JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

W.P. No. 4600 OF 2021
Chief Commissioner ICT
Versus
Federation of Pakistan etc.

Petitioner by:	Mr. Rabi Bin Tariq, State Counsel.
Respondents by:	M/s Syed Ashfaq Hussain Naqvi and Mr. Muhammad Akhtar Abbasi Advocates for respondents 2 to 5, Syed Nazar Hussain Shah, AA-G for respondent No.1,
Date of hearing:	4th March, 2022:

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ARBAB MUHAMMAD TAHIR, J: Through the instant writ petition, the petitioners (*ICT Administration*) has (**'impugned notice'**)issued under Section 140 Income Tax Ordinance, 2001 read with Rule 69 of the Income Tax Rules 2002 (Recovery of Tax) dated 22.12.2021 by the Assistant Commissioner Inland Revenue (*respondent No.4*) whereby the National Bank of Pakistan, F-8 Branch, Islamabad (*respondent No.5*) was required to remit amount of Rs.2,382,163,837/-, outstanding tax, from the official accounts of the petitioners to the Commissioner Inland Revenue *(respondent No.3*) through pay order, demand draft, or through cheque.

2. The impugned notice was issued pursuant to orders dated 07.04.2015, 12.05.2015 and 09.01.2019 passed by the Assessing Officer in terms of Section 7 of the Finance Act 1989 for failure on the part of the petitioners to collect the Capital Value Tax ("**CVT**").

3. The petitioners came up with the stance that the impugned action is uncalled for and without any justification, *inter alia*, for the reason that the mischief qua non-recovery of the CVT cannot be attributed to them as many defaulters assailed the recovery notices through various writ petitions due to which the proceedings of recovery remained at-halt and that the litigation ultimately

culminated on 09.10.2020 where after the proceedings of recovery were revived and being pursued.

4. In response to notice, respondents 2 to 4 filed written comments wherein besides objecting upon the maintainability of the instant petition due to having alternate efficacious remedy, on facts asserted that the issue of (CVT) was finally decided by the Hon'ble apex Court through a reported judgment dated 29.10.2019 (2020 SCMR 146) and that earlier petitioners also filed identical writ petitions No.1361 & 1362 of 2019 which were dismissed vide judgment dated 20.06.2019 and that during the pendency of said writ petitions, recovery of outstanding tax demand remained stayed, therefore, the mischief is fully attracted against the petitioners.

5. Heard, record perused.

6. The challenge to demand for payment of CVT was finally decided by the Hon'ble apex Court vide order dated 29.10.2019 passed in the case of M/s Pak Gulf Constructions Company (Pvt.) Ltd v/ Federation of Pakistan through Secretary Finance Ministry of Finance, etc. (**2020 SCMR 146**). It has graciously been concluded that "*we are in no manner of doubt that the sale, purchase, transfer and other similar transactions are undertaken between the petitioner-company which is the owner of the immovable assets and buyer in whose favour the transfer takes place, therefore, it is only logical that the petitioner should be obligated to collect CVT from the purchaser and deposit it with the Federal Government. Even otherwise, the petitioner squarely falls within the purview of sections 7(d) and (4) of the Act read with Rule 4 of Rules, 1990 cannot deny its liability by relying upon hyper technicalities and stratagems".*

7. By the direction ibid, the private entities engaged in sale, purchase, transfer and other similar transactions were held responsible to collect CVT from the purchasers and deposit it with the Federal Government being falling within the purview of sections 7(d) and (4) of the Finance Act, 1989 read with Rule 4 of Rules, 1990.

8. Record further divulges that earlier the two components of the petitioner i.e. Registrar & Sub-Register ICT, had assailed assessment order creating demand on alleged failure to collect the CVT through WP 1361 & 1362 of 2019 which were dismissed by this Court vide Judgment dated 26.06.2019 with the observations that "*respondents are competent to collect the Capital Value Tax from the petitioners, who are part of the registration authority. There is no jurisdictional error on part of the respondents. Even otherwise, there is no error in the impugned order."*

9. The question of law & facts of the instant case are akin to one decided earlier by this Court through the above referred judgment. However, learned counsel apprised that the petitioners have assailed the assessment orders dated 07.04.2015, 12.05.2015 and 09.01.2019 passed by the Assessing Officer by filing three separate applications under Section 122-A of the Income Tax Ordinance 2001 before the Commissioner, Inland Revenue, Withholding Zone, Islamabad (respondent No.3). As the petitioners have already availed alternate efficacious remedy before appropriate forum against the assessment orders, there left no need to comment upon merits of the case.

10. In view of above, the instant writ petition is accordingly **disposed of**.

(ARBAB MUHAMMAD TAHIR)
JUDGE

A.R.ANSARI*

Announced in open Court on 03.2022.

JUDGE