

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**Present:**

Mr. Justice Qazi Faez Isa  
Mr. Justice Syed Mansoor Ali Shah

**Civil Petitions No. 6309 to 6312 of 2021**

*(Against the order dated 15.09.2021 of the  
Lahore High Court, Lahore passed PTR Nos.  
527 to 530 of 2010)*

*Commissioner Inland Revenue,  
Regional Tax Office, Faisalabad.* ... *(in all cases)*  
*Petitioners*

**Versus**

*Mr. Abdul Hameed Labour Contractor.* ... *(in all cases)*  
*Respondent*

For the Petitioner: <i>(In all cases)</i>	Dr. Farhat Zafar, ASC. Ch. Akhtar Ali, AOR. a/w Syed Hassan Sardar, Addl. Commissioner, FBR. Mr. Naeem Hassan, Secretary (Lit), FBR.
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For the Respondent:	Not represented.
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Date of Hearing:	31.08.2022.
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**ORDER**

**Qazi Faez Isa, J.** Through these petitions for leave to appeal ('**CPLAs**'), the petitioner seeks leave to appeal against consolidated order dated 15 September 2021, whereby four tax references (PTRs No. 527 to 530 of 2020) ('**PTRs**') were filed by the taxpayer (respondent herein) against the tax department (petitioner herein). Four PTRs, and hence four CPLAs were filed because orders were passed in respect of four different tax years. However, the same question of law was raised in the PTRs, which is whether the contract for rendering *labour and carriage services* by the taxpayer fell under section 153(1)(c) of the Income Tax Ordinance, 2001 ('**the Ordinance**'), thereby treating the income of the taxpayer liable to the final tax regime as opposed to the normal tax regime under section 153(1)(b), (6) and (9) of the Ordinance.

2. The High Court decided the references against the petitioner-department on the sole ground that the said question of law already stood decided by the Lahore High Court in the case of *Rehman Enterprises*<sup>1</sup>. And, the High Court agreed with the said earlier decision.

3. At the very outset, we inquired from the learned counsel for the petitioner-department whether the petitioner had challenged the decision in *Rehman Enterprises* case before this Court, but the learned counsel alongwith the departmental representative could not answer the query. Instead they stated that the Sindh High Court in the case of *Premier Mercantile*<sup>2</sup> had taken a different view, one which was in favour of the petitioner, and there are conflicting opinions of the two High Courts on the same point. Before proceeding further in the matter, we inquired from our office whether the aforementioned judgments were challenged before this Court. It transpired that the decision of the High Court in *Rehman Enterprises* (and connected cases) was challenged by the petitioner-department before this Court, but was dismissed *vide* judgment dated 22 February 2011 (passed in Civil Appeals No.1045 to 1052 of 2008 and 1183 to 1206 of 2010, titled *Commissioner of Income Tax/Wealth Tax/Inland Revenue, Multan v M/s Mujahid Enterprises*). One of the tax references which had already been decided by order dated 22 February 2011 somehow once again came up before this Court (in Civil Appeal No.1102 of 2008, titled *Commissioner of Income Tax/Wealth Tax, Multan Zone, Multan v Sh. Asghar Mahmood*) and was also dismissed *vide* order dated 17 April 2017 by relying on the earlier decision of this Court dated 22 February 2011. Therefore, there is gainsaying that there are contradictory judgments of the two High Courts since the view taken by the Lahore Court in *Rehman Enterprises* was approved by this Court, not once but twice.

4. However, the petitioner-department in *Rehman Enterprises* had placed reliance on Circular No.11 of 1991, but the question of law in these CPLAs is regarding section 153(1)(c) of the Ordinance, which was not raised earlier. Accordingly, we have examined the question of law

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<sup>1</sup>*Commissioner of Income Tax/Wealth Tax v Rehman Enterprises* (2008 PTD 1897).

<sup>2</sup>*Premier Mercantile Services (Pvt.) Ltd. v C.I.T* (2007 PTD 2521).

regarding section 153(1)(c) of the Ordinance. In the present case the taxpayer had entered into a contract for rendering *labour and carriage services*, which, according to the taxpayer, was covered by section 153(1)(b) and also by the exception to section 153(1)(c) of the Ordinance, therefore, it was subject to the final tax regime (erstwhile presumptive tax regime) rather than to the normal tax regime. The contention of the learned counsel and the departmental representative is that the said *labour and carriage services* are not covered by the definition of 'services' mentioned in section 153(9) of the Ordinance and are instead covered by section 153(6) of the Ordinance, which attracts the first part of section 153(1)(c) and thus it constitutes the final tax regime.

5. To understand and appreciate the aforesaid contention, the relevant provision of sub-sections of Section 153 of the Ordinance (as they were at the relevant time) are reproduced hereunder:

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

- (a) for the sale of goods;
- (b) for the rendering of or providing of services;
- (c) on the execution of a contract, other than a contract for the sale of goods or 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.

(1A)–(5) ...

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

Provided that this sub-section (6) shall not apply to companies in respect of transactions referred to in clause (b) of sub-section (1):

(7)–(8) ...

(9) ...

"services" includes the services of accountants, architects, dentists, doctors, engineers, interior decorators and lawyers, otherwise than as an employee.

6. We note that the definition of '*services*' in the above quoted sub-section (9) of section 153 is not exhaustive and uses the word '*includes*' and then mentions a few *services*. In the case of *Premier Mercantile* '*services*' were declared to be a basket of '*professional*' services and *labour and carriage services* were excluded as these were not provided by a professional by applying the interpretational rule of *ejusdem generis*. However, the word '*professional*' was omitted from section 153(9) by the Finance Ordinance, 2003<sup>3</sup> and the word '*professional*' in section 153(1)(b) of the Ordinance was omitted by Finance Ordinance, 2002.<sup>4</sup>

7. '*Services*' mentioned in section 153(9) of the Ordinance are not exhaustive and may include other services, including *labour and carriage services*. Therefore, to exclude *labour and carriage services* it would be discriminated, which is not permissible. The reliance placed by the petitioner on section 153(1)(c), (6) and (9) is misplaced, and as noted (above) the judgment of the Sindh High Court in *Premier Mercantile* is not applicable on account of the change in the law. For the sake of completion, we have noticed that the view taken in *Rehman Enterprises* was subsequently followed by the Lahore High Court in the case of *Muhammed Ali*<sup>5</sup>, and we endorse the view taken in these two judgments.

8. Therefore, for the aforesaid reasons, leave is declined and consequently these petitions are dismissed.

9. Whilst hearing these petitions we were dismayed with the fact that the learned counsel for the petitioner and the petitioner's representative did not know what had happened in the cases mentioned above, which accounts from a lack of proper record-keeping

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<sup>3</sup>Section 12, sub-section 72 (d) of the Finance Ordinance, 2003

<sup>4</sup>Section 8, sub-section 58 (a) of the Finance Ordinance, 2002.

<sup>5</sup>*Commissioner Inland Revenue v Muhammed Ali* (2016 PTD 377).

by the Federal Board of Revenue ('FBR'). In an earlier case<sup>6</sup> we had said:

'In cases of the Federal Board of Revenue ('FBR') and Inland Revenue coming before us FBR/Inland Revenue are often not aware whether a particular decision was challenged, and if it was what was the result. This raises the question whether FBR/Inland Revenue maintains a data bank of decided cases interpreting different provisions of the applicable law and of the judgments which have been challenged. Therefore, let reports be submitted by FBR and Inland Revenue stating whether a data bank of decisions on different provisions of the law and pending cases is maintained, and if so the link to access such decisions and cases. The needful be done within two weeks. The reports be submitted for our perusal in chambers. A copy of this order be sent to the Chairman of the FBR and Member, Inland Revenue (Operations) for information and compliance.'

The Secretary (Lit-SC) responded through his letter<sup>7</sup> (wherein in paragraphs ii and iii) he stated that:

- 'ii. It is pertinent to mention that the FBR is in the process of devising an online Litigation Management System (LMS). The architecture of the system is complete and it will be made available to IR filed formations in due course of time. Subsequently, historical data of decided cases interpreting different provisions of the applicable laws and the judgments which have been challenged, will be uploaded in the system by the relevant formations from manual record of the cases.
- iii. Moreover, LMS will also have data of pending cases with detail of each stage of litigation. After development of the software module and feeding of historical data of decided cases and the judgments of the honorable Courts, LMS will be made fully functional.'

10. However, whilst hearing the instant petitions (on 31 August 2022, that is, after over five months of our said order passed in Civil Petition No. 1554-L of 2021) it appears that FBR has still not attended to the shortcomings which had been pointed out. In not maintaining a

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<sup>6</sup> *Commissioner Inland Revenue, Lahore v M/s Immaj Pakistan (Private) Limited, Lahore* (Civil Petition No. 1554-L of 2021 decided on 21 March 2022).

<sup>7</sup> Letter No. C.No.7/36/S/Lit-SC/2022 dated 15 April 2022.

data bank of its cases the interest of FBR is jeopardized and this Court's time is also wasted. While hearing these petitions we had to check the office record and this had to be done because the queries addressed to the learned counsel and the FBR's representative remained unanswered. The FBR constitutes the economic and financial backbone of the country but by not maintaining a data bank of its cases the working of its own officers is hampered, and so too that of the tribunals and of the courts. In the age of technology this lapse is unacceptable. Since the FBR remains remiss of its duties a copy of this order be sent to the Chairman and every Member of the FBR, to the Secretary, Finance Division, Secretary Law and Justice Division and to the Cabinet Secretary, Cabinet Division, Government of Pakistan with the expectation that the noted shortcomings will be attended to with the promptness that they deserves.

Judge

Judge

Islamabad:  
31.08.2022  
Approved for Reporting  
(M. Tauseef)/Sadaqat