

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P. No.1224-2021
M/s Telenor Pakistan Pvt. Ltd
Vs.
Federation of Pakistan etc.

W.P. No.1228-2021
M/s CMPak Limited
Vs.
Federation of Pakistan etc.

W.P. No.1234-2021
M/s CMPak LDI Limited
Vs.
Federation of Pakistan etc.

W.P. No.1286-2021
Pakistan Telecommunication Company Limited
Vs.

Federal Board of Revenue through its Chairman, Islamabad etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	03.06.2021	Mr. Ali Sibtain Fazli, Advocate and Mr. Abad ur Rehman, Advocate for petitioner in W.P. No.1224-2021 Mr. Faisal Rafique Malik, Advocate and Mr. M. Usman Shaukat, Advocate for petitioner in W.P. No.1228 & W.P. No.1234-2021 Syed Husnain Ibrahim Kazmi, Advocate for petitioner in W.P. No.1286-2021 Mr. Barrister Atif Rahim Barki, Advocate for respondents.

The present order shall decided the instant writ petition as well as W.P. Nos.1228-2021, 1234-2021 & 1286-2021, as they entail common questions of law and facts.

2. The petitioners are assesseees for the purposes of filing returns and payment of income tax with the Federal Board of Revenue (FBR); under the law, they are required to furnish the estimated income for payment of advance tax,

which at the end of fiscal/tax year, is adjusted in determination of final liability. Accordingly, the petitioners filed their estimation of advance tax and accordingly paid the tax where applicable; the same was rejected by the Commissioner, Income Tax and while doing so, demand for recovery of tax was raised, which has been assailed in these petitions.

3. Syed Hunain Ibrahim Kazmi, Advocate, appearing for the petitioner in W.P. No.1286-2021, submitted that procedure prescribed in section 147 of the Income Tax Ordinance, 2001 has not been followed. In this behalf, it was contended that under the second proviso to subsection (6) *ibid*, where Commissioner is not satisfied with the documentary evidence provided and where estimate of amount of tax payable is not accompanied by the details, the Commissioner may reject the estimate after providing opportunity of hearing to the taxpayer and taxpayer shall pay advance tax according to the formula contained in subsection (4). It was submitted that no opportunity was granted to the petitioners before rejecting the estimate and even-otherwise, demand for recovery that has been raised, is not in accordance with the formula provided.

4. The other learned counsel for the petitioners adopted the arguments by learned counsel for the petitioner in W.P. No.1286-2021.

5. Learned counsel for the respondents *inter alia* contended that notices were sent to the petitioners, however, since they did not respond, the estimate of amount of tax payable, was rejected.

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

7. The background, leading to filing of instant petitions, is mentioned hereinabove, hence need not be reproduced.

8. Under section 147 of the Income Tax Ordinance 2001, every taxpayer, subject to subsection (2), whose income was charged to tax for the latest tax year under this Ordinance or latest tax year, shall be liable to advance tax for the year in accordance with this section. In this behalf, advance tax is payable accordance to the formula provided in subsection (4), however, where the taxpayer is an individual, requisite formula is provided in subsection (4B). For ease of convenience, relevant subsections read as follows:-

“(4) Where the taxpayer is an association of persons or a company, the amount of advance tax due for a quarter shall be computed according to the following formula, namely:-

Where--

A *is the taxpayer's turnover for the quarter;*

Provided that where the taxpayer fails to provide turnover or the turnover for the quarter is not known, it shall be taken to be one-fourth of one hundred and ten percent of the turnover of the latest tax year for which a return has been filed;

B *is the tax assessed to the taxpayer for the latest tax year;*

Explanation.-- For removal of doubt it is clarified that tax

assessed includes tax under sections 113 and 113C.

C *is the taxpayer's turnover for the latest tax year; and*

D *is the tax paid in the quarter for which a tax credit is allowed under section 168.*

“(4B) *Where the taxpayer is an individual having latest assessed income of one million rupees or more as determination under section (2), the amount of advance tax due for a quarter shall be computed according to the following formula, namely:-*

Where--

A *is the tax assessed to the taxpayer for the latest tax year or latest assessment year under the repealed Ordinance; and*

B *is the tax paid in the quarter for which a tax credit is allowed under section 168, other than tax deducted under section 149;*

(6) *If any taxpayer who is required to payment of advance tax under subsection (1) estimates at any time before the last installment is due, that the tax payable by him for the relevant tax is likely to be less than the amount he is required to pay under subsection (1), the taxpayer may furnish to the Commissioner an estimate of the amount of the tax payable by him, and thereafter pay such estimated amount, as reduced by the amount, if any, already paid under subsection (1), in equal installments on such dates as have not expired;*

Provided that an estimate of the amount of tax payable shall contain turnover for the completed quarters of the relevant tax year, estimated turnover of the remaining quarters along with reasons for any decline in estimated turnover, documentary evidence of estimated expenses or deductions which may result in lower payment of advance tax and the computation of the estimated taxable income of the relevant tax year:

Provided further that where the Commissioner is not satisfied with the documentary evidence provided or where an estimate of the amount of tax payable is not accompanied by details mentioned in the first proviso, the Commissioner may reject the estimate after providing an opportunity of being heard to the taxpayer and the taxpayer shall pay advance tax according to the formula contained in subsection (4)”.

The bare reading of second proviso to subsection (6) *ibid* shows that where Commissioner is not satisfied with the documentary evidence provided, or where an estimate of the amount of tax payable is not accompanied by details mentioned in the first proviso, the Commissioner may reject the estimate after providing opportunity of being heard to the taxpayer and the taxpayer shall pay advance tax according to the formula contained in subsection (4). It is pertinent to observe that first proviso to subsection (6) provides for certain documents and information which need to be appended with the estimate and payment of advance tax.

9. The petitioners are aggrieved of rejection of estimate of the amount of tax payable as advance tax, however, it is an admitted position that while doing so, the Commissioner did not provide any opportunity of hearing. This being the position, the rejection of estimate and raising of demand/recovery notice, are without lawful authority inasmuch as they are not within the mandate of law. It was incumbent upon the Commissioner to provide opportunity of hearing.

10. In order to ensure that in such like situation, the assessee does not turn up and delay the matter, it is expedient to issue notices either through courier or registered acknowledgement

due, so that there is proof that service was effected upon the assessee and in case, assessee does not turn up on the date fixed in the notice, the Commissioner may record the same and proceed to decide the matter, so that assessee does not have the excuse that opportunity of hearing was not provided. In the instant case, no such proof is on record that same was done hence, it would be appropriate that opportunity be granted to the petitioners before proceeding further in the matter.

11. In view of foregoing, instant petitions are allowed and rejection, by the Commissioner of the estimate of income for payment of advance tax, is set aside along with recovery notices. The Commissioner Inland Revenue, Large Taxpayers Unit, Islamabad shall proceed in the matter strictly in accordance with section 147 of the Income Tax Ordinance, 2001 by providing opportunity of hearing as envisaged in second proviso to subsection (6) *ibid*. The petitioners shall also ensure their presence on the date and time, when the matter is fixed by the referred respondent.

(AAMER FAROOQ)
JUDGE

