

**03<sup>rd</sup> OF 2024 KTBA ONE PAGER  
CASE LAW UPDATE  
(July 25, 2024)**

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**Dear Members,**

A brief update on a judgment by the High Court of Sindh on “**Commissioner Cannot Reject a Lower Estimate of Payment of Advance Tax**” is being shared with you for your knowledge. The order has been attached herewith the update.

This update is in line with the efforts undertaken by our “**CASE LAW UPDATE COMMITTEE**” to apprise our Bar members with important court decisions.

You are equally encouraged to share any important case law, which you feel that should be disseminated for the good of all members.

You may contact the Committee Convener Mr. Shams M. Ansari or at the Bar’s numbers 021-99212222, 99211792 or email at [info@karachitaxbar.com](mailto:info@karachitaxbar.com) & [ktba01@gmail.com](mailto:ktba01@gmail.com)

**(Syed Zafar Ahmed)**  
President

**(Asim Rizwani Sheikh)**  
Hon. General Secretary

**03<sup>rd</sup> OF 2024 KTBA ONE PAGER  
CASE LAW UPDATE  
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**COMMISSIONER CANNOT REJECT A LOWER ESTIMATE OF  
PAYMENT OF ADVANCE TAX**

**Appellate Authority:** Sindh High Court

**Appellants:** SICPA Inks Pakistan (Private) Limited

**Section:** 147 of the Income Tax Ordinance, 2001 (the Ordinance)

Detailed judgment was issued on July, 23 2024.

**Background:** The department rejected the lower estimate filed after the 1st quarter under Section 147(6) and issued demand notices for advance tax payments, claiming its authority to verify, reassess and recover shortly-paid tax. The petitioners argued that the Commissioner cannot object to estimates until after the final tax return is filed and pleaded the impugned Orders, Demands and Notices be set aside. On the other hand the department insisted that despite the removal of the 2nd proviso, it can still assess the estimates, claiming that some adjustments by the Petitioners are inadmissible.

**Decision of the Court:**

**First Ruling of the Court:**

**NO AUTHORITY OR JURISDICTION IN ADVANCE TAX PAYMENT  
DISPUTES**

On the question of non-acceptance or rejection of an estimate of advance tax the court ruled that there is no specific provision allowing action against the taxpayer where the estimate is incorrect for any reason. An Assessing Officer had no authority to pass any order if the taxpayer paid less advance tax for any reason. The Court concluded that the law does not grant any authority or jurisdiction to act against a taxpayer who fails to pay or delays payment or makes a short payment of advance tax instalments as it does not provide any immediate penalty for such actions.

**Second Ruling of the Court:**

**JUDICIAL INTERPRETATION OF SECTION 147 IN KPT CASE**

In the case of Karachi Port Trust, the Court examined the Section 147 of the Ordinance and concluded that once an advance tax estimate is filed, the department has no authority to reject it or to demand additional tax payments based on subsections (1) and (4). The only recourse available to the commissioner is to levy default surcharge after completing the assessment if applicable.

The Court also addressed Section 137(2) noting that while it authorizes recovery of unpaid advance tax as if it were tax due under an assessment order, it does not grant authority to pass orders for such recovery. Consequently, the Taxation Authority's orders were deemed without jurisdiction. This KPT judgment is binding and the reliance by the department on a Lahore High Court judgment from a different period (2018-2021) was found to be inapplicable.

**Third Ruling of the Court:**

**AMENDMENT AND SUBSEQUENT OMISSION OF AUTHORITY TO  
REJECT ADVANCE TAX ESTIMATES IN TY 2021**

To counteract previous judgments, the Federal Government amended the Ordinance by adding a 2nd proviso to Subsection (6) of Section 147, thereby allowing the Commissioner to reject advance tax estimates if unsatisfied with the provided evidence. However, this proviso was omitted through the Finance Act, 2021. The omission indicates that a Commissioner no longer has the authority to examine or reject advance tax estimates, reflecting a legislative intent to remove such powers. The FBR's Circular No. 02 of 2021-2022 confirms this by noting the withdrawal of the Commissioner's power to reject estimate.

**Fourth Ruling of the Court:**

**LATEST AMENDMENT BY FINANCE ACT, 2024**

The newly inserted Section 6B by Finance Act, 2024 now includes the second proviso, allowing the Commissioner to reject advance tax estimates if unsatisfied with the documentary evidence or details provided. This change indicates that for the cases in question, the Commissioner had no authority to reject estimates earlier.

**CONCLUSION:**

Given the settled law in Pak Saudi Fertilizer, Karachi Port Trust, and Pakistan Petroleum Limited, the department's actions based on misconceptions are deemed inappropriate. Although the actions may amount to contempt, the Court will not pursue further action against the officials due to potential confusion caused by the Ordinance amendments from 2018 to 2021, Officials are cautioned to avoid such violations in the future, and the FBR is advised against issuing internal instructions that contradict the Court's judgments.

**DISCLAIMER:**

This update has been prepared for KTBA members and carries a brief narrative on a detailed Judgment and does not contain an opinion of the Bar, in any manner or sort. It is therefore, suggested that the judgment alone should be relied upon. Any reliance on the summary in any proceedings would not be binding on KTBA.

## **IN THE HIGH COURT OF SINDH, KARACHI**

**Present: Mr. Justice Muhammad Junaid Ghaffar  
Mr. Justice Jawad Akbar Sarwana**

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|-----|---------------------|---|
| 1.  | Const. P. 5577/2023 | SICPA Inks Pakistan Pvt Ltd <b>VS</b> Fed. of Pakistan and Others |
| 2.  | Const. P. 4705/2023 | Shell Pakistan Ltd <b>VS</b> Pakistan & Others                    |
| 3.  | Const. P. 6039/2023 | P.D.O.H.A <b>VS</b> Fed. of Pakistan and Others                   |
| 4.  | Const. P. 118/2024  | Hascol Petroleum Ltd <b>VS</b> Fed. of Pakistan and Others        |
| 5.  | Const. P. 1548/2024 | Hascol Petroleum Ltd <b>VS</b> Fed. of Pakistan and Others        |
| 6.  | Const. P. 320/2024  | South Asia Pakistan Terminal Ltd <b>VS</b> Pakistan & Others      |
| 7.  | Const. P. 901/2024  | The Hub Power Co. Ltd <b>VS</b> Pakistan & Others                 |
| 8.  | Const. P. 1687/2023 | Habib Bank Ltd <b>VS</b> Pakistan & Others                        |
| 9.  | Const. P. 2093/2023 | Pakistan Petroleum Ltd <b>VS</b> Pakistan & Others                |
| 10. | Const. P. 1972/2024 | Riaz Ali Towfiq Chinoy <b>VS</b> Fed. of Pakistan and Others      |

**For the Petitioners:**

M/s. Dr. Farogh Naseem, Hussain Ali Almani, Haider Waheed, Ovais Ali Shah, Ahmed Hussain, Jahanzeb Baloch, Muhammad Asad Ashfaq Tola, Muhammad Amayed Ashfaq Tola, Sami-ur-Rehman Khan, Advocates for Petitioners.

**For the Respondents:**

M/s. Ameer Bakhsh Metlo, Ghazi Khan Khalil, Ameer Nausherwan Adil, Dr. Huma Sodher, S. Ahsan Ali Shah, Faheem Raza Khuhro, Irshad-ur-Rehman, Abdul Ghaffar, Sadaqat Ali Lakho, Imran Ahmed, Ovais Ali Memon, Abdul Hakeem Junejo, Ali Haider, Abdul Ghaffar, Advocates for Respondents.

**Federation of Pakistan:**

Through Mr. Kashif Nazeer, Assistant Attorney General.

Mr. Sardar Taimur Durrani, Commissioner, Zone-I, M.T.O.

Mr. Muhammad Akbar Mehar, Commissioner AEOI Zone.

Mr. Qazi Hifzur Rehman, Commissioner, L.T.U.

Mr. Girdhari Mal, Commissioner, Zone-II, L.T.U.

Dr. Najeebullah, Commissioner, L.T.U.

**Date of hearing:**

**16.05.2024**

Date of Judgment: 23.07.2024.

## JUDGMENT

**Muhammad Junaid Ghaffar, J.** Through these petitions, the Petitioners have impugned respective Notices and Demands issued / raised by the Respondents pursuant to filing of quarterly estimates of Advance Tax as required under Section 147 of the Income Tax Ordinance, 2001 (“Ordinance”).

2. At the very outset, we may state, and without any disrespect to all the learned Counsel, that their arguments have been noted and recorded in this judgment collectively for ease and convenience and to avoid overlapping, if any. They have jointly contended that time and again, this issue has come up for interpretation before this Court and has been decided in favour of the taxpayers in various cases<sup>1</sup>. Yet despite such judgments in the field, the department has repeatedly attempted to assume jurisdiction under Section 147 of the Ordinance by claiming that they have the authority to verify and reassess the advance tax estimates, in addition, to enforcing the recovery of such alleged short-paid tax. According to them, for a brief period in the year 2018, a 2<sup>nd</sup> Proviso was added to Section 147(6) of the Ordinance, wherein the concerned Commissioner was authorized to proceed further if he was not satisfied with the advance tax estimates; however, according to them, the Proviso stands omitted through Finance Act, 2021 and now the provisions; whereby, the Commissioner was given certain authority is no more on the Statute; hence the ratio of the judgments referred to hereinabove is fully attracted. According to them, any estimate so filed, whether right or

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<sup>1</sup> Pak Saudi Fertilizer v Commissioner of Income Tax (1999 PTD 4061), Karachi Port Trust v Commissioner Inland Revenue (2011 PTD 1996); judgment dated 26.06.2014 in C.P No. D-3304/2015 (Pakistan Petroleum Ltd v Fed of Pakistan) & order dated 6.11.2020 in CP No. D-6600 of 2017 (Abbott Laboratories Pakistan Ltd v Pakistan) passed by one of us *Muhammad Junaid Ghaffar J*

wrong, cannot be objected to by the Commissioner, whereas, the only recourse available to him is to proceed further, once a final tax return has been filed. They have prayed for allowing all these petitions by setting aside the impugned Orders / Demands / Notices.

3. On the other hand, Respondents' Counsel have contended that notwithstanding the omission of the proviso, if a wrong estimate has been filed in respect of advance tax, the concerned Commissioner is still competent to examine and see whether such an estimate is correct; and if not, then a demand for payment of additional tax can be raised. In support, they have relied upon Section 147(6) & (7) read with Section 137(2) of the Ordinance. It has been further contended that by virtue of amendments made in Section 147 ibid through the Finance Act, 2018 and 2023, the Respondents action is in accordance with law. They have also placed reliance on a judgment of learned Lahore High Court in the case of **National Power Parks**<sup>2</sup> and submit that the judgments relied upon by the Petitioners are no more relevant; hence the impugned action is fully justified in law.

4. Heard all the learned Counsel and perused the record. In all listed petitions, the legal question is common, in that, they are aggrieved by respective notices issued by the Respondent Commissioners, whereby, their advance tax estimates filed in terms of Section 147(4) of the Ordinance have been rejected and simultaneously, they have been asked to pay an additional amount of advance tax. In some cases, coercive measures have been adopted by taking recourse to sections 137 & 138 of the Ordinance without any opportunity of hearing and or a prior notice under Section 140 ibid. Before proceeding further, it would be advantageous to refer to the relevant provisions of

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<sup>2</sup> National Power Parks Management Company (Pvt.) Ltd. V. Federal board of revenue and others (2020 PTD 1001)

Section 147 as are applicable today and so also the 2<sup>nd</sup> Proviso, which was inserted through the Finance Act, 2018 and was thereafter omitted through the Finance Act, 2021. They read as under:-

**“147. Advance tax paid by the taxpayer.—** (1) Subject to sub-section (2), every taxpayer [whose income was charged to tax for the latest tax year under this Ordinance or latest assessment year under the repealed Ordinance] other than--

- [(a) \*\*\*\*\*]
- (b) income chargeable to tax under sections 5, 6 and 7;
- [(ba) \*\*\*\*\*]
- (c) income subject to deduction of tax at source under section 149;
- [and]
- [(ca) \*\*\*\*\*]
- (d) income from which tax has been collected under Division II or deducted under Division III [or deducted or collected under Chapter XII] and for which no tax credit is allowed as a result of sub-section (3) of section 168,

shall be liable to pay advance tax for the year in accordance with this section.

(2) This section does not apply to an individual where the individual's [\*\*\*] latest assessed taxable income excluding income referred to in clauses [(b),] (c) and (d) of sub-section (1) is less than [one million] ] rupees.

- [(3) \*\*\*\*\*]
- [(4) \*\*\*\*\*]

(5) Advance tax is payable by 3 [an individual [\*\*\*] to the Commissioner:--

- (a) in respect of the September quarter, on or [before] the [15th day of September];
- (b) in respect of the December quarter, on or before the [15th day of December];
- (c) in respect of the March quarter, on or before the [15th day of March]; and
- (d) in respect of the June quarter, on or before the [15th day of June].

[(5A) Advance tax shall be payable by an association of persons or a company to the Commissioner:--

- (a) in respect of the September quarter, on or before the 25th day of September;
- (b) in respect of the December quarter, on or before the 25th day of December;
- (c) in respect of the March quarter, on or before the 25th day of March; and
- (d) in respect of the June quarter, on or before the 15th day of June.]

- [(5B) \*\*\*\*\*]
- [(5C) \*\*\*\*\*]

[(6) If any taxpayer who is required to make payment of advance tax under sub-section (1) estimates at any time before the last installment is due, that the tax payable by him for the relevant tax year is likely to be less than the amount he is required to pay under sub-section (1), the taxpayer may furnish to the Commissioner an estimate of the amount of the tax payable by him, and thereafter pay such estimated amount, as reduced by the amount, if any, already paid under sub-section (1), in equal installments on such dates as have not expired.

[Provided that an estimate of the amount of tax payable shall contain turnover for the completed quarters of the relevant tax year, estimated turnover of the remaining quarters along with reasons for any decline in estimated turnover, documentary evidence of estimated expenses or deductions which may result in lower payment of advance tax and the computation of the estimated taxable income of the relevant tax year.

[(6A) Notwithstanding anything contained in this section, where the taxpayer is a company or an association of persons, advance tax shall be payable by it in the absence of last assessed income or declared turnover also. The taxpayer shall estimate the amount of advance tax payable on the basis of quarterly turnover of the company or an association of persons, as the case may be, and thereafter pay such amount after,--

(a) taking into account tax payable under [sections 113 and 113C] as provided in sub-section (4AA); and

(b) making adjustment for the amount (if any) already paid.]

(7) The provisions of this Ordinance shall apply to any advance tax due under this section as if the amount due were tax due under an assessment order.

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**2<sup>nd</sup> Proviso to Section 147(6) inserted through Finance Act 2018 and omitted through Finance Act, 2021:-**

“[Provided further that where the Commissioner is not satisfied with the documentary evidence provided or where an estimate of the amount of tax payable is not accompanied by details mentioned in the first proviso, the Commissioner may reject the estimate after providing an opportunity of being heard to the taxpayer and the taxpayer shall pay advance tax according to the formula contained in sub-section (4).]”

5. From perusal of the aforesaid provisions, it appears that in terms of Sub-Section (1) of Section 147 of the Ordinance and subject to Sub-Section (2) thereof, every taxpayer, whose income was charged to tax for the latest tax year, (subject to certain exceptions, which are not relevant for the present purposes.) shall be liable to pay advance tax for the year in accordance with this section. Sub-Section (4) provides for the computation of advance tax due for a quarter, whereas, Sub-Section 4A provides that every tax-payer who is required to make payment of advance tax in accordance with sub-section (4), shall estimate the tax payable for the relevant tax year, at any time before the second installment is due. It further provides that if the tax payable is likely to be more than the amount that the taxpayer is required to pay under Sub-section (4), it shall, furnish to the Commissioner on or before the due date of the second quarter, an estimate of the amount of tax payable and shall also pay 50% of the said amount after making adjustment of the amount, if any, already paid in terms of Sub-Section (4) *ibid*, whereas, the remaining 50% is to be paid after the 2<sup>nd</sup> quarter in two equal installments payable by the due date of the

3<sup>rd</sup> and 4<sup>th</sup> quarter of the tax year. To this extent, admittedly, there is no issue; however, the dispute is in respect of an estimate which is less than the tax paid in the 1<sup>st</sup> quarter as provided in Subsection (6) of Section 147, which provides that if any taxpayer who is required to make payment of advance tax under sub-section (1) estimates at any time before the last installment is due, that the tax payable by him for the relevant tax year is likely to be less than the amount he is required to pay under sub-section (1), then such taxpayer may furnish to the Commissioner an estimate of the amount of the tax payable by him, and thereafter pay such estimated amount, as reduced by the amount, if any, already paid under sub-section (1), in equal installments on such dates as have not expired. The first Proviso to sub-section (6) further stipulates certain guidelines and directions for calculating such estimates. The Respondents case is that notwithstanding the fact that the 2<sup>nd</sup> proviso no longer exists, they can still examine the estimate(s) to the extent of its correct calculation, as according to them, certain adjustments made by the Petitioners are inadmissible.

6. As contended by the Petitioners Counsel, the issue has been settled by this Court in several judgments, and therefore, before proceeding further, it would be appropriate first to consider the case of ***Pak Saudi Fertilizer*** (Supra). Insofar as the present position of subsection (6) of Section 147 of the Ordinance is concerned, it is more or less analogous to the provisions of Section 53 of the repealed Ordinance, of 1979 considered in the case of ***Pak Saudi Fertilizer*** (Supra), to the extent that in the 1979 Ordinance as well, there was no provision empowering the Commissioner to reject the estimate of advance tax. In that case, the issue was in respect of Section 53 of the repealed Income Tax Ordinance 1979, which reads as under;

**"Section 53. Advance payment of tax.---(l) An assessee---**



- (a) other than a company or a registered firm, whose total income (excluding income to which section 27, section 80-B, section 80-C, section 80-CC or subsections (1) and (2) of section 50 applies) for the latest assessment year in respect of which the tax payable by him has been determined under sections 59, 59-A, 60, 62, 63 or 65, is not less than one hundred and fifty thousand rupees shall be liable to pay by way of advance tax to the credit of the Federal Government, on or before the seventh day of October, the seventh day of January, the seventh day of April and twenty-first day of June in each financial year, an amount equal to one-fourth of the full amount of income-tax and super-tax so determined to be payable in respect of that assessment year (without making any adjustment for any tax already paid by way of advance tax or otherwise), as reduced by the tax, if any, already collected or deducted and paid under section 50 if the said financial year; and
- (b) being a company or a registered firm shall, in respect of its income (excluding income to which section 27, section 80-C, or section 80-CC applies) be liable to pay by way of advance tax an amount which bears the same proportion to the company's or a registered firm's turnover for that year as the tax assessed, bears to the turnover assessed, for the latest assessment year in respect of which the tax payable by the company or registered firm has been determined under sections 59, 59-A, 60, 62, 63 or 65, as reduced by the tax already paid under section 50 other than the tax attributable to income covered by sections 80-C and 80-CC in the said financial year."

7. Perusal of the aforesaid provision, reflects that insofar as non-acceptance of an estimate of advance tax is concerned, there is no specific provision for taking any action against the tax-payer, if such an estimate is incorrect for any reason. The question before the Court was that whether, the Assessing Officer had any authority to pass any order, if the taxpayer had paid less amount as advance tax for any reason and the Court came to the conclusion that Section 53 of the 1979 Ordinance does not provide any authority or jurisdiction, if the taxpayer, for any reason, does not pay advance tax installment, delays payments of the installments or makes short payments of the installments as the law does not provide any immediate penalty for any such act. The Court further held that it is only the additional tax, which can become payable under Section 87(1) of the 1979 Ordinance, if subsequently, after filing of the tax return, it is determined that any such advance tax was not paid. However, the Court came to the conclusion that insofar as Section 53 (ibid) is concerned, it does not confer any jurisdiction on any officer of the department to make any assessment or demand any payment from the taxpayer, on his

failure to pay or delay in payment or for short payment of advance tax under the said provision. It was lastly held that, at most, it is only Section 87 (ibid), which can be invoked and nothing beyond that. The said judgment is a Division Bench judgment; however, the separate Note of *S. A. Sarwana J.* as his Lordship then was, appears to be more relevant and adequately deals with the situation, and we are in conformity with the said Note; relevant finding whereof reads as under: -

A bare reading of section 53 clearly indicates that if an assessee does not pay the advance tax instalment, delays payment of the instalment or makes short payment of the instalment, no immediate penalty is provided for the dereliction. There is not a single word in the entire section from which it can be inferred that the Assessing Officer has the power to direct an assessee to pay the instalments which he is required to pay under the said section. However, under section 87(1) of the Ordinance, the assessee is liable to pay additional tax at the rate of 24 per cent. per annum on the amount of the tax not paid, delayed or short paid which additional tax is calculated from the date on which the said amount should have been paid till the date on which it is actually paid or the 30th day of September of the financial year next following, whichever is earlier. For other eventualities regarding payment of advance tax different rates and dates of payment are provided under section 87(2) of the Ordinance. There is no other provision in the entire Ordinance except section 87 which provides for the consequences of non-payment, short payment or delayed payment of advance income-tax under section 53 of the Ordinance. The impugned Order (undated) refers to section 53(1) of Income Tax Ordinance, 1979 under which it was passed. whereby the petitioner was required to pay Rs.281,791,458 with a warning that if the aforesaid demand was not paid the same shall be recovered through recovery action under section 92193 of the Income Tax Ordinance, 1979.

As stated above section 53 of the Income Tax Ordinance does not contain any authority or provision whereby any officer of the Income Tax Department has been empowered to make any assessment or demand any payment from the assessee on his failure to pay, for delay in payment or for short payment of advance tax under section 53 of the Ordinance. The most the Deputy Commissioner of Income-tax can do is to take action against the assessee for non-payment, short payment or delayed payment of advance tax by imposing additional tax under section 87 of the Ordinance while making an assessment, inter alia, under section 60 or 62 of the Income Tax Ordinance, 1979. He has no authority, whatsoever to make any demand under section 53(1) of the Ordinance at any other time. In view of this position, it is clear that the impugned order (undated) passed by the Deputy Commissioner of Income Tax (respondent No.5) requiring the petitioner to pay Rs.281,791,458 is patently without jurisdiction, unlawful, mala fide and contrary to the provisions of the Income Tax Ordinance, 1979 and cannot be sustained. The petition is accordingly allowed with costs and the impugned order is cancelled.”

From perusal of the above observations, it is clear that despite the same being in respect of the repealed Ordinance,

1979; the law determined therein was to the effect that since there was no provision under the 1979 Ordinance, empowering the Commissioner to check and verify the estimate of advance tax; hence even if an estimate is wrong and lesser tax is being paid as advance tax, the Commissioner could not dispute or demand payment of any additional advance tax. In our considered view, the position remains the same as that of the current provision of Section 147 of the Ordinance. The aforesaid judgment was impugned by the department before the Hon'ble Supreme Court and in **Chairman, Central Board of Revenue**<sup>3</sup> the said judgment has been maintained in respect of the above finding that the Assessing Officer has not been authorized by law to effect any recovery of advance tax in case of failure to pay the same on time under Section 53 of the 1979 Ordinance; and therefore the impugned Demand Notice was correctly held to be without lawful authority and jurisdiction.

8. Thereafter once again the provisions of Section 147 of the 2001 Ordinance came for scrutiny before a learned Division Bench of this Court in the case of **Karachi Port Trust** (supra) and it was held that perusal of Section 147 of the Ordinance, leads to a conclusion that once such an estimate is filed, *whether right or wrong*, there is no provision under the Ordinance, which provides any authority to the department to discard the estimate and ask the taxpayer to continue to pay the tax in accordance with the provisions of subsection (1) and subsection (4) of Section 147 (ibid). It was further held that once an estimate is filed, the only option available to the Taxation Authority is to levy a default surcharge under subsection (IB) of Section 205 of the Ordinance after completing the assessment, if such default surcharge is otherwise leviable on the basis of the final assessment order. As to reliance on Section 137(2) of the Ordinance by the

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<sup>3</sup> Chairman, Central Board of Revenue v. Pak-Saudi Fertilizer Ltd. (2001 SCMR 777),

Respondent's Counsel, again, this provision was also dealt with and dilated upon by the learned Division Bench of this Court in **Karachi Port Trust** (supra) and it was observed that though this provision provides an authority to recover advance tax not paid as if it was a tax due under an assessment order; however, it does not provide them an authority or jurisdiction to pass any order for the recovery of such tax and by holding so, it was held that the orders passed by the Taxation Authority were without jurisdiction and cannot be sustained. Admittedly, the judgment in **Karachi Port Trust** (supra) is binding on this Bench, whereas, no other contrary view has been placed before us by the department's Counsel, except reliance on the judgment of learned Lahore High Court in the case of **National Power Parks Management Company** (supra) and when the facts of that case are examined, it appears that issue in that case was in respect of the period between 2018 to 2021 (the impugned orders are dated 30.1.2020 & 6.2.2020), and therefore, without any further deliberations, it can be safely observed that on facts, the said judgment is not applicable. In fact, the judgment appears to be correct to the extent of second proviso as the same was part of Section 147(6) *ibid* at the relevant time.

9. It further appears that for a brief period to undo the effect of judgments in **Pak Saudi Fertilizer (supra)**, **Karachi Port Trust (supra)** and **Pakistan Petroleum Ltd.**, (Supra), the Federal Government amended the Ordinance by inserting 2<sup>nd</sup> proviso to Subsection (6) of Section 147 of the Ordinance, which provided that if the Commissioner is not satisfied with the documentary evidence provided, or, wherein, estimate of amount of tax payable is not accompanied by details mentioned in the first proviso, the *Commissioner may reject the estimate* after providing an opportunity of being heard to the taxpayer and the taxpayer shall pay advance tax according to the formula contained in subsection 4(*ibid*). Now, from a careful

perusal of the second proviso, which now stands omitted through the Finance Act, 2021, it appears that for the period from 2018 to 2021, the Commissioner was empowered to examine the estimates and to also pass an order in respect of such estimates being incorrect in showing a lesser amount of tax payable in advance. The insertion of the second proviso, and thereafter its omission, clearly reflects that insofar as the powers available to the Commissioner to examine the estimates of advance tax are concerned, the same was not available prior to 2018; nor after 2021. The insertion and omission of the 2<sup>nd</sup> proviso, leads to a definite inference, that the Commissioner had no such powers, otherwise, the very insertion of the proviso and its' omission would amount to redundancy, which cannot be attributed to the Legislature. Per settled law, the insertion of a provision in a law is often a response to identified issues or streamlining processes and supporting the assumed deficiencies.<sup>4</sup> The purpose is to empower the relevant authority with specific powers to address specific situations effectively.<sup>5</sup> However, if a provision is omitted or repealed,<sup>6</sup> it is considered as having never existed unless explicitly stated otherwise.<sup>7</sup> The legal effect of omission is that the authority should no longer exercise powers based on the omitted provision, and courts interpret such omissions as intended to remove those powers.<sup>8</sup> Reference may also be made to Circular No. 02 of 2021-2022 (Income Tax) dated 1.7.2021, issued by FBR, wherein, at Serial No.22(c), it has been explained that the power of Commissioner to reject advance tax estimates has also been withdrawn and necessary changes have been made in section 147 of the Ordinance. This clearly shows the intention behind the omission of the 2<sup>nd</sup> proviso, post 2021.

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<sup>4</sup> Messrs Hirjina & Co. (Pakistan) Ltd. v. Commissioner of Sales Tax (1971 SCMR 128)

<sup>5</sup> Karachi Port Trust v. Commissioner Inland Revenue (2011 PTD 1996)

<sup>6</sup> Muhammad Tarip Badr v. National Bank of Pakistan (2013 SCMR 314)

<sup>7</sup> Taisei Corporation v. A.M. Construction Company (Pvt.) Ltd. (2024 SCMR 640)

<sup>8</sup> --do--

10. Lastly, and after the matters were reserved for judgment, through Finance Act 2024 effective from 01.07.2024, once again Section 147 of the Ordinance has been amended and now subsection (6B) and a Proviso thereof and subsection (6C) have been inserted after subsection (6A), which reads as under: -

“(6B) Where an estimate of the amount of tax payable has been filed by the taxpayer under sub-section (6) as the case may be, the estimate shall contain turnover for the completed quarters of the relevant tax year, estimated turnover for the remaining quarters, supporting evidence of expenses or deductions in computing income, evidence of tax payments and tax credits and computation of estimated taxable income.

Provided that where the Commissioner is not satisfied with the documentary evidence provided or where an estimate of the amount of tax payable is not accompanied by details mentioned in this sub-section, the Commissioner may reject the estimate after providing an opportunity of being heard to the taxpayer and the taxpayer shall pay advance tax according to the formula set out in sub-section (4) or sub-section (4B), as the case may be.

(6C) Notwithstanding anything continued in this Ordinance, the persons specified in sub-sections (1), (3) (3A), (3B) and (3C) of section 154 shall, at the time of realization of foreign exchange proceeds, or realization of the proceeds on account of sale of goods, or export of goods, or at the time of making payment to an indirect exporter, or clearing to goods exported, respectively, deduct or collect, as the case may be, advance income tax under this section at the rate of one percent of such foreign exchange proceeds, or export proceeds, or exports, or payment, in addition to tax collectable or deductible under section 154 of this Ordinance.”

11. From perusal of the newly inserted sub-sections, it reflects that once again the second proviso, which was earlier available in sub-section (6) has now been inserted with subsection (6B) (ibid) and states that if the Commissioner is not satisfied with the documentary evidence provided, or where an estimate of the amount of tax payable is not accompanied by details mentioned in this sub-section, the *Commissioner may reject the estimate* after providing an opportunity of being heard to the taxpayer and the taxpayer is required to pay advance tax according to the formula set out in sub-section (4) or sub-section (4B), as the case may be. This insertion of the Proviso

as above, clearly reflects that insofar as the cases in hand are concerned, at the relevant time, the Commissioner had no authority to reject the estimates.

12. Another issue was also raised by the Respondents' Counsel that in fact, through impugned Notices, the Commissioner has not rejected the estimates; nor exercised any powers to pass an order; but, merely the estimate has been examined and it was found that the estimate does not provide accurate calculation for payment of advance tax and accordingly asks the taxpayer to correct their estimates. However, this contention also appears to be superfluous and misconceived as no such authority has been conferred upon the Commissioner in terms thereof, as issuance of demand under Section 137(2) of the Ordinance, in and of itself is a rejection of the estimate, prejudicing the Petitioners to approach this Court.

13. In view of hereinabove facts and circumstances of these cases, we are of the considered view that for the period under consideration, the law is already settled in ***Pak Saudi Fertilizer*** (Supra), ***Karachi Port Trust*** (Supra) and ***Pakistan Petroleum Ltd*** (Supra), whereas, the impugned demand and the action of the department is time and again based on misconception and ill advice. In fact, they ought to have restrained themselves from violating the judgments of this Court duly upheld by the Supreme Court. This, on the face of it, amounts to a contemptuous act and concerned officers are required to be proceeded with under Article 204 of the Constitution read with The Contempt of Court Ordinance, 2003; however, while showing restraint, and for the reasons that the Ordinance remained amended from 2018 to 2021, which may have misled the Respondents in interpreting the said provisions; for the present purposes we do not intend to proceed any further against the delinquent officials; however, they are cautioned to

be careful in future, whereas, FBR shall also restrain itself from issuing any internal instructions in violation of the judgments of the Court as above. Accordingly, all listed Petitions are hereby **allowed** and respective impugned orders, notices and demands raised, if any, are hereby set aside and declared to be have been passed / issued without any lawful authority and jurisdiction.

Dated: **23.07.2024**

**J U D G E**

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Ayaz ps/