

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE MUNIB AKHTAR
MR. JUSTICE MUHAMMAD SHAFI SIDDIQUI
MR. JUSTICE MIANGUL HASSAN AURANGZEB

C.P.L.As.22-L, 23-L, 24-L and 25-L of 2025

(Against judgment dated 04.11.2024 passed by the Lahore High Court, Lahore in PTRs. No.603/2008, 604/2008, 605/2020 and 606/2020.)



M/s Worldcall Telecom Ltd. (WTCL) (M/s ... Petitioner
Worldcall Communication Limited prior to merger), 67-A, C-III, Gulberg-III, Lahore
Vs

The Commissioner of Income Tax, Larger ... Respondents
Division, Larger Taxpayer Unit, Nabha Road, (in all cases)
Lahore and two others

For the Petitioner : Mr. Khurram Shahbaz Butt, ASC

For the Respondents : Ch. Muhammad Zafar Iqbal, ASC
a/w Dr. Ishtiaq, D.G. (Law), FBR

Date of Hearing : 01.10.2025

JUDGMENT

Munib Akhtar, J.: These leave petitions are being disposed of as appeals; see below. They arise in relation to the Income Tax Ordinance, 2001 ("2001 Ordinance") and raise, in the facts and circumstances of the case, the following question of law of general application:

In respect of any transaction or point at which advance income tax is to be paid (by way of collection or deduction), can tax be regarded as so payable in the absence of, or without reference to, the person who would be entitled (by way of adjustment in his tax return or otherwise) to the benefit of the advance payment?

The question specifically arises, in the facts and circumstances of the case, in relation to s. 236 and for the tax years 2004 and 2005.

2. The leave petitions are presented by the same taxpayer and arise out of an impugned judgment of the High Court whereby tax references filed by the Commissioner (herein after referred to as

the "Department") were answered in its favor. Earlier, the Appellate Tribunal had allowed appeals filed by the taxpayer by means of a common order dated 23.05.2008 (herein after "the Tribunal's order"). We may note for completeness that this is the second round of litigation inasmuch as earlier the tax references had been dismissed by the High Court by means of judgment dated 28.09.2015. On leave petitions being presented to this Court by the Department the matters were remanded, by order dated 10.02.2023, for the tax references to be decided afresh. That remand resulted in the impugned judgment whereby, as noted, the tax references were answered in the Department's favor. That has led to the present leave petitions, now filed by the taxpayer.

3. It will be convenient to state, at the very outset, s. 236 as it stood (as presently relevant) for the tax years in question:

"236. Telephone users.- (1) Advance tax at the rates specified in Part IV of the First Schedule shall be collected on the amount of –

- (a) telephone bill of a subscriber; and
- (b) prepaid cards for telephones.

...

(3) The person issuing or selling prepaid cards for telephones shall collect advance tax under sub-section (1) from the purchasers at the time of issuance or sale of cards...."

The dispute is as to the applicability or otherwise of clause (b) of subsection (1) to the facts and circumstances of the case. The rates specified for clause (b) in Part IV of the First Schedule were in the following terms for and during the tax years in question:

"in the case of subscriber of mobile telephone and pre-paid telephone card	10% of the amount of bill or sale price of pre-paid telephone card"
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4. The taxpayer is a well known telecommunications company that provides a range of telephony services. It conducts its business, inter alia, through a network of franchisees. The present dispute arises out of the Department's claim, strongly contested,

that the taxpayer was liable to collect tax from its franchisees under s. 236(1)(b) when it supplied or issued prepaid cards to them. The admitted position is that the taxpayer did not collect any advance tax under the aforesaid provision. This alleged failure, according to the Department, triggered s. 161 of the 2001 Ordinance which, *inter alia*, applies when a person who is required to deduct or collect advance tax fails to do so. Such failure makes that person a deemed taxpayer in default and, *inter alia*, activates s. 163 which provides as follows: "The provisions of this Ordinance shall apply to any amount required to be paid to the Commissioner under this Division as if it were tax due under an assessment order". It will be seen that a person liable in terms of s. 161 faces severely adverse penal consequences. The orders passed in this regard against the taxpayer by the concerned officer of Inland Revenue were upheld in departmental appeal but set aside, as noted above, by the learned Tribunal in further appeal. That decision was reversed by the learned High Court by means of the impugned judgment.

5. Learned counsel for the taxpayer submitted that the learned High Court had erred materially in its consideration of the facts of the case. It was submitted that the correct factual matrix relevant for determining the present dispute had been set out in the Tribunal's order in the following terms:

"7. Distinguishing between two types of system, it was submitted that nature of cards used in the payphone service is quite different from prepaid telephone cards. As discussed above in the case of a prepaid telephone card, the moment the card is activated by the subscriber, the balance is consumed. The subscriber cannot claim refund of unused card value, moreover, after a period of time if the subscriber does not use the service, the balance in the card/account expires. In the case of payphone units are transferred by the company to its franchise holder through a smartcard, which is a SIM, the SIM only activates the phone set attached to the network management system of the payphone company. The franchise holder than approaches the payphone company, which then transfers a certain number of units to the terminal/set of the franchise holder. These units are not considered as consumed till an actual call is made by the subscriber. If there are balance units available then these units can be returned to the payphone company and the payphone company can transfer these units to another franchise holder. Actually, these units are advances to the

franchise holder at the point of sale by the payphone company for sale to the subscribers through the company's set. The unit cards or transfer of units through the software and computer system of the company is a mechanism to control/limit the use of the company's payphone sets at the point of sale."

Learned counsel submitted, in light of the foregoing, that in the present case the matter related not to prepaid cards at all but to payphone services. In such services, the taxpayer transferred certain "units" to be utilized at the franchisees' premises only as and when a customer wished to place a call. It was only then that the "units" were "consumed". Thus, there were no prepaid cards involved at all as would attract the application of clause (b). Attention was drawn to clause (c) that was added to subsection (2) of s. 236 by means of the Finance Act, 2010. This provided as follows: "sale of units through any electronic medium or whatever form". It was submitted that, if at all, it was this clause that could have applied to the services provided by the franchisees to customers through the payphones. But since this clause was only added in 2010 it had no application for the tax years in question. It was submitted that the learned High Court had completely misread the record. The learned Tribunal was the final finder of fact, and the facts as recorded by it showed that the taxpayer had no obligation under s. 236 and hence no liability under s. 161 (read with s. 205, which relates to payment of default surcharge or, as it was earlier known, additional tax). The High Court could not, in terms of settled principles of law applicable to tax references, reach its own findings of fact which is what, in effect, had been done in the impugned judgment. It was prayed that the petitions be allowed.

6. Learned counsel for the Department, on the other hand, submitted that the right result had been reached in the impugned judgment on a correct appraisal of the facts. It was submitted that the taxpayer took shifting stands as to the factual position to justify its failure to abide by its obligations under s. 236. In particular, reference was made to paras 15 and 16 of the impugned judgment in which, according to learned counsel, the learned High Court had correctly pierced the factual smokescreen and concluded that s. 236 did apply to the facts and

circumstances of the case. The learned Director General (Law), FBR sought and was granted permission to address the Court. He ably set out the Department's case and supplemented the submissions of learned counsel. It was prayed that the leave petitions be dismissed.

7. We have heard learned counsel and the learned DG (Law) and considered the record and the statutory provisions involved. We have also seen the written submissions filed on behalf of the respective parties. Section 236 is to be found in Chapter XII of the 2001 Ordinance. That Chapter, titled "Transitional Advance Tax Provisions", is not the only place where the statute deals with the advance payment of tax. Another place where such provisions are set out is Part V of Chapter X, titled "Advance Tax and Deduction of Tax at Source". In its conceptual essence however the advance payment of tax remains the same and until that framework is understood and kept in mind the correct result will not be reached.

8. Chapter XII has been much legislated over the years. A number of sections were added thereto some of which were later omitted. Others (including those added) were substituted or amended (and then, sometimes, omitted). This Chapter must be read with Part IV of the First Schedule, which sets out the rates at which advance tax is to be collected or deducted. In all, Chapter XII has (cumulatively) seen no less than 40 sections being part of it at one time or another. When the Ordinance was promulgated there were only six. At the present time, i.e., after the 2001 Ordinance was amended by the Finance Act, 2025 it comprises of 14 sections. Of course we are, strictly speaking, only concerned with the statute (and hence the Chapter) as it stood in relation to the tax years 2004 and 2005. However, the essential conceptual nature remains the same and it is for this reason that the question of law that arises in the facts and circumstances of the case can be stated in the general terms as set out at the beginning of the judgment. More formally, in the context of Article 189 of the Constitution, while the answer given here to that question will decide a question of law in relation to s. 236 as it stood for the tax years involved it will, in relation to the other provisions (especially

those that are or were part of Chapter XII) and other tax years, also enunciate a principle of law.

9. The advance payment of tax takes one of two forms: deduction or collection. Two types of possibilities are envisaged under the Chapter: a transaction or simply a point of interaction. The difference between the two is that in a transactional situation some payment is invariably being made in relation to which there is the advance payment of tax, whereas in the latter some point of interaction (usually with some State authority or agency) is selected for such payment, the interaction itself not necessarily envisaging any payment. In a transactional situation there can be either deduction or collection. Thus, it may be that A has to make payment to B and the relevant provision provides that while doing so A has to deduct a certain specified amount and pay it into the State treasury (more formally, "to the Commissioner" under s. 160). Or it may be that B has to make payment to A and the relevant provision provides that while doing so B has also to make an (additional) payment of a certain specified amount, which A is then required to pay into the State treasury. In the other type of situation, i.e., a point of interaction, there is only collection: the agency or authority interacting is required to collect from B a certain specified amount, which it then has to deposit into the State treasury. But in all cases (subject to what is stated below) it must be remembered that what is being deducted or collected is the payment of *tax in advance*. This obviously and necessarily raises the question, for whose benefit is the tax being so paid? Put differently, who is the taxpayer who will ultimately (i.e., in relation to the tax year for or in which tax is so deducted or collected) be able to claim it in his tax return, either as an adjustment of income tax due or its discharge? This indeed is the crux of the matter: whenever one speaks of an advance payment of tax *there must be a taxpayer who can be a "claimant" in relation thereto*. In other words, *there can as a general principle, and conceptually, be no advance payment of tax for which there is no taxpayer who is or can be its referent*. Whether such a referent taxpayer actually claims the benefit of the tax so paid is another matter. But in principle there must always be such a taxpayer. The reason is that

if there is no referent taxpayer the amount deducted or collected is not advance payment of tax at all. It is then simply an extraction of monies, a disembodied plucking of funds at a certain point or transaction, detached from any link to the income tax liability of any person. No such situation is envisaged or can come within the contemplation of the 2001 Ordinance (subject to what is stated below).

10. From the foregoing, another principle follows: the referent taxpayer must be identified (or identifiable) when the advance tax is deducted or collected. That is, at the transaction at which "A" is required to act under any of the provisions of Chapter XII there must be an identified "claimant" for the benefit of the tax paid in advance. That "claimant", almost inevitably, would be "B" i.e., the person from the payment to whom the advance tax is being deducted or, as the case may be, the person making the payment and from whom the advance tax is being (additionally) collected. Likewise, when advance tax is being collected at a point of interaction, there must be an identified "claimant" for whose benefit the tax is being paid in advance. Again, that "claimant", almost inevitably, would be "B" at whose interaction with the relevant authority or agency the advance tax is being collected. In theory it is possible (though it is difficult to conceive of such situations) for the "claimant" to be some person other than "B" if the statutory provision expressly so provides. However, the crucial point is that there must be a "claimant", who must be identified (or identifiable) when the advance tax is deducted or collected.

11. It must also be remembered that, as noted above, severely adverse consequences follow for the person who is liable to deduct or collect advance tax under the provisions of Chapter XII but fails to do so. In a recent judgment of the Court in relation to s. 153, being CPLA 2845-L/2022 dated 03.10.2025 (*Collector of Inland Revenue v Coca Cola Pakistan Ltd.*) 2025 SCP 364 it was observed as follows:

"4. Section 153, like a number of other provisions in the Ordinance, requires for the advance payment of tax by way of deduction. Other provisions provide for advance payment of tax by way of collection. If the person who is required to so deduct or collect fails to do so then, among other

consequences, s. 161 is activated. The section makes the person in default personally liable for the payment of the amount of tax that was not deducted or collected and the recovery provisions of the Ordinance become applicable, per s. 163, "as if it were tax due under an assessment order". Thus, a failure to abide by the duty to deduct or collect advance tax has severe penal consequences and he becomes, in essence, a taxpayer in default. Other consequences adverse to the person in default (such as the aforementioned s. 21(c)) also become applicable. In our view, suchlike provisions, and therefore s. 153, when viewed from the perspective of the person who is said to be under a duty to collect or deduct the advance payment of tax, may be regarded as akin or analogous to a charging provision. This is so because of the severe penal consequences that can result from a failure to abide by the statutory duty. These advance payment provisions therefore have to be strictly construed. This need not be with the same rigidity and literalness with which a charging section, in terms of well settled tax jurisprudence, is interpreted. Nonetheless, such provisions cannot be regarded simply as recovery mechanisms and dealt with accordingly. The severe penal consequences for a person who defaults on a duty to deduct or collect, as the case may be, militate against any such approach. The interpretation must be tight and narrow."

The foregoing principles apply also in relation to the various sections of Chapter XII.

12. When these principles are applied to the facts and circumstances of the case, the fundamental conceptual error, with respect, made by the learned High Court is at once apparent. The section relates to a transactional situation, i.e., one where a payment is being made. This is clear from the use of the term "purchasers" in subsection (3). Furthermore, the transactional situation is one of collection, as subsection (1) expressly provides. Therefore, if at all s. 236 applied between the taxpayer and its franchisees then the latter had to be the persons from whom the advance tax had to be collected, along with the payments made by them for the prepaid cards. This, in sum and substance, is the Department's case. But if so, then they would have to be the persons who could claim the benefit of the tax so collected in advance. However, it was common ground between the parties that the franchisees were *not* the persons who could claim the benefit of any tax collected in advance under s. 236. It was (correctly) accepted all around that they could not be in the picture at all when it came—as it necessarily had—to claiming the

benefit of the advance payment of tax. Indeed, a specific query was put in this regard to the learned DG (Law) and learned counsel for the Department. Both of them accepted (in our view, correctly) that no such claim from the franchisees, if made (which was *not* the case), would have been entertained.

13. But if that be the case, who were the persons who could, if at all, make a claim for the benefit of the advance payment of tax under s. 236? The only possible answer is that they would be the persons who purchased the prepaid cards from the franchisees (i.e., the subscribers or customers). Again, it was common ground that this would be so and was confirmed (in our view correctly) by the learned DG (Law) and learned counsel for the Department on a specific query from the Court. *However, no such persons were involved in or identified (or identifiable) at the time of the transactions between the taxpayer and its franchisees.* This was so for the simple reason that at such time such persons did not exist. They came into the picture only later, and in respect of their transactions with the franchisees. It follows from this that the only transaction that could come within the scope of s. 236 was that between the customers and the franchisees since they would be the "claimants" of the tax collected in advance. The prior transactions, between the taxpayer and the franchisees, necessarily lay outside the scope of the section, since at that time there were no such (or indeed any) "claimants". But as explained above an advance tax payment provision is activated only when there is, or can be, a "claimant" for that payment. From this it follows that the taxpayer was under no obligation to collect advance tax from franchisees and hence s. 161 (read with s. 205) could not be applied against it. Unfortunately, this fundamental aspect of the matter, at the conceptual plane, was not kept in mind by the learned High Court.

14. It appears that the learned High Court focused unduly on subsection (3) and concluded that the taxpayer was the person "issuing or selling prepaid cards" of which the franchisees were the "purchasers". But this provision cannot be read in isolation. The "purchasers" had to be the persons who could be the "claimants" of the tax collected in advance. As noted above, the

franchisees could not be so regarded. The transaction between them and the taxpayer did not therefore attract the section. Such persons came into the picture subsequently, being the consumers transacting with the franchisees. They were therefore the "purchasers" envisaged in terms of subsection (3). This is also apparent from the manner in which the amount to be collected was to be computed in terms of Part IV of the First Schedule. This referred to the "subscribers" of the prepaid cards and set the rate (10 percent) with reference to the "sale price" of the cards. Quite clearly, the franchisees were not the "subscribers" of the cards. Thus, both conceptually and textually the section did not apply to the transactions in which the taxpayer was involved. The learned High Court, with respect, erred materially in coming to the contrary conclusion.

15. While the foregoing is dispositive of the matters, four further points may be made. Firstly, the necessity of the person who would be the "claimant" of the tax paid in advance being identified or identifiable at the time of the payment itself (i.e., at the time of the transaction or point of interaction) is also borne out by subsection (2) of s. 161. If this section is triggered and recovery made by the Revenue from the person who is the deemed taxpayer in default in terms thereof, subsection (2) provides that such deemed defaulter "... shall be entitled to recover the tax from the person from whom the tax should have been collected or deducted". But if the identity of such person, i.e., the putative "claimant", is unknown (or indeed unknowable) then clearly the deemed defaulter will be unable to recoup what has been recovered by the State from him. This provision therefore serves to emphasize the necessity of the advance tax payment provisions applying only in relation to or in the context of the person who would be able to claim the benefit of the advance payment, in terms as explained above.

16. Secondly, it is to be noted that some of the provisions of Chapter XII state that the tax deducted or collected is to be a "final" or "minimum" tax. (These terms have different legal connotations and consequences.) Examples of such provisions include ss. 233, 235, 236A and others. Interestingly, and

somewhat anomalously, these sections refer to the deduction or collection (as the case may be) as "advance tax" and then simultaneously characterize such payment as "final" or "minimum". We simply flag the point. Whether, and if so to what extent, the analysis in this judgment may require modification when dealing with such sections need not be considered here because s. 236 is not such a provision.

17. Thirdly, some of the sections of Chapter XII (since omitted) had expressly provided that the tax paid was not adjustable. These were ss. 235B and 236W. Again, since s. 236 is not of this category nothing more need be said with regard thereto except to flag these examples as (legally) troubling and (*prima facie*) of dubious validity.

18. Finally, and most importantly, it is to be noted that many of the sections of Chapter XII, especially those added in the years after the 2001 Ordinance came into force, expressly state that the advance tax collected or deducted (as the case may be) is "adjustable". Section 236 does not so state. It is to be emphasized that it is of the essence of an advance payment of tax that its "benefit" must be claimable by some taxpayer, i.e., it is in its very nature that it is "adjustable". To expressly declare that this is so conceptually adds nothing. Contrariwise, for a section not to expressly so provide subtracts nothing. Advance payment of tax is not a free "gift" to the State, although the State certainly benefits from obtaining a portion of the tax that may be due before its levy is complete. Equally, it is not an extraction for which there can be no accounting. Rather, it is precisely what it is characterized to be: a *payment of tax in advance*, for which there must be some taxpayer who is entitled to the credit or "benefit" thereof. Any deviations or departures from this are precisely that: express anomalies created by the statute which must be subjected to the closest and most searching scrutiny and analysis to establish the validity and scope thereof.

19. Before concluding, we would like to place on record our appreciation of the research done by Ms. Naveesha Fatima, law associate, and the detailed note she prepared in relation to

Chapter XII. In light of the above discussion, we are with respect unable to agree with either the reasoning or conclusion of the learned High Court. These petitions are converted into appeals to answer the question of law posed at the beginning of the judgment. That question is answered in the negative, against the Department and in favor of the taxpayer. Accordingly, these appeals succeed and the impugned judgment is set aside.

Judge

Judge

Judge

Announced in the Court on 11.11.2025 at Islamabad

Sd/-
Judge

Approved for reporting