

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

Writ Petition No. 4684/2013

Fauji Fertilizer Bin Qasim Limited

Versus

Chief Commissioner Inland Rev, LTU, etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	04.05.2021	Sirdar Ahmed Jamal Sukhera, Advocate for the petitioner. Dr. Farhat Zafar, Advocate for the respondents.

This order will dispose of Writ Petitions No.
4684/2013 and 4685/2013.

2. Through these petitions the petitioner has impugned (i) orders of the Commissioner Inland Revenue under section 152(6) of the Income Tax Ordinance, 2001 (**"Ordinance"**) refusing exemption from deduction of tax from payments being made to M/s Pakistan Maroc Phosphore S.A., Casablanca-Morocco (PMP), and (ii) orders of the Chief Commissioner Inland Revenue in revisions under section 122B of the Ordinance, whereby the revisions were dismissed by order dated 12.09.2013.

3. Learned counsel for the petitioner submitted that the petitioner had filed writ petitions No. 4684, 4685 and 4686 of 2013 which had identical subject-matter. The basic grievance of the petitioner in all three petitions

were that the Commissioner Inland Revenue had passed the orders, in exercise of authority under section 152(6) of the Ordinance, without hearing the petitioner and in disregard of longstanding departmental practice and the orders passed in relation to the revision applications under section 122B of the Ordinance did not consider the objections raised by the petitioner and were devoid of reasoning as required under section 24-A of the General Clauses Act, 1897. The learned counsel for the petitioner stated that these petitions were heard along with the other clubbed petitions and while Writ Petition No. 4686/2013 was disposed of by this Court by remanding the matter to respondent No.2 through a consolidated order passed in W.P No. 4413/2012, Writ Petitions No. 4684/2013 and 4685/2013 were inadvertently left out of Annexure-A of the order of this Court passed in W.P No. 4413/2012 even though the subject-matter of all three petitions (i.e. 4684/2013, 4685/2013 and 4686/2013) was identical. And that in view of the reasoning of this Court in its order dated 11.05.2015 in W.P No. 4413/2012, the instant petitions ought to have been disposed of by being remanded back to the respondent No.2 as part of Category-II in Annexure-A of the said order.

4. Learned counsel for the respondent Department submitted on merits of the subject-matter that no hearing was required prior to passing order under sections 156(5) and 156(6) of the Ordinance and the order in revision under section 122B of the Ordinance was passed after hearing the representative of the petitioner and consequently the impugned orders suffer from no illegality. She further submitted that longstanding practice of a Department is not legally binding and can be deviated from if the practice is not in accordance with law.

5. I have reviewed the record in the instant petitions and also reviewed the record of W.P No. 4486/2013 and W.P No. 4413/2012, which were disposed of by this Court through its consolidated order dated 11.05.2015 passed in W.P No. 4413/2012. It appears that submissions of the learned counsel for the petitioner that the instant writ petitions were inadvertently left out and were not mentioned in Category-II of Annexure-A of Order dated 11.05.2015 in W.P No. 4413/2012 has merit. The order passed in W.P No. 4413/2012 that disposed of W.P No. 4486/2013 by remanding it back to respondent No.2 is applicable to the instant petitions as well

as their subject-matter are identical. The said order of this Court in W.P No. 4413/2012 is binding on this Court in terms of the principle laid down in Multiline Associates v. Ardeshir Cowasjee and 2 others (PLD 1995 SC 423). As through the said order this Court had remanded various petitions to respondent No.2 to be decided afresh, the instant petitions are also remanded back to respondent No.2 in terms of the consolidated order of this Court dated 11.05.2015 passed in W.P No. 4413/2012 and the direction issued in Para. 10 of the said order.

6. These petitions are disposed of in the above terms.

(BABAR SATTAR)
JUDGE

Saeed.