

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
(Judicial Department)

“ITR No. 269 of 2010”

Commissioner of Income Tax (legal), LTU, Islamabad.
Versus
M/s National Telecommunication Corporation, Islamabad.

For the Applicant:	Ms. Shazia Bilal, Advocate.
For Respondent:	Mr. M.Imam Ul Haq, Advocate.
Date of Decision:	01.09.2020.

Ghulam Azam Qambrani, J. Through this consolidated judgment we shall decide the Income Tax References No.269/2010 & 272/ 2010. These Reference Applications seek framing questions of law, arising out of decision of the Appellate Tribunal, Islamabad, dated 27.10.2009, and answering the same.

2. The facts, in brief, are that the applicant is Commissioner Inland Revenue (Legal) Taxpayers Unit, Islamabad, exercising the powers and functions of the Commissioner Inland Revenues for the purpose of the proceedings against respondent under the provisions of Income Tax Ordinance, 2001; that the respondent is existing taxpayer under the jurisdiction of the applicant; that the order of the Tax Appellate Tribunal bearing I.T.A No.383/ IB / 2009 dated 27.10.2009 was received in his office on 09.02.2010 and the respondent is a private limited company which derives income from providing telecommunication services. amendment IN the order passed under Section 120 of the Income Tax Ordinance, 2001, was made on the ground that the status of the company was to be taken as private limited company for the purpose of tax rate for all the years under consideration relying upon the fact that the learned Tribunal had already held the status of the company to be private limited vide its order in ITA No.609/IB/2000-2001 dated 21.07.2002;

that the taxpayer took the plea that the Federal Board of Revenue in its decision in ADRC for assessment years 1999-2000 & 2000-2001 has decided the issue of its status to be public limited but the taxation officer rejected it taking cognizance that Rule 231C of Income Tax Rules, 2002 says that the resolution reached by the taxpayer and the Board shall not be binding upon the tax years not covered by the agreement. Against the above treatment, the taxpayer went into appeal before the learned CIT (Appeals-I), Islamabad. The taxpayer pleaded that no opportunity of being heard was provided to the taxpayer and the taxpayer was assigned the status of public company through ADR order # 5 of 2005 for assessment years 1999- 2000 & 2000-2001, which was accepted by the department for Assessment order for assessment year 2002-2003. That as the department accepted the status of Public Limited Company for assessment year 2002-2003 the action for reassigning the status amounts to change of opinion. That the CIT(A) disposed of the case by holding that the status of public limited is to be assigned to the taxpayer on the basis that the same status has been awarded by the Department for the year 2002-2003 and also because the issue was resolved in the ADRC hence reassigning the status would not be justified. He also opined that 100% ownership of NTC vests with the Government of Pakistan. That the department filed appeals before the learned ITAT on the grounds that the Commissioner (Appeals-I) Islamabad, was not justified to assign the status of Public Limited to the taxpayer. The learned ITAT confirmed the order of CIT (Appeals).

3. Learned counsel for the petitioner appearing on behalf of the department submits that the learned ITAT is not justified to simply depend upon the treatment given for assessment year 2002-2003 relying upon the findings of the Commissioner of Income Tax (Appeals-I) Islamabad, without appreciating that status of private limited company has been decided through a previous decision of the Income Tax Appellate Tribunal vide its order 669/IB/2000-2001 dated 21.08.2002 and afterward vide orders in ITA No.MA(R) 140, 195/ IB/2003 for the assessment year 1999-2000 and 2000-2001

and ITA No.1326/IB/2004 dated 09.03.2006 for the assessment year 2001-2002 whereby the learned ITAT was asked to review its previous order. The learned ITAT rejected the MA (R). But the taxpayer did not challenge the above order before the Honorable High Court hence has attained finality. Further contended that the following question of law arise out of the order of the Tribunal:-

- i. *"Whether on the facts and under the circumstances of the case the learned ITAT was justified to assign the status of public limited to the taxpayer notwithstanding its previous orders on the same issue".*
- ii. *"Whether the taxpayer fulfils the criteria to be assigned the status of a public limited company notwithstanding the requirements of the Company's Ordinance 1984."*

4. We have carefully perused the order passed by the learned Tribunal and the provisions of the Ordinance of 1971. Section 2 (f) of the Ordinance of 1971 has defined the expression "Industrial Establishment" while any concern or establishment which is owned by Government or by a corporation established by it or by a corporation the majority of the shares of which is owned by the latter has been explicitly excluded.

5. Arguments advanced by learned counsel for the applicant has no force that the expression 'Company' is not covered under the expression 'Corporation'. The learned Tribunal has rightly held that as under:-

"That the department had accepted the NTC's status as 'Public Company' in Assessment year 2002-2003, as is evident from the Assessment Order and the action to re-assign the status amounts to change of opinion and cannot be sustained. Further, as per definition of "Public Company" in the Income Tax Ordinance, 2001, the contention of the learned AR that since 100% ownership of NTC vests with the Government of Pakistan is acceptable. He further found that on the basis of ADR Order No.5 of 2005, succeeded by Corrigendum dated February 2, 2005 and High Court, Rawalpindi Bench order dated December 8, 2005 the status of the assessee is that of a Public Limited Company."

The status of the respondent tax payer i.e. National Telecommunication Corporation is admittedly not that of a Private Limited Company. It was assessed as a Public Company by the Assessing Officer but subsequently for the relevant tax year it was treated as a Private Limited Company status of the respondent taxpayer as a Public Company and the same was upheld by the learned Tribunal.

6. Learned counsel for the department has failed to place on record any document indicating the status of the respondent taxpayer as a Private Limited Company and also failed to point out any misreading or non-reading of material on record by the two appellate forums warranting interference by this Court. The concurrent findings of the tribunal regarding the status of the respondent taxpayer do not suffer from any legal infirmity nor have been found to be perverse.

7. In view of the above, these references are misconceived and therefore, the questions proposed for our consideration are accordingly answered.

(AAMER FAROOQ)
JUDGE

(GHULAM AZAM QAMBRANI)
JUDGE

M. H.