SINDH HIGH COURT JUDGMENT DATED 24.07.2020 Part-II

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ENGLISH

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.

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