Form No: HCJD/C-121
ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Writ Petition No. 5082 of 2025

Telenor Pakistan (Private) Ltd.

Versus

Commissioner Inland Revenue-IV, etc.

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	08.10.2026.	Sirdar Ahmed Jamal Sukhera, Advocate

***AYYAZ SHAUKAT, J*:-** Through this common judgment, we intend to decide the captioned writ petition as well as the Writ Petitions listed in Annexure-A attached herewith as common questions of law and facts are involved in these petitions.

2. Through these petitions filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (the **"Constitution"**), the Petitioner, Telenor Pakistan (Private) Limited, seeks a declaration that Respondent No.1, the Commissioner Inland Revenue, Zone-IV, Large Taxpayers' Office, Islamabad (the **"Commissioner"**), is no longer vested with jurisdiction to pass an order under section 152(6) of the Income Tax Ordinance, 2001 (the **"Ordinance")** upon the Petitioner's notices under section 152(5), inasmuch as the period of thirty days prescribed by section 152(5A) has expired.

3. The facts, briefly stated, are that the Petitioner is a company engaged in the provision of mobile telecommunication services in Pakistan. Under a local supply contract, it imports telecom equipment from Nokia Solutions and Networks Oy, a company incorporated in Finland (the **"Non-Resident"**). The Petitioner follows a special tax year. The petitioner filed notices under section 152(5) on 25.08.2020, 25.11.2020, 03.03.2021, 19.05.2021, 29.08.2021, 05.09.2022 and 06.12.2022 in respect of tax years 2022

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(01.01.2021 to 31.12.2021) and 2023 (01.01.2022 to 31.12.2022), stating in each notice that it intended to remit the amount specified therein to the Non-Resident without deduction of tax. Its case was that the Non-Resident had no permanent establishment in Pakistan and that, accordingly, under Article 7 of the agreement between Pakistan and Finland for the avoidance of double taxation (the **"Treaty"**), its business income was taxable only in Finland. On 15.06.2021, the Petitioner was called upon to furnish further documents, which it furnished on 22.06.2021 and 06.07.2021. The payment was made to the Non-Resident without deduction of tax. No order has been passed on the notice to date. On similar notices relating to earlier payments to the Non-Resident, the Commissioner passed orders under section 152(6) directing the Petitioner to deduct tax; those orders are stated to be under challenge.

4. Learned counsel for the Petitioner contended that the period of thirty days in section 152(5A) of the Ordinance was introduced by way of amendment and is expressed in the word "shall"; that it is, therefore, mandatory in accordance with the law settled by the august Supreme Court; that any order passed after its expiry would be without lawful authority and a nullity in the eye of law; and that the Petitioner became entitled to pay the Non-Resident without deduction of tax upon the expiry of that period. He further contended that, in any event, by virtue of the provisos added to sub-section (5A) by the Finance Act, 2023, an exemption certificate must be deemed to have been issued. He also contended that the remedies under the Ordinance are neither adequate nor efficacious, inasmuch as the Commissioner and the Chief Commissioner had already rejected the Petitioner's stance in respect of similar payments. On merits, he contended that the payments were not Pakistan-source income that the Non-Resident had no permanent establishment in Pakistan, and that clause (e) of section 109(1) of the Ordinance,

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inserted through the Finance Act, 2022, cannot apply to payments made before its insertion.

5. The arguments of the learned counsel have been heard and the record has been perused with his assistance.

6. The grounds relating to the source of the payments, the Treaty and section 109(1)(e) of the Ordinance go to the merits of the notice. The Petitioner has itself urged them *ex abundanti cautela*, in response to the reasons given by the Commissioner in the earlier orders. No order has yet been passed on the notice in question, and these are matters for the Commissioner to decide in the first instance. The relief sought rests on a single proposition, namely, that the Commissioner forfeited jurisdiction upon the lapse of thirty days. That proposition is examined below. As no order has yet been passed on the notice, the question of an alternative remedy does not arise at this stage; any order passed under sub-section (6) will be amenable to the remedies provided by the Ordinance in the ordinary course.

7. The first question for determination is whether the period of thirty days in sub-section (5A) of section 152 of the Ordinance is mandatory, such that the Commissioner was divested of jurisdiction to pass an order under sub-section (6) upon its expiry. As they stood when the Petitioner filed its notices on 25.08.2020, 25.11.2020, 03.03.2021, 19.05.2021, 29.08.2021, 05.09.2022 and 06.12.2022, sub-sections (5) and (5A) read as follows:

> *"(5) Where a person intends to make a payment to a non-resident person without deduction of tax under this section, other than payments liable to reduced rate under relevant agreement for avoidance of double taxation, the person shall, before making the payment, furnish to the Commissioner a notice in writing setting out- (a) the name and address of the non-resident person; (b) the nature and amount of the payment; and (c) such other particulars as may be prescribed.*

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> *(5A) The Commissioner on receipt of notice shall, within thirty days, pass an order accepting the contention or making the order under sub-section (6).”*

Sub-section (6) empowers the Commissioner, where he has reasonable grounds to believe that the Non-Resident is chargeable to tax in respect of the payment, to direct the taxpayer, by an order in writing, to deduct tax therefrom under sub-section (2).

8. Through clause (15) of section 7 of the Finance Act, 2023 (Act No. XXXIV of 2023), the following provisos were inserted in sub-section (5A):

> *“Provided that the Commissioner shall be deemed to have issued the exemption certificate upon the expiry of thirty days and the certificate shall be automatically processed and issued by Iris subject to the condition that in computing the said period of thirty days, there shall be excluded days taken for adjournment by the applicant:*
>
> *Provided further that the Commissioner may modify or cancel the certificate issued automatically by Iris on the basis of reasons to be recorded in writing after providing an opportunity of being heard.”*

By virtue of section 1(2), the Finance Act, 2023 came into force on 01.07.2023, and no other date is prescribed for the commencement of these provisos. They were not on the statute book when the Petitioner filed its notices, nor when the thirty days expired.

9. The thirty-day period prescribed by section 152(5A), as applicable to the notices, is directory in the sense that its expiry does not, by itself, divest the Commissioner of jurisdiction. The thirty days were intended to secure a timely decision. They did not circumscribe the jurisdiction of the Commissioner, and their lapse did not render a later order void. The principal difference between the two kinds of provision lies in the consequence of breach. A mandatory provision must be strictly obeyed, and an act done in breach of it is invalid. A directory provision must also be obeyed, but its breach does not, by

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itself, invalidate the act done. Whether there has been substantial compliance must be assessed in the context of the provision and the circumstances of the case. The Hon'ble Supreme Court enunciated the distinction in ***Niaz Muhammad Khan v. Mian Fazal Raqib*** **(PLD 1974 SC 134)**:

> *"To put it differently, if the Act is directory, its disobedience does not entail any invalidity; if the Act is mandatory disobedience entails serious legal consequences amounting to the invalidity of the act done in disobedience to the provision."*

In ***The State through Regional Director ANF v. Imam Bakhsh and others*** **(2018 SCMR 2039)**, it was further observed that *"some rules are vital and go to the root of the matter, they cannot be broken; others are only directory and a breach of them can be overlooked provided there is substantial compliance"*. The difference, therefore, lies not in the duty but in the consequence of its breach. If the thirty days were mandatory, an order under sub-section (6) passed after their expiry would be void. If they are directory, the Commissioner remains bound to decide the notice, but does not forfeit jurisdiction to do so merely because the period has elapsed.

10. There is no single test for distinguishing the one from the other. In ***Atta Muhammad Qureshi v. The Settlement Commissioner, Lahore Division, Lahore and 2 others*** **(PLD 1971 SC 61)**, the Hon'ble Supreme Court observed that *"It is not possible to lay down a general rule of universal application in this behalf".* The question is one of legislative intent, and the word "shall" is not, of itself, determinative. In ***Province of Punjab through Secretary Excise and Taxation Department, Lahore and others v. Murree Brewery Company Ltd. and others*** **(2021 SCMR 305)**, it was held:

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> *"The test to determine whether a provision is directory or mandatory is by ascertaining the legislative intent behind the same. The general rule expounded by this Court is that the usage of the word shall generally carries the connotation that a provision [is] mandatory in nature. However, other factors such as the object and purpose of the statute and inclusion of penal consequences in cases of non-compliance also serve as an instructive guide in deducing the nature of the provision."*

In ***Messrs Tri-Star Industries (Pvt.) Limited v. Trisa Burstenfabrik AG Triengen and another*** **(2023 SCMR 1502)**, the Hon'ble Supreme Court observed that *"it is the fundamental nature which counts and should take preference and affinity more than the form".* More recently, a five-member Bench restated the principles in ***Messrs WAK Limited, Multan Road, Lahore and others v. Collector Central Excise and Sales Tax, Lahore and others*** **(2025 SCMR 1280)**, affirming ***The Collector of Sales Tax, Gujranwala and others v. Messrs Super Asia Mohammad Din and Sons and others*** **(2017 SCMR 1427)**. Their Lordships noted that *"generally the courts have more readily concluded that in appropriate circumstances a "shall" is to be read as "may" (i.e., that the provision seemingly mandatory was in actuality directory) rather the other way round"*. The indicators of intent that are relevant to sub-section (5A) are its language, the consequence of non-compliance, and its object read with the nature of the duty it imposes.

11. The first indicator is whether the language is affirmative or negative. In **Atta Muhammad Qureshi** (supra), the Hon'ble Supreme Court expounded:

> *"If it is negative, that is to say, if the statute enacts that certain action shall be taken in a certain manner and in no other manner, it has been held that the requirements are absolute and that neglect to attend them will invalidate the*

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> *whole procedure. If, on the other hand, the language is affirmative, it may be considered as a directory provision."*

The rule was applied to a period of time in ***Province of Punjab through Conservator of Forest, Faisalabad and others v. Javed Iqbal*** **(2021 SCMR 328)**, where proceedings against a retired employee had to be finalised "not later than two years of his retirement". The Hon'ble Supreme Court held that the phrase *"passes for a negative phrase and gives an imperative effect",* and that such words make a requirement mandatory *"even if no penalty is prescribed for non-compliance".* The time limit in **Super Asia** (supra) was of a similar character. Section 36(3) of the Sales Tax Act, 1990 permitted the period for adjudicating a show cause notice to be extended, but such extension "shall in no case" exceed a stated limit. In **WAK Limited (supra)**, the larger Bench held:

> *"In our view, when considering which of the two rules is applicable here, the use of the words "in no case" in particular tips the balance in favor of the latter. The hard edge provided by these words is a clear indication that if the thing here required to be done (i.e., the issuance of the order-in-original) goes beyond the prescribed time limits there is indeed a penal consequence that ensues, i.e., its invalidity."*

12. The second indicator is whether the statute provides a consequence for non-compliance. Where it does not, the provision is generally construed as directory. In ***Maulana Nur-ul-Haq v. Ibrahim Khalil*** **(2000 SCMR 1305)**, a provision using the word "shall" was held to be directory "for want of a penal clause". The Supreme Court observed:

> *"...it is by now firmly settled that where the consequence of failure to comply with the provision is not mentioned the provision is directory and where the consequence is expressly mentioned the provision is mandatory."*

To the same effect is ***Faiz Sons v. Hakim Sons (Impex) Private Ltd.*** **(1999 SCMR 2771)**. The High Courts have followed the same

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approach: in ***Sharif Khan v. Akbar Zaman*** **(2016 CLC 774)**, the Peshawar High Court, applying **Maulana Nur-ul-Haq (supra)**, held a provision framed in the word "shall" to be directory for want of a penal clause. The rule is a useful guide, but not a conclusive one. **Javed Iqbal (supra)** demonstrates that negative words may make a provision mandatory without any penalty. In **WAK Limited (supra)**, the larger Bench described the rule as *"but one device among many available in the judicial toolkit"*, *"neither universal nor determinative in and of itself"*. It is to be applied in conjunction with the language and the object of the provision.

13. The third indicator is the object of the provision and the nature of the duty it imposes. The rule stated in Maxwell on the Interpretation of Statutes, and adopted in **Imam Bakhsh (supra)** and **Murree Brewery (supra)**, is as follows:

> *"Where the prescription of statute relates to the performance of a public duty and where the invalidation of acts done in neglect of them would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty without promoting the essential aims of the legislature, such prescriptions seem to be generally understood as mere instructions for the guidance and government of those on whom the duty is imposed or in other words as directory only."*

In **Javed Iqbal (supra)**, the Supreme Court restated the rule and delineated its limits:

> *"...where a public officer is directed by a statute to perform a duty within a specified time, the provision as to time are only directory. This general principle, however, does not apply where the phraseology of the provision, or the nature of the act to be performed, or the consequence of performing or failing to perform it within the prescribed timeframe is such that the prescription of timeframe is actually a limitation on the power of the public functionary. Or where a public functionary is empowered to create liability against a citizen only within the prescribed time, the performance of such a duty within the specified timeframe is mandatory."*

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The limit in **Super Asia (supra)** fell within the exception. It regulated the adjudication of a show cause notice issued by the department against a taxpayer. In **WAK Limited (supra),** the larger Bench explained that it *"shields him from unmeritorious claims and bogus show cause notices, which may be issued by the concerned officer to harass and intimidate the former".*

14. **WAK Limited (supra)** also furnishes two further safeguards. The first is whether a directory reading would leave another part of the provision redundant. In **Super Asia (supra)**, it would have caused the extension and its outer limit to "either be reduced to redundancy or effectively become inconsequential". The second is the test of substitution:

> *"...when a "shall" is determined to be directory, especially in the context of or in relation to a period of time, the substitution of "shall" with "may" ought to work equally well with "may not". It is only then that the court can conclude that whatever it is that can (or should) be done within the period found to be directory may, as a matter of law, be done within a reasonable period."*

The provision in **Super Asia (supra)** failed this test. The provision stipulated that the extended period "shall in no case" exceed a stated limit. When read with "may", the words became "may in no case exceed", which could only mean "shall not exceed". When read with "may not", they became "may not in no case exceed", which, in the words of their Lordships, "makes no sense at all". If it conveyed any meaning at all, it would mean that every extension must go beyond the limit. The second "shall" could, therefore, only be mandatory. The larger Bench also noted that Parliament had re-enacted the provision in substantially the same words through the Finance Act, 2024, as section 11G, a circumstance which confirmed that **Super Asia (supra)** had read the legislative intent correctly.

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15. Sub-section (5) of Section 152, which requires the taxpayer to furnish a notice before making the payment, is not in issue, the Petitioner having given such notice, and its character need not be determined in these petitions. It may, however, be noted that the High Court of Sindh held it to be directory in ***Messrs EFU General Insurance Ltd. v. Federation of Pakistan atnd others*** **(2010 PTD 1159)**, observing that *"merely on the basis of the use of the word "shall" it could not be construed that it is a mandatory provision of law but is a directory provision".*

16. The Petitioner contended that the thirty days were introduced by amendment and are expressed in the word "shall", and are, therefore, mandatory in accordance with the law settled by the Hon'ble Supreme Court. The principles governing statutory time limits were considered in **Super Asia (supra)** and reaffirmed in **WAK Limited (supra)**. It is correct that sub-section (5A) of Section 152 of the Ordinance was inserted by the Finance Act, 2003, and the words "within thirty days" were added by the Finance Act, 2004. The contention, however, rests on a single factor, namely the word "shall", and disregards the rest. Tested on the indicators discussed above. The language and scheme of the provision support a directory construction of the thirty-day period. Sub-section (5A) directs the Commissioner to pass an order within thirty days. There are no words such as "in no case" or "not later than", and no outer limit. In the terms of **Atta Muhammad Qureshi (supra)**, the language is affirmative, not negative. The observation of the larger Bench in paragraph 21 of **WAK Limited (supra)** regarding the words "in no case" marks the point of distinction:

> *"In other words, they appear to convey a sense of finality and conclusiveness. Periods provided in statutes (or in exercise of delegated legislation) within which something is (or, more rarely, not) to be done are usually just that: a specific duration of time. This coupling with strongly negative*

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> *language is unusual and appears to indicate, even on a bare textual consideration, that an unbreachable limit is indicated."*

Sub-section (5A) has no such coupling. In the words of **WAK Limited (supra)**, its thirty days are "just that: a specific duration of time". The substitution test yields the same answer. Applied to the period alone, the test permits a decision after thirty days; it does not make the duty to decide optional. Any delayed exercise of power must nevertheless be within a reasonable time and remain subject to the other requirements of law. There is no mechanism of extension, and no other part of the provision is rendered redundant by a directory reading. Upon the test laid down in **WAK Limited (supra)**, the order may, as a matter of law, be passed within a reasonable period.

17. The difference stands out when sub-section (5A) is read alongside other provisions of the Ordinance. Where the legislature intended an unbreachable limit, it employed negative or prohibitory words. Section 122(2) provides that *"No order under sub-section (1) shall be amended by the Commissioner after the expiry of five years"*. Section 214B(3) provides that *"No order shall be made under this section after the expiry of three years".* Section 221(4) provides that *"No order under sub-section (1) may be made after five years".* The first proviso to section 129(4) requires the order of the Commissioner (Appeals) *"not later than one hundred and twenty days".* Most telling of all is the proviso, as it then stood, added to section 122(9) by the Finance Act, 2021, the very year of the Petitioner's notice:

> *"Provided that order under this section shall be made within one hundred and twenty days of issuance of show cause notice or within such extended period as the Commissioner may, for reasons to be recorded in writing, so however, such extended period shall in no case exceed ninety days. This*

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proviso shall be applicable to a show cause notice issued on or after the first day of July, 2021."

The proviso possesses every feature that the larger Bench found decisive in **WAK Limited (supra):** a period, an extension for reasons to be recorded, an outer limit that "shall in no case" be exceeded, and a defined temporal application. Sub-section (5A) prescribes a period but contains no comparable extension mechanism or express prohibition against a later order. The contrast supports, though it does not by itself determine, the construction of the thirty-day period in sub-section (5A).

18. The object of sub-section (5A) points to the same result. It does not circumscribe proceedings initiated by the department against a taxpayer. It regulates the disposal of a notice which the taxpayer itself chooses to file in order to pay a non-resident without deduction. The need to shield a taxpayer from proceedings pending against him, which led the august Supreme Court to treat the limit in **Super Asia (supra)** as mandatory, does not arise. The thirty days are a period within which a public functionary is to perform a public duty, and they fall within the general rule stated in **Javed Iqbal (supra)**, and not within the exception thereto. They do not operate as a limitation on a power to create liability. Any obligation to deduct tax must arise under the applicable provisions of the Ordinance, read with the Treaty where relevant. An order under Section 152(6) must satisfy the statutory condition that the Commissioner has reasonable grounds to believe that the Non-Resident is chargeable to tax in respect of the payment. The existence of such liability is not determined in these proceedings. To hold a later order void would also cause the general inconvenience of which Maxwell speaks. Tax at source would be lost to the exchequer by reason of the default of an officer, and no aim of the legislature would be advanced. The provision, moreover, said nothing as to the effect of a failure to decide within thirty days. It

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did not say that the contention of the taxpayer would be deemed to have been accepted, or that a later order would be void. In **EFU General Insurance (supra)**, the Division Bench made the same point:

> *"However, it has not been specified as to what will happen in case the Commissioner does not pass an order within the period provided in section 152(5A) of the Ordinance. Accordingly, we can safely say that these provisions are also not mandatory."*

19. Where the legislature intended the inaction of an officer to carry a consequence, it said so expressly. Under section 221(3), a mistake not dealt with in time "shall be treated as rectified". Under a proviso to section 114(6), approval for revising a return not decided within sixty days "shall be deemed to have been granted by the Commissioner". Section 129(5), until omitted by the Finance Act, 2012, provided that if an appeal was not decided within four months, "the relief sought by the appellant in the appeal shall be treated as having been given". Sub-section (5A) of Section 152, as it stood in 2021, contained no words of this kind. **EFU General Insurance** was decided in 2010. Parliament attached a consequence to the lapse of thirty days only through the Finance Act, 2023, and only from 01.07.2023. Until then, sub-section (5A) was directory. That does not mean that the Commissioner may sit upon a notice indefinitely. A directory provision must nevertheless be complied with in substance, and within a reasonable time.

20. Even if sub-section (5A) were mandatory, the declaration sought would not avail the Petitioner. The obligation to deduct tax from a payment to a non-resident arises under section 152 itself; a notice under sub-section (5), followed by an order accepting the contention of the taxpayer, is merely the procedure by which the taxpayer may be relieved of it. Under **Super Asia (supra)**, the consequence of contravening a mandatory time limit is that a later

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order is invalid. That would, at most, disable the Commissioner from passing an order under sub-section (6). It would not convert the silence of the Commissioner into an acceptance of the contention of the taxpayer, and the obligation to deduct would remain where the statute places it. A deemed certificate can only emanate from the statute. Before 01.07.2023, there was no such deeming clause, and this Court cannot supply one. As cautioned in **Super Asia (supra),** *"the Courts should refrain from supplying an omission in the statute because to do so steers the Courts from the realms of interpretation or construction into those of legislation".*

21. The Finance Act, 2023 introduced a different statutory consequence. The first proviso attached, for the first time, a consequence to the lapse of thirty days: a deemed certificate issued automatically through Iris. The second gave the Commissioner a matching power to modify or cancel it. The provisos did not clarify the earlier law; they altered it, by conferring on the taxpayer a right, and on the Commissioner a power, that neither had before. Had the earlier law already treated silence as acceptance, there would have been no need for them. The larger Bench in **WAK Limited (supra)** drew a similar inference from a provision inserted by the Finance Act, 2006. The test for determining whether such legislation operates retrospectively was laid down in ***Rajby Industries, Karachi v. Federation of Pakistan and others*** **(2023 SCMR 1407)**:

> *"In order to find out whether any beneficial, remedial or curative legislation has a retrospective effect, the litmus test is to explore whether it is intended to clear up an ambiguity or oversight in the prevailing or standing law and in its pith and substance, it corrects or modifies an existing law or an error that interferes with interpreting or applying the statute*."

The provisos added in 2023 confer an express entitlement to a deemed certificate, subject to modification or cancellation in

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accordance with law. In that respect, they alter substantive rights and do not merely regulate the manner of deciding a notice. **Super Asia (supra**) itself illustrates how an inserted provision operates in time. One of the appeals there concerned a show cause notice adjudicated in 1999, before the time limit was inserted. The Hon'ble Supreme Court held that *"the matter pertained to the time period when the proviso containing the limitation period was not yet inserted into the Act hence, such limitation period did not apply thereto"*. The same holds true for the provisos added to sub-section (5A).

22. The second question is, therefore, whether the provisos of 2023 can govern notices relating to tax years 2021 and 2022. The principles governing the temporal application of income tax legislation provide further guidance. Income tax is an annual levy, and each year is a separate and self-contained unit. The principle was recognised by the Privy Council in ***Commissioner of Income Tax v. Chitnavis*** **(AIR 1932 PC 178)**, and the august Supreme Court has applied it ever since. In ***Fawad Ahmad Mukhtar and others v. Commissioner Inland Revenue (Zone-II), Regional Tax Office, Multan and another*** (**2022 SCMR 426)**, an addition made to the law in 2009 was put to one side in applying the law for tax year 2008, and it was held:

> *"...it is well established as a fundamental principle of income tax law that each tax year is a separate unit of account and taxation and the law has to be applied as it stood in respect of that tax year alone."*

The Ordinance is premised on the same principle. Section 4(1) imposes income tax "for each tax year", and sections 2(68) and 74 define the tax year as a period of twelve months.

23. The scheme was examined at length in ***Commissioner Inland Revenue, Zone-V, Corporate Regional Tax Office, Lahore v. Power Line Construction Company (Pvt.) Ltd.,***

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Lahore **(2026 PTD 967).** A notice issued in 2015 to amend a deemed assessment for tax year 2009 was within time under section 122(2) as substituted with effect from 01.07.2009, but time-barred under the provision as it stood on 30.06.2009. The Supreme Court held the notice to be barred, and observed:

> *"For each tax year the 2001 Ordinance applies [as] it stands at the end of that year. ... Now, all that one has to ask is how does the statute stand on the last day of the tax year in question? The answer to this will likewise be determinative. No vexed questions of vested rights or past and closed transactions or beneficial legislation would arise or need to be addressed."*

The Court further held that the principle applies, mutatis mutandis, to a special tax year. The Petitioner follows one, and its tax year 2022 ran from 01.01.2021 to 31.12.2021. In paragraph 43, their Lordships excluded from the operation of the judgment, up to and including tax year 2025, the rates of tax in the First Schedule, rates for advance tax, final or minimum tax, and tax on a special block of income or on specially designated income; in all other respects, the judgment applies to past tax years. The present dispute concerns the consequence of failing to decide a notice, rather than the rate of withholding tax. The relevance of **Power Line (supra)** must be understood within that distinction; whether the 2023 provisos govern notices already pending when they commenced is examined in paragraph 30 below.

24. Before **Power Line (supra)**, in reliance on ***Maharajah of Pithapuram v. Commissioner of Income Tax*** **(AIR 1945 PC 89)**, the law was taken to apply to a year as it stood on the first day of the succeeding year. The High Court of Sindh applied this rule to the Ordinance in ***Shahnawaz (Pvt.) Ltd. v. Pakistan*** **(2011 PTD 1558)** and ***Commissioner Inland Revenue, Zone-II, RTO, Hyderabad v. Jamshoro Power Company Ltd.*** **(2017 PTD 237).** The two approaches differ only in respect of an amendment

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that takes effect on that very 1st July. On either approach, an amendment that comes into force later does not reach back to an earlier year. That principle was settled in ***Scindia Steam Navigation Company Ltd. v. Commissioner of Income Tax*** **(AIR 1955 Bom 230)**, where it was held *"not open to the Department to give retrospective effect to the amending Act".* The provisos of 2023 came into force long after tax years 2021 and 2022 had closed.

25. The same result follows from the general rules on the temporal operation of statutes. In ***Molasses Trading & Export (Pvt.) Limited v. Federation of Pakistan and others*** **(1993 SCMR 1905),** a five-member Bench, by majority, held that *"vested rights cannot be taken away save by express words or necessary intendment"*, notwithstanding that the legislature has plenary power to legislate retrospectively. In ***The Commissioner Inland Revenue and others v. Mekotex (Pvt.) Limited and others*** **(PLD 2024 SC 1168)**, a case under the Ordinance, the Hon'ble Supreme Court held:

> *"Every statute that relates to substantive rights and obligations should be deemed prospective unless, by express provision or necessary implication, it has been given retrospective effect. ... Although vested rights may be affected and taken away by express provision or necessary implication, past and closed transactions can be disturbed and reopened only by express provision."*

26. Turning specifically to the Ordinance, in ***Commissioner of Income Tax v. Eli Lilly Pakistan (Pvt.) Ltd.*** **(2009 SCMR 1279)**, section 122 was held to be prospective, it not being a mere matter of procedure:

> *"...the provision is impregnated with an essential attribute, which affects an accrued right of an assessee or a taxpayer that after efflux of a certain period of time, his assessment will not be opened or amended. Therefore, the section*

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cannot be applied retrospectively unless the legislature has by express words or necessary implication intended to give it retrospective effect."

In ***Additional Commissioner Inland Revenue, Audit Range, Zone-I and others v. Eden Builders Limited and others*** **(2018 SCMR 991)**, a five-member Bench of the Hon'ble Supreme Court held that section 122(2), as substituted in 2009, could not govern returns filed earlier, inasmuch as *"a right related to the law of limitation came to vest in the respondents on the date of filing of their respective returns".* The Lahore High Court had taken the same view in ***Commissioner Inland Revenue v. Maj. Gen. (R) Dr. C.M. Anwar and 2 others*** **(2015 PTD 424)**, which **Power Line (supra)** approved.

27. An amendment which, in the garb of an explanation, enlarges a burden for a past year fares no better. In ***Commissioner Inland Revenue, RTO, Rawalpindi v. Trillium Pakistan (Pvt.) Ltd., Rawalpindi and others*** **(2019 SCMR 1643)**, an Explanation added in 2011 to the base of the penalty under section 182 was not applied to tax years 2008 and 2009. It was held that "retrospective liability is imposed when an explanation attributes a meaning to a substantive provision or expression whereby the burden, obligation or liability of a person is increased for a past period". Following **Fawad Ahmad Mukhtar** (supra), a Division Bench of the Lahore High Court in ***Sheikh Naseem Akhtar v. Commissioner Inland Revenue (Legal) and others*** **(2025 PTD 1001)** applied the definition in section 2(22A) to tax year 2015 as it then stood, and not as narrowed in 2017.

28. The rule operates in both directions. An amendment that lightens a burden does not, for that reason alone, operate retrospectively either. In **Fawad Ahmad Mukhtar** (supra), the taxpayers relied on an exemption inserted in 2010. The Hon'ble Supreme Court held:

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> *"...simply because a statutory provision has a beneficial effect does not mean that it automatically has, or can have, retrospective effect. ... Of course, the principle is not sacrosanct. It can be overridden by the legislative will. But that must be done either expressly or shown to be the necessary intendment of the provision sought to be applied retrospectively."*

In **Rajby Industries (supra**), the withdrawal of a restrictive proviso in a sales tax notification, made effective from 01.07.2018, was likewise denied retrospective effect. The rule concerns the law of the year, not the identity of the party who benefits from it.

29. Parliament can, if it so chooses, apply a fiscal law to a closed tax year. In ***Messrs DG Khan Cement Company Limited and others v. The Federation of Pakistan and others*** **(PLD 2026 FCC 168)**, the Hon'ble Federal Constitutional Court upheld the imposition of super tax under section 4C for tax year 2022, because the words "for tax year 2022 and onwards" were "as clear an expression of retrospective legislative intent as the English language allows". The apex Court limited its conclusion to that provision, and did not foreclose arguments "*where the statutory scheme may legitimately attach finality to the close of a tax year*". The provisos added to section 152(5A) of the Ordinance contain no words of retrospective effect. They were merely inserted with effect from 01.07.2023.

30. There is, moreover, a further reason. Section 152 of the Ordinance is a withholding provision. The duty to deduct arises when the payment is made, and the notice must precede the payment. The thirty days run from the receipt of that notice. Each notice and payment is a distinct event with its own date. The Petitioner filed its notices in 2020, 2021 and 2022. The notices remained undecided, but the thirty-day period relied upon by the Petitioner had elapsed before the amendment commenced. The claim advanced is that an exemption certificate must be deemed to have arisen from that

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earlier expiry. No express words in the provisos give that consequence to an expiry occurring before 01.07.2023. The continued pendency of the notice does not, by itself, establish the retrospective operation asserted by the Petitioner. The first proviso attaches the deeming to "the expiry of thirty days", a period that runs from the receipt of the notices. That expiry is a single and completed event which, in the present cases, had occurred in respect of each notice before 01.07.2023, the thirty-day period for the last notice having expired in January 2023. To hold that a fresh period of thirty days began to run on 01.07.2023 in respect of notices then pending would be to supply words which the legislature has not enacted, an exercise against which **Super Asia (supra)** cautions. The mechanism of the proviso, by which the certificate is automatically processed and issued through Iris, likewise presupposes a notice received and timed after the proviso came into force. Significantly, the Petitioner itself contends, in ground V(ii) of the petition, that clause (e) of section 109(1) of the Ordinance, inserted in 2022, cannot apply to payments made prior to its insertion. That is the same principle; it cannot be invoked where it assists and disregarded where it does not.

31. Additionally, and in any event, there is another aspect of the matter. In the petitions listed in Annexure-A, the respective periods of thirty days expired in 2020, 2021 and 2022 and, in one case, in January 2023. The jurisdiction of this Court was, however, invoked only in 2025, well after the expiry of those periods. No explanation has been offered for the delay in any of these cases. The absence of such an explanation requires consideration in the context of the relief sought and the continuing pendency of the respective notices. In ***Special Secretary-II (Law and Order), Home and Tribal Affairs Department, Government of Khyber Pakhtunkhwa, Peshawar and others v. Fayyaz Dawar*** **(2023 SCMR 1442)**, the Hon'ble Supreme Court held that *"if the remedy of filing a*

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constitutional petition is not availed within reasonable time, the interference can be refused on the ground of laches. Delay would defeat equity which aids the vigilant and not the indolent", and that the question of laches *"is always considered in the light of the conduct of the person invoking constitutional jurisdiction"*. The Petitioner complains of the inaction of the Commissioner, yet it remained content with that inaction for over four years. The declaration sought rests upon a single event, the expiry of thirty days, and not on a wrong that recurs. Even if the period of thirty days were mandatory, the Petitioner would not, in the circumstances, be entitled to the discretionary relief of a declaration under Article 199 of the Constitution.

32. In summary, the thirty-day period in section 152(5A), as applicable to the notice in question, was directory. Its language and statutory context did not make expiry of that period, by itself, a bar to a subsequent order. The expiry of thirty days did not divest the Commissioner of jurisdiction to pass an order under sub-section (6) upon the Petitioner's notices. The provisos added by the Finance Act, 2023 operate prospectively from 01.07.2023. They have not been accorded retrospective effect, expressly or by necessary implication, and cannot be applied to that notices. No exemption certificate can be deemed to have been issued under those provisos merely because the thirty-day period had expired before they came into force, and the Petitioner did not become entitled to pay the Non-Resident without deduction merely by reason of the lapse of thirty days. The declaration sought cannot, therefore, be granted.

33. For the foregoing reasons, the petitions stand **dismissed**. However, if the notices referred to in paragraph 3 above have not already been decided, the Commissioner is directed to decide the same in accordance with law, after affording the Petitioner an opportunity of hearing, within thirty days of receipt of a copy of this

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judgment. This direction shall not be construed as extending any otherwise applicable period of limitation or authorising any assessment or recovery beyond the powers conferred by the Ordinance. Except for the questions expressly determined herein, all objections available to the Petitioner under the law shall remain open. No opinion is expressed on the taxability of the payment.

(CHIEF JUSTICE) **(AYYAZ SHAUKAT)**
JUDGE

Announced in open Court on **29.10.2026.**

(CHIEF JUSTICE) **JUDGE**

Approved for reporting

Saeed

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ANNEXURE-A

Sr. No.	Case No.	Parties Name
1.	W.P No. 5083/2025	Telenor Pakistan (Private) Limited. Vs. Commissioner Inland Revenue Zone-IV and another
2.	W.P No. 5084/2025	Telenor Pakistan (Private) Limited. Vs. Commissioner Inland Revenue Zone-IV and another
3.	W.P No. 5085/2025	Telenor Pakistan (Private) Limited. Vs. Commissioner Inland Revenue Zone-IV and another
4.	W.P No. 5086/2025	Telenor Pakistan (Private) Limited. Vs. Commissioner Inland Revenue Zone-IV and another
5.	W.P No. 5087/2025	Telenor Pakistan (Private) Limited. Vs. Commissioner Inland Revenue Zone-IV and another
6.	W.P No. 5088/2025	Telenor Pakistan (Private) Limited. Vs. Commissioner Inland Revenue Zone-IV and another
7.	W.P No. 5089/2025	Telenor Pakistan (Private) Limited. Vs. Commissioner Inland Revenue Zone-IV and another
8.	W.P No. 5090/2025	Telenor Pakistan (Private) Limited. Vs. Commissioner Inland Revenue Zone-IV and another
9.	W.P No. 5091/2025	Telenor Pakistan (Private) Limited. Vs. Commissioner Inland Revenue Zone-IV and another
10	W.P No. 5092/2025	Telenor Pakistan (Private) Limited. Vs. Commissioner Inland Revenue Zone-IV and another
11.	W.P No. 5093/2025	Telenor Pakistan (Private) Limited. Vs. Commissioner Inland Revenue Zone-IV and another
12.	W.P No. 5094/2025	Telenor Pakistan (Private) Limited. Vs. Commissioner Inland Revenue Zone-IV and another
13.	W.P No. 2515/2026	Telenor Pakistan (Private) Limited. Vs. Commissioner Inland Revenue Zone-IV and another

(JUDGE)

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