IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT: MR. JUSTICE MIAN SAQIB NISAR, HCJ
MR. JUSTICE MAQBOOL BAQAR
MR. JUSTICE IJAZ UL AHSAN

CIVIL PETITIONS NO.3551 TO 3555 OF 2015
(on appeal from the judgment of the Islamabad High Court, Islamabad dated 23.09.2015 passed in I.T.R. Nos.224-228/2015)

M/s Pakistan Television Corporation Ltd.

... Petitioner(s)
(In all cases)

VERSUS

Commissioner Inland Revenue (Legal), LTU, Islamabad etc.

... Respondent(s)
(In all cases)

For the petitioner(s): Mr. M. Makhdoom Ali Khan, Sr. ASC
Hafiz Muhammad Idris, ASC
Mr. Faisal Hussain Naqvi, ASC.
Syed Rifaqat Hussain Shah, AOR
(In all cases)

For the respondent(s): Mr. Muhammad Bilal, Sr. ASC
Mr. Babar Bilal, ASC.
Mr. Ehsan Ullah Khan, Dy. Commissioner Inland Revenue
(In all cases)

Date of hearing: 07.03.2017, 14.03.2017 & 15.03.2017

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JUDGMENT

MIAN SAQIB NISAR, CJ.- The facts of the instant cases are that the petitioner, Pakistan Television Corporation Ltd. *(PTV)* collects 'television license fee' from consumers. This fee was previously collected by the Water and Power Development Authority *(WAPDA)*, and now by the successor Electricity Distribution and Supply Companies *(DISCOS)* for PTV in pursuance of an agreement dated 01.07.2004, through monthly electricity bills. WAPDA *(this expression shall include DISCOs)* would remit the balance license fee to PTV after retaining a portion of it as their fee for this collection service. PTV claimed the service charges retained by WAPDA as expenditure in terms of Section 21 of the Income Tax Ordinance, 2001 *(the*

Ordinance) in the income tax returns it filed for the tax years 2009 to 2013, which stood finalized under Section 120(1) of the Ordinance. Show cause notices was issued to PTV for further amendment of the assessments in terms of Sections 122(5A) and 122(4) of the Ordinance on the ground that the original assessments were erroneous as they were prejudicial to the interest of revenue for the reason that the 'television license fee collection expense' is a commission earned by WAPDA and PTV was required to deduct tax under Section 233 of the Ordinance, and since this was not done, therefore this expense was liable to be disallowed under Section 21(c) of the Ordinance *(note:- the assessment was once amended under Section 122(5A) of the Ordinance for some other reason but this is not relevant for the purposes of the instant issue)*. Thus the said expense was disallowed and the assessment orders were accordingly further amended. This amendment was upheld throughout: before the Commissioner Income Tax (Appeals), the Income Tax Appellate Tribunal *(the Tribunal)* and the learned High Court, hence these petitions.

2. For the sake of brevity, the arguments of the learned counsel are not being recorded separately, rather would reflect in the course of this opinion. The key question involved in this matter is whether PTV was not entitled to deduct as expenditure, the service fee retained by WAPDA, as per the provisions of Section 21(c) of the Ordinance. In this regard, the relevant provisions of the Ordinance *(as they existed at the relevant time, i.e. for the tax years 2009 to 2013)* read as under:-

> ***21. Deductions not allowed.—*** *Except as otherwise provided in this Ordinance, no deduction shall be allowed in computing the income of a person under the head "Income from Business" for –*
>
> *(a)* …
>
> *(b)* …
>
> *(c)* *any salary, rent, brokerage or commission, profit on debt, payment to non-resident, payment for services or fee paid by the person from which the person is required to deduct tax under Division III of Part V of*

Chapter X or section 233 of Chapter XII, unless the person has paid or deducted and paid the tax as required by Division IV of Part V of Chapter X;

…

*[1]**153. Payments for goods and services**.— (1) Every prescribed person making a payment in full or part including payment by way of advance to a resident person or permanent establishment in Pakistan of a non-resident person—*

(a) ……

(b) for the rendering of or providing of services;

(c) ……

shall, at the time of making the payment, deduct tax from the gross amount payable at the rate specified in Division III of Part III of the First Schedule.

…

(6) The tax deducted under this section shall be a final tax on the income of a resident person arising from transactions referred to in sub-sections (1) and (1A):

…

(9) In this section,—

"prescribed person" means—

…

(b) a company

*[2]**153. Payments for goods, services and contracts**.— (1) Every prescribed person making a payment in full or part including a payment by way of advance to a resident person or [3][* * *]—*

(a) ……

(b) for the rendering of or providing of services;

(c) ……

shall, at the time of making the payment, deduct tax from the gross amount payable (including sales tax, if any) at the rate specified in Division III of Part III of the First Schedule.

(2) ……

(3) The tax [4][deductible] under clauses (a) and (c) of sub-section (1) and under sub-section (2) of this section, on the income of a resident person or [5][* *], shall be final tax.*

Provided that,—

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[1] As it read prior to the Finance Act, 2011 (XVI of 2011).

[2] As it read in 2013 after substitution by the Finance Act, 2011 (XVI of 2011).

[3] The words "permanent establishment in Pakistan of a non-resident person" omitted by the Finance Act, 2012 (XVII of 2012).

[4] Substituted for the word "deducted" by the Finance Act, 2012 (XVII of 2012).

[5] The words "permanent establishment of a non-resident person" omitted by the Finance Act, 2012 (XVII of 2012).

(a) ……

(b) *tax [6][deductible] shall be a minimum tax on transactions referred to in clause (b) of sub-section (1); and*

…

161. Failure to pay tax collected or deducted.— *(1) Where a person–*

(a) *fails to collect tax as required under Division II of this Part or Chapter XII or deduct tax from a payment as required under Division III of this Part or Chapter XII or as required under section 50 of the repealed Ordinance; or*

(b) *having collected tax under Division II of this Part or Chapter XII or deducted tax under Division III of this Part or Chapter XII fails to pay the tax to the Commissioner as required under section 160, or having collected tax under section 50 of the repealed Ordinance pay to the credit of the Federal Government as required under sub-section (8) of section 50 of the repealed Ordinance,*

the person shall be personally liable to pay the amount of tax to the Commissioner who may pass an order to that effect and proceed to recover the same.

…

(1B) Where at the time of recovery of tax under sub-section (1) it is established that the tax that was to be deducted from the payment made to a person or collected from a person has meanwhile been paid by that person, no recovery shall be made from the person who had failed to collect or deduct the tax but the said person shall be liable to pay [7][default surcharge] at the rate of eighteen per cent per annum from the date he failed to collect or deduct the tax to the date the tax was paid.

(2) A person personally liable for an amount of tax under sub-section (1) as a result of failing to collect or deduct the tax shall be entitled to recover the tax from the person from whom the tax should have been collected or deducted.

162. Recovery of tax from the person from whom tax was not collected or deducted.— *(1) Where a person fails to collect tax as required under Division II of this Part or Chapter XII or deduct tax from a payment as required under Division III of this Part or Chapter XII, the Commissioner may pass an order to that effect and recover the amount not collected or deducted from the person from whom the tax*

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[6] Substituted for the word “deducted” by the Finance Act, 2012 (XVII of 2012).

[7] Substituted for the words “additional tax” by the Finance Act, 2010 (XVI of 2010).

should have been collected or to whom the payment was made.

(2) The recovery of tax under sub-section (1) does not absolve the person who failed to deduct tax as required under Division III of this Part or Chapter XII from any other legal action in relation to the failure, or from a charge of [8][default surcharge] or the disallowance of a deduction for the expense to which the failure relates, as provided for under this Ordinance.

233. Brokerage and commission.— *(1) Where any payment on account of brokerage or commission is made by the Federal Government, a Provincial Government, a Local Government, a company or an association of persons constituted by, or under any law (hereinafter called the "principal") to a person (hereinafter called the "agent"), the principal shall deduct advance tax at the rate specified in [9][Division II of] Part IV of the First Schedule from such payment.*

(2) If the agent retains Commission or brokerage from any amount remitted by him to the principal, he shall be deemed to have been paid the commission or brokerage by the principal and the principal shall collect advance tax from the agent.

(3) Where any tax is [10][required to be] collected from a person under sub-section (1), [11][such tax] shall be the final tax on the income of such persons.

3. We find it appropriate to first deal with the objection raised by the learned counsel for the respondent that no question of law emerged from the order of the Tribunal and, since a reference before the High Court can only be filed on a question of law and not on a question of fact, therefore the tax references were not maintainable. Responding to this, the learned counsel for the petitioner submitted that the jurisdiction of the High Court, in a tax reference, can be invoked where:- (a) the Tribunal has decided a question of law incorrectly; (b) the Tribunal has decided a question of law not before it, whether correctly or incorrectly; or (c) the

[8] Substituted for the words "additional tax" by the Finance Act, 2010 (XVI of 2010).
[9] Inserted by the Finance Act, 2010 (XVI of 2010).
[10] Inserted by the Finance Act, 2012 (XVII of 2012).
[11] Substituted for the words "the tax so collected" by the Finance Act, 2012 (XVII of 2012).

Tribunal has not decided a question of law before it. He stated that it cannot be said that the High Court shall have no jurisdiction where the Tribunal has failed to decide a question of law before it. An interpretation which restricts the scope of the reference in the High Court to categories (a) and (b) would mean that the Tribunal could deny the High Court's jurisdiction simply by failing to decide questions of law before it. Undoubtedly, a reference under Section 133 of the Ordinance would lie before the High Court on a question of law only, however, in the instant cases, the issues *(and in the statement of case)* before the High Court required an interpretation of various provisions of the Ordinance including Sections 21, 153 and 233 which were essentially questions of law. We have examined the order of the Tribunal and find that the above questions of law do arise therefrom, resultantly the tax references before the learned High Court were maintainable.

4. Section 18 of the Ordinance provides the various incomes of a person which would be chargeable to tax under the head 'income from business' and the television license fee earned by PTV constitutes the profits and gains of its business carried on throughout the year. Section 20 of the Ordinance allows, subject to the Ordinance, deductions for any expenditure incurred by a person during the year in computing their income chargeable to tax under the head 'income from business'. PTV claimed deductions by declaring the service fee paid to WAPDA as expenditure. It is the department's stance that since Section 20 *ibid* was subject to the Ordinance, therefore PTV was required to deduct tax under Section 153(1)(b) of the Ordinance, or alternatively under Section 233 thereof, and it did not pay or deduct and pay such advance tax, thus PTV could not be allowed deduction of expenditure under Section 21(c) of the Ordinance. The general rule is that deduction of expenditure incurred by a person, in a year, for the purposes of business is allowed under Section 20

of the Ordinance. Section 21 of the Ordinance creates an exception thereto where no deduction is to be allowed in computing the income of a person under the head 'income from business' for various items, including *"payment for services or fee paid by the person from which the person is required to deduct tax under Division III of Part V of Chapter X or section 233 of chapter XII…"* The department has taken two alternate pleas:- (i) PTV was bound to deduct tax from the gross amount payable to WAPDA for the rendering/providing of services under Section 153(1)(b) of Division III of Part V of Chapter X of the Ordinance; and/or (ii) PTV, the principal, was bound to deduct/collect advance tax from WAPDA, the agent, under Section 233 of the Ordinance. Therefore PTV could not claim the service fee as expenditure and deduct the same from its income.

5. With regard to the first plea, PTV's stance is that as no payment was made by the petitioner to WAPDA, therefore, the provisions of Section 153 *supra* are not applicable. The said section provides that every prescribed person making a payment in full or part, including a payment by way of advance, to a resident person etc. for the **rendering of or providing of services**, shall, **at the time of making the payment**, deduct tax from the gross amount payable at the rate specified in Division III of Part III of the First Schedule. The term 'prescribed person' is defined in Section 153(7)(i) of the Ordinance, part (b) whereof includes 'a company' thus PTV was a prescribed person for the purposes of Section 153 *supra.* WAPDA admittedly is a 'resident person' as per the definition provided in Section 2(52) of the Ordinance. When we confronted learned counsel for the petitioner with the hypothesis that since PTV was making payments in the form of a service fee to WAPDA for the collection of television license fee from the consumers, the former was liable to deduct tax in terms of Section 153(1)(b) *supra*, he candidly conceded that had the amount of television license fee **come** to PTV in full and then been made over as

payment of service fee to WAPDA, the former would have been bound to deduct tax. However, in the instant case, no payment was ever made by PTV to WAPDA, rather WAPDA collected the television license fee from the consumers through electricity bills, deducted its fee for this collection service and remitted the balance amount to PTV. Therefore, PTV was unable to deduct tax. At this juncture, it would be useful to examine Section 158 of the Ordinance which stipulates the time of deduction of tax. Sub-part (b) thereof is relevant which provides that a person required to **deduct tax** from an amount paid by the person shall do so *(in cases other than that of deduction under Section 151 of the Ordinance)* at the time the **amount is actually paid**. The effect of the combined reading of Sections 153(1)(b) and 158(b) of the Ordinance makes it clear that deduction is to be made by a person *"making the payment" "at the time the amount is actually paid"*, and as stated earlier, in the instant case, the payment was not channeled from PTV to WAPDA, thus the former could not possibly deduct tax.

6. Another aspect of this matter is that the only way PTV could have been required to pay tax in this situation was if an obligation was imposed on it to **collect** the amount of tax from WAPDA, which Section 153 *supra* did not provide for. In circumstances such as those in the instant matters, where the Ordinance requires a person to deposit tax in the treasury it either uses the term 'deduct' or 'collect'. There is a distinction between the two which needs to be appreciated. In this context we find it appropriate to ascertain the true import of both words which have been defined as follows:-

> ***Deduct:***
> *To take away (a number, amount, etc.)*[12]
>
> *To take away money, points, etc. from a total amount*[13]

[12] Chambers 21st Century Dictionary (Reprinted 2007)
[13] Oxford Advanced Learner's Dictionary (9th Ed.)

> *Abate, attenuate, bate, cheapen, cut, cut down, decrease, deflate, deplete, depreciate, devaluate, dilute, diminish, discount, downgrade, dwindle, lessen, lower, make less, make smaller, mark down, remove, render few, shrink, slash, strike off, strip, subduct, subtract, take away, take off, trim, truncate, withdraw*[14]
>
> ***Collect**:*
> *To bring or be brought together; to gather; to get something from people, e.g. money owed or voluntary contributions etc.*[15]
>
> *To bring things together from different people or places; to ask people to give you money for a particular purpose*[16].
>
> *Accept, acquire, appropriate, arrogate, assume, be given, be paid, collect payment, demand and obtain payment, exact payment, execute, gain, get back, get money, get possession of, levy, obtain payment, profit, raise, raise contributions, raise funds, reacquire, realize, receive money, receive payment, reclaim, recompense, recoup, recover, redeem, regain, retrieve, secure, secure payment, sequester, settle accounts with, take back again, take possession*[17]

From the above, it is clear that the words 'deduct' and 'collect' cater to two different situations. A perusal of the various provisions of the Ordinance in which the words 'deduct' or 'collect' *(or both)* are used indicates that the former is used where payment is being made by a person and he is required to take away or subtract a percentage of such payment as advance tax to be deposited with the treasury, whereas the latter is employed where the person receiving the payment is to deposit advance tax on behalf of the person making the payment. The key is how the money changes hands. This reasoning is supported by Section 233 *supra* itself. The legislature used the word 'deduct' in Section 233(1) of the Ordinance to cover situations where the brokerage or commission payment is made by the principal to the agent and the former would be

[14] Legal Thesaurus AH 34 (Regular Ed. Published 1981) by William C. Burton
[15] *Supra* (n 12)
[16] *Supra* (n 13)
[17] *Supra* (n 14)

liable to **deduct** tax from such payment. However it used the word 'collect' in Section 233(2) of the Ordinance and introduced a legal fiction therein to cater to situations where payment of the entire amount was received by the broker or the commission agent who, after retaining his commission, remitted the rest of the amount to the principal, thus the former would be **deemed to have been paid** by the latter, who would **collect** the amount of tax from the former. Had it been the legislature's intention that 'deduct' appearing in Section 153 *supra* be construed the same way as in Section 233 *supra*, it would have introduced a similar legal fiction in the former provision and also used the word 'collect'. The absence of the same points to the legislature's intention that 'deduct' in Section 153 *supra* is to be read restrictively and cannot be interpreted liberally so as to extend its scope to include collection. It is trite law that fiscal statutes, particularly the provision creating a tax liability, must be interpreted strictly and any doubt arising therefrom must be resolved in favour of the taxpayer. In this respect, reference may be made to the judgments reported as **Chairman, Federal Board of Revenue, Islamabad Vs. Messrs Al-Technique Corporation of Pakistan Ltd. and others (PLD 2017 SC 99)**, **Commissioner of Income Tax Legal Division, Lahore and others Vs. Khurshid Ahmad and others (PLD 2016 SC 545)**, **Zila Council Jhelum through District Coordination Officer Vs. Messrs Pakistan Tobacco Company Ltd. and others (PLD 2016 SC 398)**, **Government of Sindh through Secretary and Director General, Excise and Taxation and another Vs. Muhammad Shafi and others (PLD 2015 SC 380)** and **Commissioner of Income Tax Vs. Messrs Eli Lilly Pakistan (Pvt.) Ltd. (2009 SCMR 1279)**. Further, in the judgment reported as **The State Vs. Zia-Ur-Rehman and others (PLD 1973 SC 49)**, while interpreting Article 281 of the Constitution of the Islamic Republic of Pakistan, 1973, a five member bench of this Court held:-

> *"It is a well-established rule that we have to gather the intention of the law-maker from the words used by it; and if it has in two clauses of the same Article used different words, then it follows that its intention is not the same, particularly, where such a conclusion also appears to be in consonance with reason and justice."*

The legislature, therefore, being aware of the distinct meanings of these words, consciously used them asymmetrically, and not interchangeably, in various provisions of the Ordinance, be it either word or both. The use of only the word 'deduct' in Section 153(1)(b) *supra* is to our mind intentional. If the legislature had the intention to cover any other situation, it could have conveniently used the word 'collect' in the said section *(or introduced a legal fiction)*, as it has done in many other provisions of the Ordinance. This reasoning is augmented by the fact that the legislature has, by virtue of the Finance Act, 2016 (XXIX of 2016) substituted Section 21(c) *supra* which now contains the phrase *"deduct or collect"*. Therefore, as Section 153(1)(b) *supra* only requires prescribed persons to deduct, and not collect, tax from the payment being made to a resident person for the rendering of or providing of services at the time of making the payment, PTV could not have possibly deducted such tax as it did not make any actual payments to WAPDA. It is settled law that the statute is the edict of the legislature and the language employed in the statute is determinative of the legislative intent. From the reading of Section 153(1)(b) *supra*, on the principle of literal interpretation, the legislative intent is evident: that the prescribed person at the time of making payment to a resident person etc. shall deduct the amount so envisaged by Division III of Part III of the First Schedule. However when payment is not being actually, physically or practically made by the

prescribed person the possibility of deduction does not arise at all. It is absolutely impracticable and impossible to deduct a certain amount from an amount which is not being paid. Therefore, from the above, we are not persuaded to hold that the interpretation of such section can be extended to require something to be done which is not possible.

7. We now advert to the applicability of Section 233 of the Ordinance. According to sub-section (2) thereof, if an agent retains the commission from any amount he remits to the principal, the former shall be deemed to have been paid the commission by the latter, who shall collect advance tax from the former. The relationship of principal and agent is a *sine qua non* for the purposes of Section 233(2) of the Ordinance. Controverting the department's plea in this regard, learned counsel for the petitioner submitted that as per the agreement between PTV and WAPDA, no relationship of principal and agent existed between them as the latter was only providing services to the petitioner. Suffice it to say that the agreement does not indicate a relationship of agency between PTV and WAPDA, rather the wording employed therein suggests that it was a contract for the provision of services for which the latter was entitled to a 'service fee'. As such, no relationship of principal and agent existed between PTV and WAPDA requiring the former to collect tax from the latter in terms of Section 233 *supra*. In this context, the judgment reported as **The Ramkola Sugar Mills Co., Ltd Vs. The Commissioner of Income-Tax, Punjab and North-West Frontier Province Lahore (PLD 1955 Federal Court 418)** referred to by the learned counsel for the respondent examined whether dividend income could be said to have been received by the assessee in British India within the meaning of Section 4(1) read with Section 14(2)(c) of the Income Tax Act, 1922 and is therefore distinguishable.

8. Learned counsel for the respondents argued that by showing WAPDA's service fee for collection of television license as an inter-account adjustment as opposed to an actual payment, PTV avoided withholding of advance tax, and according to the Income Tax Circular No.01 of 2009 dated 20.02.2009, it was clarified that such adjustments would be tantamount to actual payments thereby attracting Section 158(b) of the Ordinance. Apart from the fact that circulars issued by the department are not binding on this Court, the clarification which sought to curb the alleged menace mentioned in the said circular is against the clear mandate of Section 153(1)(b) read with Section 158 of the Ordinance as mentioned above in paragraph No.5 of this opinion, and therefore, does not provide any support to the case of the respondent.

9. The conclusion of the above discussion is that since PTV was not liable to deduct tax under Section 153(1)(b) of the Ordinance as it did not make any payments to WAPDA nor was the former required to collect advance tax under Section 233(2) thereof due to the absence of the relationship of agency with the latter, thus PTV did not fall within the garb of the exception of Section 21(c) *supra* and was entitled to claim deduction of service fee from its income as expenditure. The findings of all the forums below in this respect are liable to be set aside.

10. Further, there is an exception to the exception in Section 21(c) *supra*, that *"unless the person has paid or deducted and paid the tax..."* such that the payment for services or fee paid is not to be treated as expenditure **unless** the person has (i) paid; or (ii) deducted and paid the tax. Learned counsel for the respondent submitted that since PTV did not pay or deduct and pay the tax, thus it did not fall within the exception to the exception resultantly payment for services could not be treated as expenditure. He argued that the word 'person' in Section 21(c) *supra* only refers to withholding agents and since PTV did not pay the tax, thus WAPDA's

service fee could not be treated as expenditure. To fortify his argument, he referred to Section 161 of the Ordinance according to which where a person fails to deduct tax from a payment, he shall be personally liable to pay the amount of tax to the Commissioner who may pass an order to that effect and proceed to recover the same. Further, that PTV was also liable to pay default surcharge under Section 161(1B) of the Ordinance, which provides that where at the time of recovery of tax under sub-section (1) it is established that the tax that was to be deducted from the payment made to a person or collected from a person has meanwhile been paid by that person, no recovery shall be made from the person who had failed to collect or deduct the tax **but** the said person **shall** be liable to pay default surcharge at the rate of eighteen per cent per annum from the date he failed to collect or deduct the tax to the date the tax was paid. He also argued that even if the amount of tax could be recovered from WAPDA under Section 162(1) of the Ordinance, sub-section (2) thereof does not absolve the person who failed to deduct tax *(in this case PTV)* from any other legal action in relation to the failure, or from a charge of default surcharge or the disallowance of a deduction for the expense to which the failure relates, as provided for under the Ordinance. Conversely, learned counsel for the petitioner submitted that if the tax is deducted and paid by PTV *(which did not happen in this case)* or WAPDA paid tax on the service fee, in either of the two situations, the former was entitled to deduct the said fee as its expenditure. According to him, the service fee retained by WAPDA was shown as its income and tax due has been paid thereupon. Since WAPDA cleared its tax liability, no loss has occurred to the revenue, hence invoking Section 21(c) *supra* was unjustified and at the most the provisions of Section 161(1B) *supra* could be applied and default surcharge imposed upon PTV due to delay in payment of tax, during the period when it was due and when WAPDA actually paid such amount.

Learned counsel stated that any other interpretation would result in double taxation which *(interpretation)* should be avoided unless the law very clearly so mandates. In this regard he relied upon the judgments reported as **Pakistan Industrial Development Corporation Vs. Pakistan through the Secretary, Ministry of Finance (1992 SCMR 891)** and **Federation of Pakistan through Secretary M/o Petroleum and Natural Resources and another Vs. Durrani Ceramics and others (2014 SCMR 1630)**. He also referred to numerous judgments of this Court to argue that any uncertainty in the meaning of a taxing provision must be resolved in favour of the assessee. According to him, the claim of the department is not that since WAPDA did not pay tax, PTV should pay the same, rather that the latter failed to deduct tax that it was obliged to do and thus the service fee could not be treated as expenditure. He also stated that in identical circumstances, when the Gas Distribution Companies failed to deduct tax on the service charges retained by banks etc. for the collection of gas bills, the Tribunal allowed deduction of such expenditure from income under Section 21(c) *supra* in **ITAs No.871/LB to 874/LB of 2008 [2010 PTD (Trib.) 930]** and **Sui Northern Gas Pipelines Ltd., Lahore Vs. Commissioner Income Tax, L.T.U., Lahore [2012 PTD (Trib.) 801]**.

11. As discussed earlier, since no actual payment was made from PTV to WAPDA, therefore no deduction could have been made, resultantly category (ii) of 'deducted and paid' does not apply. Thus the question is whether the phrase *"unless the person has paid the tax..."* in category (i) refers only to PTV or includes WAPDA as well. It is pertinent to note that till 2003, only category (ii) existed. Thus *"person...deducted and paid"* clearly refers to withholding agents as it is only they who 'deduct' tax. Category (i) came into being by virtue of the Finance Act, 2003 (I of 2003) which inserted the words *"paid or"* in Section 21(c) *supra*. Prior to this amendment, the provision read *"until the person has deducted and paid the tax..."*

The amendment cannot be regarded as inconsequential, rather it has to be given meaning. By inserting the phrase 'paid or' the legislature has essentially widened the scope of the word 'person' to cover not only withholding agents but the person liable to pay the tax *(the person on whose behalf advance tax is being paid)*. If it is presumed that both the expressions 'paid' and 'deducted and paid' relate only to one person *(withholding agents)*, the amendment would have no implication whatsoever on the scope of the statutory provision and render the phrase 'paid or' completely redundant. It is settled law that redundancy cannot be attributed to statutory provisions *(or any part thereof)*. In this respect, the following judgments are relevant:- **Collector of Sales Tax and Central Excise (Enforcement) and another Vs. Messrs Mega Tech (Pvt.) Ltd (2005 SCMR 1166)**, **Aftab Shahban Mirani and others Vs. Muhammad Ibrahim and others (PLD 2008 SC 779)** and **Messrs Master Foam (Pvt.) Ltd. and 7 others Vs. Government of Pakistan through Secretary, Ministry of Finance and others (2005 PTD 1537)**. Thus, WAPDA is covered by category (i) and if it discharged its tax liability regarding the service fee, PTV is entitled to deduct the amount of such fee as expenditure under Section 21(c) *supra*.

12. As regards Sections 161 and 162 of the Ordinance, as pointed out by the learned counsel for the respondent, we find that the wording of both sections reflects a presumption that a person was required to deduct and/or collect tax. As we have discussed in the earlier portion of this opinion, PTV could neither have deducted tax nor was it liable to collect tax from WAPDA under the law, thus Sections 161 and 162 *supra*, in the facts and circumstances, do not apply to the instant case. Thus, as we have held above, the exception itself does not apply to PTV therefore the question of the exception to the exception applying to it does not arise.

13. During course of the arguments, learned counsel for the respondent submitted that PTV did not produce any documentary

evidence to establish that WAPDA paid tax on the service fee retained by it. We directed learned counsel for the respondent to obtain a certificate from the Chairman, Federal Board of Revenue *(FBR)* in this respect. On one of the hearings, the learned counsel for the petitioner filed a certificate issued by one of the DISCOs namely, IESCO certifying that "*from tax year 2009 to 2013, the commission deducted by IESCO from TV license fee paid to Pakistan Television Corporation was treated as one of the component of other income in IESCOS's Revenue*". Learned counsel for the respondent also produced a certificate issued by the Chairman, FBR showing various charts relating to service fee deducted by the DISCOs viz. withholding tax collected and the net profit/loss shown by DISCOS viz. tax paid on that amount, in the tax years 2009 to 2013. It was also certified by the Chairman, FBR that "*although withholding tax under section 153(1)(b) was not deducted/collected except Gujranwala Electric Supply Company (GEPCO). However, the DISCOS have discharged their normal tax liability on the basis of Return filed. Further examination of record reveals that the DISCOS were declaring losses whereas, had there been any tax withheld under section 153(1)(b) on service charges, the tax withheld would have been minimum Tax liability of the DISCOS. Therefore, the tax liability in cases of DISCOS showing losses has not been discharged*."

14. It is not clear from the above certificates, except for GEPCO *(which has paid tax)*, how much tax has been paid by the DISCOs on the service fee retained by them. However, it is clear that they have mentioned the said amount as one of the components of their income and have discharged their ultimate tax liability on their total income, i.e. whenever there was a profit, they paid the tax due and in case of loss, they were obviously not required to pay tax. In either of the two eventualities, they have mentioned the service fee as part of their income. Therefore, PTV was entitled to treat WAPDA's service fee as expenditure and reduce its *(PTV's)* income accordingly.

15. Learned counsel for the respondent also submitted that the tax on WAPDA's service fee deductible by PTV in terms of Section 153(1)(b) *supra*, would be treated as minimum tax as per proviso (b) of Section 153(3) of the Ordinance. Again, the said proviso uses the phrase 'tax deductible' and not 'tax collectable'. As we have already held above, PTV was not liable to deduct tax from WAPDA's service fee as no actual payment was made by the former to the latter, thus proviso (b) of Section 153(3) *ibid* is irrelevant.

16. In the light of the above, these petitions are converted into appeals and allowed and the impugned judgment(s) are set aside.

CHIEF JUSTICE

JUDGE

JUDGE

Announced in open Court
At Islamabad on 24th April, 2017
Approved for reporting
Mudassar/*