Form No: HCJD/C-121

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD (JUDICIAL DEPARTMENT)

I.T.R. No.63 of 2015

M/s Telenor Pakistan (Pvt.) Ltd.

Versus

Appellate Tribunal Inland Revenue & 3 others

Applicants by	:	Mr Ali Sibtain Fazli, Advocate. Sardar Ahmed Jamal Sukhera, Advocate. Mr Saad M. Hashmi, Advocate. Mr Abad Ur Rehman, Advocate. Mr Naeem Ahmed, Advocate. Mr Umer Tariq Gill, Advocate. Mr. Hamza Tahir, Advocate.
Respondent by	:	Mr Saeed Ahmed Zaidi, Advocate. Ms Shazia Bilal, Advocate. Mr Imran Kazmi, Member (Legal), Mr Amjad Zubair, Chief Commissioner, Ms Shabana Mumtaz, Commissioner Inland Revenue, Mr Naeem Hassan, Commissioner Inland Revenue, Mr Shah Bahar, Dy. Commissioner, LTU, Islamabad.
Date of Hearings	:	28-04-2022 and 13-10-2022
Date of Decision	:	13-10-2022

Babar Sattar, J.- Through this consolidated judgment, we shall decide the Tax References listed in **"Annexure-A".**

2. The applicant companies had filed income tax references under the Income Tax Ordinance, 2001 (*hereinafter referred to as the* ***"Ordinance"***). The questions of law framed for our consideration were answered by a Division Bench of this Court in

its judgment dated 09-01-2017. The judgment was challenged before the august Supreme Court. The apex Court vide order dated 17-05-2018 remanded the matter for consideration of additional questions i.e. whether the tax calculated at source under section 148 of the Ordinance of 2001 is adjustable advance tax? And, in the event that the Court concludes that in case of the applicant companies such tax is not adjustable, whether or not the exclusions described in clause (a) of sub section (7) of section 148 would become relevant? The august Supreme Court, however, upheld the judgment dated 09-01-2017 and the remand is to the extent of the additional questions.

3. The relevant provision of section 148 of the Ordinance, as enforced at the relevant time, is reproduced here:-

> ***"148. Import.***---
>
> *(7) The tax [required to be] collected under this section shall be a final tax [except as provided under sub-section (8)] on the income of the importer arising from the imports subject to sub-section (1) and this sub-section shall not apply in the case of import of--*
>
> *(a) raw material, plant, machinery, equipment and parts by an industrial undertaking for its own use;"*

4. We have heard the learned counsels for the applicant companies and the Department. Before we render our opinion in relation to the questions of law that form the subject matter of this reference after its remand, let us reiterate the principles of interpretation applicable in case of fiscal statutes.

5. The Ordinance is a fiscal statute. The settled principles of interpretation of a fiscal statute include, inter alia, that the provisions are required to be interpreted literally and equity or presumption are alien thereto. If a provision of a taxing statute can have two reasonable explanations then one which is favorable to the taxpayer has to be accepted and any ambiguity is required to be resolved in favour of the tax payer. Likewise, redundancy cannot be attributed to the lawmaker. Every word and part of the statute has to be given meaning and effect. It is always presumed that the legislature has used every word in a context and for a purpose. The statute has to be read as a whole and the intention of the legislature has to be discovered by paying attention to what has been said. It is settled law that while interpreting fiscal statutes the Court looks at what is clearly said. There is no room for any intendment, there is no equity about a tax nothing is to be read in or implied and one must only look fairly at the language used. Reliance is placed on the cases of ***Federation of Pakistan through Secretary Ministry of Finance and others v. Haji Muhammad Sadiq and others*** ***(PLD 2007 SC 133]***, ***Aslam Industries Ltd., Khanpur v. Pakistan Edible Corporation of Pakistan and others*** ***(1993 SCMR 683)*** ***Collector of Customs (Appraisement), Karachi and others v. Messrs Abdul Majeed Khan and others*** ***(1977 SCMR 371)*** and ***Messrs Hirjina & Co. (Pakistan) Ltd., Karachi v. Commissioner of Sales Tax Central Karachi*** ***(1971 SCMR 128).***

6. In order to determine whether tax collected at source under section 148 of the Ordinance is adjustable advance tax, provisions of section 148(7) will need to be read with (i) definition of income provided under section 2(29) of the Ordinance (ii) the classes of income referred to under section 4(4) of the Ordinance, and (iii) the scheme of the provision of credit for tax collected or deducted under section 168 of the Ordinance.

7. Let us start with plain language of section 148(7). While section 148(1) provides for collection of advance tax from every importer of goods on the value of the goods at the rate as specified in Part II of the First Schedule to the Ordinance, Section 148(7) declares that the tax collected under section 148 shall be final tax. Such declaration is, however, followed by two carve-outs or qualifications to the declaration of finality of the advance tax collected pursuant to section 148(1).

8. Section 148(7) states that the advance tax collected shall be a final tax *"on the income of the importer arising from the imports"*. The legislature has not said that the tax collected under section 148(1) shall be a final tax on the income of the importer. It has explicitly provided that it is the final tax on the income of the importer "arising from the imports" against the value of which advance tax is calculated and collected. In the event that the legislature meant for the advance tax collected to be a final tax in relation to the income of the importer for the taxpayer, there was no reason to further qualify that the income in question is that "arising from the imports".

9. The Commissioner in the Order-in-Original has declared that under section 148(7) any advance tax collected is final tax. Such interpretation of section 148(7) does not take into account the principle of interpretation that no redundancy on surplusage can be attributed to the legislature while interpreting a fiscal statute. If the said interpretation is upheld, the words "arising from the imports" mentioned in section 148(7), which qualify the income against which the advance tax collected is to be treated as final tax, would be surplusage. As each and every word used by the legislature in a fiscal statute is to be given meaning, the plain reading of section 148(7) suggests that the first exception to the declaration of finality of the advance tax collected from an importer is that it will be deemed to be final tax against an importer deriving income from the imports against the value of which advance tax has been collected under section 148(1) of the Ordinance.

10. The second carve-out is then provided under clauses (a) to (e) of subsection (7) of section 148. Here again it is provided that even if an importer is deriving income from imports against which advance tax has been collected, it shall not be deemed to be final tax in case the imports fall within clauses (a) to (e) of section 148(7).

11. Such reading of section 148(7) is in consonance with the definition of the income under section 2(29) which defines income to include *"any amount subject to collection or deduction of tax under section 148."* The definition of income itself does not state that the tax to be collected under section 148 is final tax. Likewise, section 148(1) which prescribes the amount of advance tax to be

collected from an importer does not state that tax collected is a final tax.

12. Section 4 is a charging section of the Ordinance. Section 4(4)(b) provides that *"certain classes of income may be subject to … collection of tax under Division II of Part V of Chapter X …".* Section 148 falls within Division II of Part V of Chapter X to the Ordinance and the income against which final tax is contemplated under section 148(7) is a class of income of the importer i.e. income of the importer arising from the import of goods against which advance tax is collected.

13. Also of relevance is section 168(2) of the Ordinance. Section 168 falls within Part V of Chapter X to the Ordinance and subsection (2) of section 168 provides that, "*wherein an amount of tax has been collected from a person under Division II of this part… the person shall be allowed a tax credit for that tax in computing the tax due by the person on the taxable income of the person for the tax year in which the tax was collected or deducted".* Section 168(2) therefore also contemplates that a taxpayer is entitled to a tax credit in relation to tax collected under section 148 of the Ordinance. Consequently the Tax Department's reading that the definition of income under section 2(29) of the Ordinance read together with section 148 suggests that the advance tax collected under section 148 is final tax is incorrect. The advance tax collected under section 148 is an adjustable tax in view of section 168 of the Ordinance except to such extent that it otherwise provides. Section 148(7) does provide otherwise but the exception to the advance tax being adjustable is then qualified under section

148(7) itself as well as under section 148(8). As section 148(8) is not relevant for our present purposes, we merely have to see the language of section 148(7) to determine the income against which tax collected under section 148 is to be treated as final tax. As explained above the language itself clearly provides a carve-out by explaining that the tax collected under section 148(1) is to be treated as a final tax in relation to such income of the importer that arises from the imports against the value of which advance tax has been deducted.

14. In view of the above reading of section 148(7), the first question to be determined by the Tax Department is whether an importer is deriving income that arises from the imports against the value of which advance tax has been collected. If the answer to such question is in the affirmative, the Department is then required to determine whether the imports in relation to which the advance tax has been collected fall within clauses (a) to (e) of section 148(7). If answer to the second question is in the negative, then income of the importer would not fall within the two carve-outs provided under section 148(7) and the advance tax collected from such imports would be deemed to be a final tax. If however the Tax Department comes to the conclusion that no income accrues to the importer from the imports against which advance tax has been collected, the tax collected would be adjustable tax and not a final tax. Likewise, even if there is income arising to the importer from the imports against which advance tax has been collected, but such imports fall within the category mentioned in clauses (a) to

(e) of section 148(7), the advance tax collected would still be an adjustable tax.

15. Given that the question of any income arising to the applicants from the imports against which advance tax has been collected from them is a question of fact, as is the question as to whether the imports fall within clauses (a) to (e) of section 148(7), in the event that the Department is of the view that income does arise to the applicants from the imports, these questions of fact would need to be determined by the learned Tribunal. We therefore answer the question of law remanded by the august Supreme Court accordingly and remand the matter to the learned Tribunal for determination of questions of fact involved.

16. A copy of this order is directed to be sent to the Registrar of the learned Tribunal under the seal of the Court.

(**CHIEF JUSTICE**) (**BABAR SATTAR**)
JUDGE

Saeed.

ANNEXURE - A		
S. No.	**Reference No.**	**Title**
1.	Income Tax Reference. 63/2015	M/s Telenor Pakistan Pvt. Ltd **Vs**. Appellate Tribunal IR, etc.
2.	Income Tax Reference. 64/2015	M/s Telenor Pakistan Pvt. Ltd **Vs**. Appellate Tribunal IR, etc.
3.	Income Tax Reference. 65/2015	M/s Telenor Pakistan Pvt. Ltd **Vs**. Appellate Tribunal IR, etc.
4.	Income Tax Reference. 66/2015	M/s Telenor Pakistan Pvt. Ltd **Vs**. Appellate Tribunal IR, etc.
5.	Income Tax Reference. 67/2015	M/s Telenor Pakistan Pvt. Ltd **Vs**. Appellate Tribunal IR, etc.
6.	Income Tax Reference. 73/2015	CIR **Vs.** M/s CM Pak Limited
7.	Income Tax Reference. 74/2015	CIR **Vs.** M/s CM Pak Limited
8.	Income Tax Reference. 75/2015	CIR **Vs.** M/s CM Pak Limited
9.	Income Tax Reference. 76/2015	CIR **Vs.** M/s CM Pak Limited
10.	Income Tax Reference. 77/2015	CIR **Vs.** M/s CM Pak Limited
11.	Income Tax Reference. 78/2015	CIR **Vs.** M/s CM Pak Limited
12.	Income Tax Reference. 79/2015	CIR **Vs.** M/s CM Pak Limited
13.	Income Tax Reference. 82/2015	Commissioner IR **Vs.** M/s CM Pak Ltd
14.	Income Tax Reference. 90/2015	M/s Telenor Pakistan Pvt. Ltd. **Vs**. Appellate Tribunal Inland Revenue, etc.

15.	Tax Reference. 114/2016	PTML **Vs.** CIR etc.
16.	Tax Reference. 115/2016	PTML **Vs.** CIR etc.
17.	Tax Reference. 116/2016	PTML **Vs.** CIR etc.
18.	Tax Reference. 117/2016	PTML **Vs.** CIR etc.
19.	Tax Reference. 118/2016	PTML **Vs.** CIR etc.
20.	Tax Reference. 119/2016	PTML **Vs.** CIR etc.
21.	Tax Reference. 120/2016	PTML **Vs.** CIR etc.
22.	Tax Reference. 121/2016	PTML **Vs.** CIR etc.
23.	Income Tax Reference. 128/2016	Commissioner IR **Vs.** M/s Wateen Telecom Pvt. Ltd.
24.	Income Tax Reference. 157/2016	Commissioner IR **Vs.** M/s CM PAK Ltd.
25.	Income Tax Reference. 49/2017	Commissioner Inland Revenue **Vs.** M/s Bahria Town (PVT) Ltd.
26.	Income Tax Reference. 50/2017	Commissioner Inland Revenue **Vs**. M/s Bahria Town Islamabad and others
27.	Income Tax Reference. 51/2017	Commissioner Inland Revenue **Vs.** M/s Bahria Town (PVT) Ltd.
28.	Income Tax Reference. 52/2017	Commissioner Inland Revenue **Vs.** M/s Bahria Town (PVT) Ltd.