

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P. No.2159/2021

Deodar Private Limited

Versus

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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07.03.2023 Mr. Rashid Hafeez, Advocate for the petitioner.
Sheikh Anwar ul Haq, Advocate for the respondents.

The petitioner is aggrieved of impugned order dated 17.06.2021, issued by respondent No.3.

2. Learned counsel for the petitioner contended that estimation was filed for the purposes of advance tax as required under the Income Tax Ordinance, 2001, however, instead of accepting the same as it is, the impugned order has been issued and also the order rejecting the estimation as well. It was contended that it is a settled proposition of law that no estimation once tendered can be rejected but action can be taken on the basis thereof only when the income tax return has been filed for that tax year and estimation has been found to be erroneous.

3. Learned counsel for the respondents, *inter alia*, contended that if the matter is sent back to the department for adjudication, all the objections taken by the petitioner, in the instant petition, can be taken care of.

4. The submissions by the learned counsel for the parties have been heard and the documents placed on record examined with their able assistance.

5. The grievance of the petitioner is spelt out hereinabove, hence need not be reproduced. In somewhat similar circumstances, in case titled "*Pakistan Telecommunication Company Limited, Islamabad versus Federation of Pakistan through Ministry of Finance, Islamabad, etc.*" (Writ Petition No.1143/2022), this Court observed as follows:-

"9. The above discussion of law and the statute clearly shows that the Commissioner presently has no authority to disagree with the estimate filed by the taxpayer and replace it with its own. The orders impugned, in the instant petitions, have been passed under the mistaken belief that second proviso of subsection (6) of section 147 of the Ordinance still holds the field. Even if it was the case, the Commissioner could not have passed the order, as the relevant subsection, in case of petitioners, is subsection (4) of section 147 of the Ordinance and subsection (4A) *ibid* also does not grant any similar authority/power to the Commissioner.

10. Likewise, since the Department has no authority to substitute the estimates, hence the recovery notices could not have been issued. Since the estimates were filed before the Commissioner, it would only be appropriate that the matter be placed before the relevant Commissioner again for doing the needful in accordance with law."

Since the case, in hand, is at par with decision mentioned hereinabove, hence merits same treatment.

6. For the above reasons, the instant petition is **allowed** and the impugned order is set-aside; consequently, the estimation filed by the petitioner before the Commissioner shall be deemed to be pending and the matter shall be considered in light of the relevant laws

and observations made hereinabove after providing an opportunity of hearing to the petitioner.

(CHIEF JUSTICE)

M. Shah /*