

JUDGMENT SHEET.
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD.

Writ Petition No.2143 of 2009

M/s Chashma Sugar Mills Limited.

Versus

The Federation of Pakistan, through Secretary Finance, Ministry of Finance, Islamabad
and others.

Petitioners By : Mr. Muhammad Mohsin Nazir and Hafiz
Muhammad Idris, Advocates.

Respondents By : Syed Kazim Hussain Kazmi, Advocate for
respondent No.5.
Mr. Abdul Hameed Baloch, Advocate for
the respondent/Bank Alfalah Limited.
Raja Khalid Mehmood Khan, learned
Deputy Attorney-General.

Date of Decision : 16.01.2020

AAMER FAROOQ, J. - The petitioner has filed the instant petition
claiming the following relief:-

*“It is, therefore, respectfully prayed that a
appropriate writ may graciously be issued, the provisions of
Section 231 A and 235 as amended through Finance Act
2008 may kindly be declared to be unconstitutional and
deduction/collection of tax through these sections be
declared illegal and ultra vires.*

*It is further prayed that the respondents No.5 &6 may
kindly be restrained from recovery of the impugned
deductions and collections of tax on the bank withdrawals
and electricity bills. Any other relief which may considered
fit and appropriate may graciously be granted.”*

2. At the very outset, learned counsel for the petitioner submitted that under similar facts and circumstances, the Hon'ble Lahore High Court in case titled "*Lone Cold Storage, Lahore Vs. Revenue Officers, Lahore Electric Power Co. and others.*" **(2010 PTD 2502)** has decided the matter.

3. Learned counsel for the respondents also submitted that there is no cavil with the judgment of the Hon'ble Lahore High Court and he has no objection to the disposal of the petition in light of the same.

4. Arguments advanced by learned counsel for the parties have been heard and the documents placed on record examined with their able assistance.

5. The Hon'ble Lahore High Court in case reported as "*Lone Cold Storage, Lahore Vs. Revenue Officers, Lahore Electric Power Co. and others*" **(2010 PTD 2502)** concluded as follows:-

"47. The said application clearly shows that nil tax certificate can be issued for the taxpayer, in case where advance tax under section 147 had already been paid. Once the nil tax certificate is issued under section 235, the chargeability of section remains intact but the rate of tax is reduced resulting in reading down section 235 and making it ineffective when the advance tax has been fully paid. Nil rate tax certificate does not offend section 235(3) of the Ordinance and can easily co-exist with the same. This reconciles both the provisions and there is no need to declare section 235 unconstitutional.

48. For the above reasons petitioners are directed to approach the concerned Commissioners under section 159(1) of the Ordinance and the concerned Commissioners are directed to decide the said application for the issuance of NIL RATE CERTIFICATES within a period of ONE MONTH from the date of receipt of application of the petitioner(s) after Verification of the payment of advance tax under section 147 of the Ordinance. The direction for expeditious disposal of the

application of the taxpayer under section 159(1) of the Ordinance is because of the recurring and continuous nature of transitional advance tax under section 235 of the Ordinance. While deciding the application for nil tax rate certificate the concerned Commissioners, will keep the ratio of this judgment in mind and will consider the chargeability of section 235 to be integrated and co-extensive with the liability under section 147 of the Ordinance rather than a stand alone liability in these circumstances.

51. For the above reasons, these writ petitions are allowed. In case Petitioners file applications under section 159(1) of the Ordinance before the concerned Commissioners for the issuance of nil tax rate certificate along with necessary documentation establishing the discharge of liability under section 147 of the Ordinance, the Commissioners concerned shall decide the said application within ONE MONTH of the receipt of the said application.”

6. Since parties seek disposal of the instant petition in light of the observations made hereinabove, hence the petition is accordingly **disposed of** in light of the observations made by the Hon’ble Lahore High Court in **"2010 PTD 2502"** supra as observed in paragraphs 47, 48 and 51 of the same. Since the petitioner did not press the relief to the extent of challenging the vires of Sections 231-A and 235 of the Income Tax Ordinance, 2001, hence relief to the said extent is **dismissed** as not pressed.

(AAMER FAROOQ)
JUDGE

M. Zaheer Janjua