading English Short Hand Dictation Question Paper
  - Advantages of eBooks Over Traditional Books
2. Identifying English Short Hand Dictation Question Paper
  - Exploring Different Genres
  - Considering Fiction vs. Non-Fiction
  - Determining Your Reading Goals
3. Choosing the Right eBook Platform
  - Popular eBook Platforms
  - Features to Look for in an English Short Hand Dictation Question Paper
  - User-Friendly Interface

4. Exploring eBook Recommendations from English Short Hand Dictation Question Paper
  - Personalized Recommendations
  - English Short Hand Dictation Question Paper User Reviews and Ratings
  - English Short Hand Dictation Question Paper and Bestseller Lists
5. Accessing English Short Hand Dictation Question Paper Free and Paid eBooks
  - English Short Hand Dictation Question Paper Public Domain eBooks
  - English Short Hand Dictation Question Paper eBook Subscription Services
  - English Short Hand Dictation Question Paper Budget-Friendly Options
6. Navigating English Short Hand Dictation Question Paper eBook Formats
  - ePub, PDF, MOBI, and More
  - English Short Hand Dictation Question Paper Compatibility with Devices
  - English Short Hand Dictation Question Paper Enhanced eBook Features
7. Enhancing Your Reading Experience
  - Adjustable Fonts and Text Sizes of English Short Hand Dictation Question Paper
  - Highlighting and Note-Taking English Short Hand Dictation Question Paper
  - Interactive Elements English Short Hand Dictation Question Paper
8. Staying Engaged with English Short Hand Dictation Question Paper
  - Joining Online Reading Communities
  - Participating in Virtual Book Clubs
  - Following Authors and Publishers English Short Hand Dictation Question Paper
9. Balancing eBooks and Physical Books English Short Hand Dictation Question Paper
  - Benefits of a Digital Library
  - Creating a Diverse Reading Collection English Short Hand Dictation Question Paper
10. Overcoming Reading Challenges
  - Dealing with Digital Eye Strain
  - Minimizing Distractions
  - Managing Screen Time
11. Cultivating a Reading Routine English Short Hand Dictation Question Paper
  - Setting Reading Goals English Short Hand Dictation Question Paper
  - Carving Out Dedicated Reading Time

12. Sourcing Reliable Information of English Short Hand Dictation Question Paper
  - Fact-Checking eBook Content of English Short Hand Dictation Question Paper
  - Distinguishing Credible Sources
13. Promoting Lifelong Learning
  - Utilizing eBooks for Skill Development
  - Exploring Educational eBooks
14. Embracing eBook Trends
  - Integration of Multimedia Elements
  - Interactive and Gamified eBooks

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