

**BEFORE THE APPELLATE TRIBUNAL, SINDH REVENUE BOARD**

**Appeal No.AT-124/2015**

M/s Sukkur Motels (Pvt.) Ltd. Lab-e-Mehran, Sukkur ..... Appellant

VERSUS

1/ Commissioner (Appeals), SRB, Karachi and  
2/ Assistant Commissioner, SRB, Sukkur ..... Respondents

Mr. Muhammad Faheem Bhayo, Advocate ..... For the Appellant

Mr. Irfan Ahmed Sohu, Assistant Commissioner, SRB, Departmental  
representative and

Mr. Siddique Soomro, Assistant Commissioner, SRB, Sukkur ..... For the Respondents

Date of hearing 11.04.2018

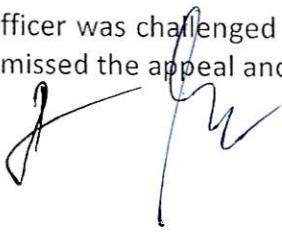
Date of Order 18.04.2018

**ORDER**

**Ms. Razia Sultana Taher:** This appeal has been filed by the appellant challenging the order in appeal No.148/2014 dated 3<sup>rd</sup> December, 2014 passed by the Commissioner (Appeals) in appeal No.123/2014 dated 22.08.2014 confirming the Order-in-Original No. 20 of 2014 dated 18.08.2014 passed by the Assistant Commissioner, SRB.

2. In short, the facts of the case as stated in the order in original are that the appellant are providing / rendering taxable services of Hotels falling under tariff heading 9801.1000 of the Second Schedule to the Sindh Sales Tax on Services Act, 2011 (hereinafter referred to as SSToS Act, 2011). The appellant provided taxable services to different services recipients and on scrutiny of tax returns filed by the appellant the same showed that the Sales were not declared by the appellant. The appellant failed to appear before the assessing officer who concluded that Sindh Sales Tax amounting to Rs.4,684,995/- was not paid / deposited against taxable services rendered to different service recipients as detailed in paragraph 2 of the order in original and ordered for recovery of the said Sindh sales tax amount along with default surcharge under section 44 of the SSToS Act, 2011 (to be calculated at the time of payment) and also imposed penalty of Rs.234,249/- under section 43(3) of the SSToS Act, 2011.

3. The said order of the assessing officer was challenged by way of filing of appeal before the Commissioner (Appeals) SRB who dismissed the appeal and upheld the order in original.



4. During the course of hearing, the appellant's advocate submitted that no statement has been filed with FBR showing the list of withholding agents and read section 153 of the Income Tax Ordinance 2011 which states as follows "every prescribed person making a payment in full or part including a payment by way of advance to a resident person or (a) for the sale of goods (b) for the rendering or providing of services (c) on the execution of a contract [including contract by a sportsperson] [but not including] a contract for the sale of goods or the rendering or providing of services shall at the time of making the payment, deduct tax from the gross amount payable (including sales tax if any) at the rate specified in Division III of part III of the First Schedule of the Income Tax Ordinance." The appellant argued that the respondent did not provide any specific amounts which they intended to charge / levy Sindh Sales Tax and in the absence of such specific amount, the appellant was unable to reconcile the payment figures with the concerned officer of SRB. He added that even the details of withholding statement of recipient was neither provided during assessment proceedings nor it was placed before Commissioner (Appeals). Whereas the learned Commissioner (Appeals) vide paragraph 32 of the order in appeal had specifically mentioned that the evidence placed on record and forwarded by AC-SRB Sukkur stands successfully established. However, it is evident before this Honorable Tribunal that no such evidence was provided except withholding statement of service recipients and which statement has also been provided at the Appellate Forum and not before Commissioner (Appeals) showing payment sections, therefore, the orders passed by the assessing officer as well as learned Commissioner (Appeals) are not based on correct factual position and no proper appreciation of law has been made and the undue demand has been created on presumption and assumption till to date. The advocate argued that the appellant is not aware of any specific differential amount which the respondent may have alleged. Thus the show cause notice is defective, invalid and the proceedings culminating to the order in original are void ab initio and the order in appeal based on such order in original is liable to be vacated.

The advocate drew attention to show cause notice dated 25.03.2014 and stated that Annexure 'A' part Show cause notice was not received by the appellant. Moreover, the whole allegation is based on Income Tax statements and there are several situation under the Income Tax Ordinance 2001 whereby withholding tax is deducted. Can it be based to calculate sales tax liability? No any clause or provision of law such as Section 153 (a), (b) or (c) has been confronted in the impugned show cause notice, which is apparent from the said SCN, hence any departmental representative has any authority appearing at Appellate stage to distinguish or bifurcate any amount which were never confronted in the SCN and also drew attention to the last three lines of paragraph 15 of the Order in Appeal.

The learned appellant's advocate stated that in the impugned show cause notice, the officer mentioned value of Rs.29,281,217/- during the 2012-2013 which was not declared to SRB but the respondent in the SCN did not provide Annexure 'A' which has been shown in the order in original. The said order in original does not give details like under which section the respondent had relied upon at the time of assessment. During the proceeding before the Tribunal the respondent submitted details of withholding revealing Payment Section under which the tax was deducted by recipients. The statement further reveals that the recipients of the appellant deducted withholding tax under the provision of section 153(1)(a), (b) and (c)/ of the Income





Tax Ordinance 2001. However, the respondent officer without bifurcating the figures alleged and established that the same are due against the appellant. The advocate continued that on perusal of the said statement prime facie it is established that the respondent officer has also established / added even those payment which were outside his domain, thus the show cause notice culminating into order in original are void ab initio. The Tribunal on previous hearings had directed the respondent officer to give specific amount which according to him was not declared to SRB and pertained to services only. However no such details till to date have been placed before the Tribunal and no copy has been provided to the appellant and submitted that both the appeal case pertains to the same issue.

5. The respondent submitted that the appellant is providing taxable services of Hotels and restaurants falling under tariff heading 9801.1000 of the Second Schedule to SSTS Act, 2011. That paragraph 2 of the order in original clearly states that the appellant failed to give the value of taxable services rendered which comes to Rs.29,281,217/- and the Sindh Sales tax involved stands at Rs.4,684,995/- during the year 2012-2013. The departmental representative submitted that the appellant provided services to different service recipients but the services so provided have not been declared with SRB in the sales tax returns filed by the appellant and these services rendered by the appellant to the service recipients have clearly been declared in the income tax returns filed with Federal Board of Revenue and added that on the basis of the said data, show cause notice was issued and orders were passed and also upheld by Commissioner (Appeals). The respondent further submitted that the contention of the appellant's advocate is factually not correct, that no documents regarding the amount / data were confronted to the appellant at the initial stages and the statement so made was not taken at the two lower forums. The version of the advocate that the statement of record showing short payments under section 153 of the Income Tax Ordinance is inclusive of the value of goods is not correct also. The Assistant Commissioner stated that the value pertaining to goods has been excluded, and 153(b) and (c) are covered for services. The amendment in 153(c) was made in 25<sup>th</sup> June, 2014 the contractual execution pertains to services and not goods. The respondent argued that if the appellant is in doubt that it pertains to goods, then relevant invoices may be provided to the respondent / department for reconciliation and verification. The amount as covered under section 153(b) comes to Rs.3,280,749/- the amount under section 153(c) has not been taken and it is subject to production of documents by the appellant.

6. We have heard the learned representatives of both sides and perused the record made available to us. Before proceeding we would like to place on record that the respondent has remained absent on three consecutive hearings and it has also been observed that the Assistant Commissioner representing the department in the present appeal case have not shown any interest whereby no substantive arguments have been presented and the appeal cases remained pending since November, 2016. We are thus left with no option but to proceed on merits on the basis of available record.

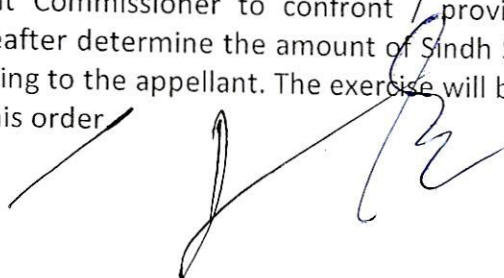
The Appellant's advocate argued that no amount was mentioned in the show cause notice which the respondent had intended to charge / levy upon the appellant, there was no Annexure 'A' attached to the show cause notice. That it was before the Appellate forum, the respondent



submitted the withholding statement and no such statement was submitted at the two lower forums as against the version of Commissioner (Appeals) in paragraph 32 of the order in appeal. The said withholding statements shows the payment sections, no specific differential amount has been confronted to the appellant. On the other side the respondent denied the version of the appellant and stated that the statement showing short payment under section 153 of the Income Tax Ordinance 2001 is not inclusive of the value of goods and the same have been excluded and section 153(b) and (c) are covered for services. The respondent had further added that if the appellant was in doubt then relevant invoices be provided to the respondent department for reconciliation.

We observe that the respondent during the course of hearing submitted statement to the Tribunal. The said statement read as Withholding details (Sukkur Motels Pvt. Ltd.)(2012-2013) and the columns shown are withholders NTN, withholders name, Stat month, Stat year, Withholding Agent name, payment section, tax payable, tax paid, tax rate and actual value = (tax payable 6%), SST 16% the last page bears the signature of Assistant Commissioner (Unit-24) Departmental representative Sukkur Region and is dated 07.06.2017. The section cited is 153(1)(b), 153(1)(c), 153(1)(a). The respondent failed to show the connection of the above submitted withholding statement to the present appeal case, how and from where the values have been taken. The appellant at hearing countered the statement of the respondent, that the recipients of the appellant deducted withholding tax under the provisions of section 153 of the Income Tax Ordinance 2001, no bifurcation was done but stood established against the appellant. The respondent have not been able to place on record the details / documents if any, received from service recipients of withholding amount having paid to the appellant in respect to Sindh Sales tax. The respondent is required to confront specific amount due to Sindh Revenue Board. The said statement submitted before Tribunal which departmental representative claimed was filed by appellant to Federal Board of Revenue and the same shows the sections under Income Tax Ordinance, 2001. The statement by the respondent has cited section under Income Tax Ordinance, 2001 and is dated 07.06.2017 and apparently it does not match with paragraph 2 of the order in original and order in appeal. We do not find any clarity in the argument of the respondent. The respondent needs to re-examine the case after going through the record received, if any, from the service recipients of the appellants, verify the Sindh Sales tax due to the appellant and confront the same.

7. In view of the above discussions we feel it is necessary that the assessing officer / respondent thoroughly re-examine the case quoting relevant sections and the same be substantiated and provide proper opportunity to the appellant to produce all relevant and detailed documents. We therefore, in exercise of powers vested in the Tribunal as provided under clause (b) of subsection (5) of section 62 of the SSToS Act, 2011 set aside the orders by the Assistant Commissioner, SRB and the Commissioner (Appeals) and remand the case to the concerned Assistant Commissioner to confront / provide the relevant documents to the appellant and thereafter determine the amount of Sindh Sales Tax payable, after providing full opportunity of hearing to the appellant. The exercise will be completed within 60 days from the date of receipt of this order.



8. Both the parties have submitted that the issue is same in appeal No.AT-125/2015 M/s Sukkur Motels (Pvt.) Ltd. v/s Commissioner (Appeals) and others SRB.

9. The order in appeal case No.AT-124/2015 disposes of Appeal case No.AT-125/2015 having identical facts, grounds and arguments except difference in tax year and amount of Sindh Sales Tax and penalty.



(Muhammad Ashfaq Balouch)  
JUDICIAL MEMBER



(Razia Sultana Taher)  
TECHNICAL MEMBER

18/4/18

Karachi

Dated:18.04.2018

Copies supplied for compliance:-

1. The Appellant through authorized Representative.
2. The Assistant Commissioner (Unit- ), SRB, Karachi.
- Copy for information to :-
- 3) The Commissioner (Appeals), SRB, Karachi.
- 4) The Deputy Commissioner (Legal), SRB, Karachi.
- 5) Office Copy.
- ✓ 6) Guard File.

Certified to be True Copy



REGISTRAR  
APPELLATE TRIBUNAL  
SINDH REVENUE BOARD