

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

W.P. No.2452-2017
M/s Biafo Industries Limited
Vs.
Federation of Pakistan etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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18.04.2022	Hafiz Muhammad Idrees and Syed Farid Bukhari, Advocates for petitioners in W.P. No.2452-2017 & W.P. No.4806-2016 and Mr. Imran Ul Haq, Advocates for petitioner in W.P. No.2383-2019. Mr. Babar Bilal, Advocate for respondents in all writ petitions.
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The instant order shall decide present writ petition as well as W.P. No.4806-2016 & W.P. No.2383-2019, as common questions of law are involved.

2. The petitioners, in all above mentioned writ petitions, are aggrieved of recovery notices issued to them pursuant to the estimate sent by them viz a viz advance tax for the Tax Year 2017.

3. Learned counsel for the petitioners *inter alia* contended that pursuant to the provisions of Income Tax Ordinance, 2001, estimate is to be furnished by the taxpayer and accordingly pay advance tax. It was submitted that in case, return is filed and estimation is found to be erroneous, amendments can be made and consequences to follow pursuant to section 205 of Income Tax Ordinance, 2001. It was submitted that the estimate rendered by the taxpayer was not believed and instead recovery notices have been issued. It was also pointed out that this Court has already decided the matter by declaring such notices to be without lawful authority. Reliance

was placed on decision dated 05.09.2016 of this Court passed in W.P. No.2426-2016.

4. Learned counsel for the respondents *inter alia* contended that instant petitions have become infructuous inasmuch as returns have been filed for the Tax Year in question.

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

6. The factual basis, which led to filing of above mentioned petitions, has been mentioned hereinabove.

7. The petitioners, as noted above, are aggrieved of recovery notices issued to them by the Tax Department rejecting the estimate for advance tax filed by them. In somewhat similar circumstances, this Court vide judgment dated 05.09.2016, in case titled 'M/s Pak Telecom Employees Trust Vs. Federation of Pakistan etc.' (W.P. No.2426-2016), decided the matter and declared the recovery notices to be without lawful authority. The operative part of referred judgment is reproduced below:-

“7. In the instant case, the petitioner filed estimate of the tax liability by submitting that no advance tax is payable on the basis of the exemption available. The tax return, filed by the petitioner, was amended by the department under section 122 (5A) of the Ordinance, 2001 and the matter is pending before the Appellate forum. The bare reading of section 147 shows that the estimate of the tax payable is to be filed by the taxpayer before the last installment is due. The interpretation awarded to section 147 generally and sub-section 6 of section 147 particularly is that once the estimate has been filed, the veracity of the same cannot be questioned by the tax department. It is only when the tax return is filed for that respective year and it is found that the same is

not correct, the department is entitled to levy additional surcharge as provided in section 205 of the Income Tax Ordinance, 2001. The amendment in the Assessment Order for the year in question is inconsequential for the purposes of section 147 of the Ordinance.

8. *In view of above position of law, since the petitioner submitted Nil estimation for payment of the advance tax, therefore, respondent no.1 could not raise a demand and seek recovery of the same on the basis of amendment in the Assessment Order under section 122 (5A) of the Ordinance.*

9. *In view of above, the instant petition is allowed, the impugned recovery notice under section 140 of the Income Tax Ordinance, 2001 is declared to be illegal and without lawful authority”*

8. In light of above judgment handed down by this Court, recovery notices are not tenable. Moreover, if tax returns have been filed, the department can proceed against the taxpayer, if any basis is made out for erroneous filing of estimate with respect to advance tax.

9. For the above reasons, instant petitions are allowed and recovery notices, impugned in the petitions, are set aside.

(AAMER FAROOQ)
JUDGE