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

Writ Petition No. 5095 of 2025

Telenor Pakistan (Private) Ltd.

Versus

Chief 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 impugns orders dated 21.04.2025 passed by respondent No.1, the Chief Commissioner Inland Revenue, Zone-IV, Large Taxpayers' Office, Islamabad (the **"Chief Commissioner"**), under section 122B of the Income Tax Ordinance, 2001 (the **"Ordinance"**). The petitioner further seeks a declaration that the orders dated 16.03.2022, 30.04.2022, 03.08.2022 and 04.08.2022 (challenged in W.P. Nos.5098 and 5099 of 2025 and 2514 of 2026; W.P. Nos.5095 and 5096 of 2025; W.P. No.5100 of 2025; and W.P. No.5097 of 2025, respectively), passed by respondent No.2, the Commissioner Inland Revenue (Enforcement), Large Taxpayers' Office, Islamabad (the **"Commissioner"**), under section 152(6) of the Ordinance, are without lawful authority and of no legal effect.

3. The facts, briefly stated, are that the petitioner is a company providing mobile telecommunication services in Pakistan. It imports telecom equipment from Nokia Solutions and Networks Oy, a

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company incorporated in Finland (the **"non-resident"**). On 19.11.2021, 24.02.2022 and 30.05.2022, the petitioner furnished notices under section 152(5) of the Ordinance in respect of tax years 2022 and 2023, covering the periods from 01.01.2021 to 31.12.2021 and from 01.01.2022 to 31.12.2022, respectively, seeking permission to remit the amount specified in each notice to the non-resident without deduction of tax. The petitioner stance was that the non-resident has no permanent establishment in Pakistan and that, under Article 7 of the Agreement between Pakistan and Finland for the Avoidance of Double Taxation, its business income is taxable only in Finland. On 16.03.2022, 30.04.2022, 03.08.2022 and 04.08.2022, the Commissioner rejected the contention raised in the notices and directed the petitioner, under section 152(6), to deduct tax in terms of section 152(2). He held that the petitioner had not furnished a copy of the contract, and that the non-resident operated in Pakistan through Nokia Solutions and Networks Pakistan (Private) Limited, which constituted its permanent establishment. The petitioner filed applications for revision under section 122B of the Ordinance on 12.10.2022. The Chief Commissioner heard the petitioner's representatives on 08.01.2025, who contended, inter alia, that the orders had been passed without calling for any explanation or documents from the petitioner. By the impugned orders dated 21.04.2025, the Chief Commissioner set aside the orders dated 16.03.2022, 30.04.2022, 03.08.2022 and 04.08.2022 and remanded the cases to the Commissioner Inland Revenue, Zone-IV, Large Taxpayers' Office, Islamabad, for a fresh decision after affording the petitioner a further opportunity to present its cases along with evidence.

4. Learned counsel for the petitioner contends that the period of thirty days prescribed in section 152(5A) of the Ordinance is mandatory; that the orders of the Commissioner, having been passed after its expiry, is a nullity; and that the impugned order,

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instead of declaring that order to be barred by time, revives a jurisdiction which had already lapsed and is, therefore, equally a nullity. He further contends that the order of the Commissioner was non-speaking and was passed without affording the petitioner an opportunity of hearing, and that a hearing before a higher forum does not cure the denial of hearing below. He submits that the remedies under the Ordinance are illusory, as the Commissioner and the Chief Commissioner have already rejected the stance of the petitioner on similar payments to the non-resident. On merits, he contends that the payments are not Pakistan-source income; that the non-resident has no permanent establishment in Pakistan; that no income could in any case be attributed to such an establishment; that clause (e) of section 109(1) cannot apply to payments made prior to its insertion; and that the rate of deduction directed was erroneous.

5. The arguments advanced have been heard and the record perused.

6. The matter essentially turns on the question whether the impugned orders of the Chief Commissioner warrant interference in the constitutional jurisdiction of this Court. The orders of the Commissioner dated 16.03.2022, 30.04.2022, 03.08.2022 and 04.08.2022 no longer hold the field, having been set aside by the impugned orders itself. The relief sought against them has, therefore, become infructuous. The grounds urged by the petitioner, whether relating to limitation, denial of hearing or the merits of its application, can be examined only if the impugned order is open to challenge under Article 199 of the Constitution. That question must, therefore, be answered at the threshold.

7. The impugned orders are, for all intents and purposes, orders of remand. It does not finally decide any matter between the petitioner and the department. It does not hold that the non-resident

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has a permanent establishment in Pakistan, or that tax is to be deducted from the payments; nor does it hold to the contrary. It sets aside the order of the Commissioner and remits the matter for a fresh decision after hearing the petitioner and examining its evidence. Its operative part reads:

> *"4. In view of the arguments put forth by the taxpayer, it is considered reasonable that the taxpayer be provided reasonable opportunity to present his case before the Commissioner along with evidence to support his contention. 5. Therefore, the order dated 04.08.2022 is set-aside and the case is remanded to the Commissioner Inland Revenue, Zone-IV, LTO, Islamabad to provide another opportunity to the taxpayer and pass a fresh order after scrutinizing the evidence provided and in accordance with the law and the facts of the case."*

The impugned orders describe their own outcome as one of partial acceptance. That description does not alter its true character. The petitioner sought the setting aside of the orders of the Commissioner, and that relief has been granted. The petitioner also sought a further declaration from the Chief Commissioner that the said orders were barred by time. The Chief Commissioner did not adjudicate upon that plea in either direction. It remains open to the petitioner to raise it before the Commissioner, as indeed all its other pleas.

8. The law on whether such an order is amenable to the constitutional jurisdiction of this Court is well settled. An order of remand is not a final order. It does not determine the rights of the parties; it merely remits the matter for re-examination. The forum to which the case is remitted is at liberty to decide it afresh on the material before it, and its decision is then open to challenge before the next forum in the ordinary hierarchy. The remand does not, by itself, foreclose the parties' claims or defences. Where an adequate remedy is available against the eventual decision, this Court

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ordinarily declines interference at the intermediate stage, subject to the exceptions discussed below.

9. The principle was enunciated by a Division Bench of the Lahore High Court in ***Ramzan v. Rehabilitation Commissioner (Legal), Sargodha and another*** **(PLD 1963 (W.P.) Lahore 461)**. The petitioner there sought leave to argue that the order of remand was illegal and unwarranted. Manzur Qadir, C.J., speaking for the Bench, declined to examine the point and held:

> *"We are of the opinion that even if it is assumed that his complaint is well-founded (without deciding that it is so), since the error, if any, has not resulted in a final order but in an order of remand, it is not appropriate that we should interfere with that order in writ jurisdiction. ... It does not seem desirable that this Court should prevent a Department, with its own rules and laws and its own hierarchy of officers, from having a second look at a case if it so chooses, unless it has been prohibited from doing so."*

The Bench also repelled the contention that the remanding authority had acted without lawful authority, observing that *"the jurisdiction to decide a matter includes the jurisdiction to decide it erroneously".* Another Division Bench of the Lahore High Court followed this view in ***Mst. Kaniz Fatima and 3 others v. Member (Revenue), Board of Revenue, Punjab, Lahore and 5 others*** **(PLD 1973 Lahore 495)**, where a mutation case had been remanded for fresh decision after hearing the contesting parties.

10. The rationale of the rule, and its limits, were expounded by a Division Bench of the Balochistan High Court, of which Ajmal Mian, Actg. C.J. (as he then was) was a member, in ***Ghulam Rasul and others v. Khudai Dad and others*** **(PLD 1986 Quetta 130)**:

> *"Additionally, it is observed that order of remand does not finally determine claim or rights of the parties in a proceeding. In fact on account of this situation another opportunity is always available to any party who may feel aggrieved from final determination of claim in suit. Such*

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> *order mainly rectifies illegalities and irregularities committed by subordinate forum as already discussed above. As a consequence of remand the forum to which case is sent for fresh decision, is always free to pass judgment on the available fact uninfluenced from any extraneous circumstances. Thus against such fresh decision alternate remedy by way of regular appeal or revision is again available to the aggrieved party, therefore in this view of the matter order of remand would not be amenable to the writ jurisdiction unless it is ex facie perverse, or order passed in the exercise of jurisdiction not vested in such forum or is otherwise void."*

11. The Hon'ble Supreme Court has approved this view. In ***Muhammad Ilyas Khan v. Muhammad and others*** **(1986 SCMR 251)**, the Member, Board of Revenue had remanded a mutation matter to the Mukhtiarkar for fresh decision, and the High Court of Sindh dismissed the constitutional petition against that order in limine. The august Supreme Court declined to interfere, observing that the matter already stood remanded to the Mukhtiarkar "*where all the disputed questions could be resolved and determined*". In ***Divisional Superintendent, Pakistan Railways, Rawalpindi v. Muhammad Aslam and 25 others*** **(1986 SCMR 1607)**, the Labour Court, in appeal, had remanded a claim for fresh decision after allowing the parties to lead evidence, and the Lahore High Court set that order aside in writ jurisdiction. Before the Hon'ble Supreme Court it was urged that the remand was not a final adjudication of the claim and that an adequate remedy was available. The august Supreme Court converted the petition into an appeal, allowed it and recalled the writ.

12. The law was reiterated in ***Allah Ditta and others v. Member (Judicial), Board of Revenue and others*** **(2018 SCMR 1177)**, where leave had been granted only to examine whether a writ petition is maintainable against an order of remand. The apex Court held:

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> *"6. Order of remand is not a final order and simply sends the matter for re-examination for the second time. It does not finally determine the claim or the rights of the parties. The forum to which the case is sent for fresh decision is free to re-examine the case and pass a fresh judgment. Against any such subsequent decision or judgment, alternate remedy is available to the parties. ... This is not an absolute rule. An order of remand that is facially perverse or without jurisdiction or otherwise void can be interfered with, like any other order (see Ghulam Rasool (supra)). ... Infact, the principle that emerges from the wisdom of the precedents is that, for reasons narrated above, the constitutional court must approach and examine a remand order passed by the Board of Revenue with care and circumspection, so as to sparingly interfere with it, unless of course, the remand order is facially perverse, without jurisdiction or otherwise void."*

The High Court in that case had struck down the remand order. The august Supreme Court set aside that judgment and restored the remand, modifying it as to the forum to which the case was to be remitted and the matters to be decided on remand.

13. The High Courts have applied this rule consistently. In ***Akbar Ali and 18 others v. Mukhtar Ahmad and 14 others*** **(2007 CLC 768)**, the Lahore High Court, after reviewing the earlier judgments, held that *"it would not be appropriate to exercise constitutional jurisdiction to interfere with an order of remand"*, a principle *"followed consistently for the last several decades".* A Division Bench of the Peshawar High Court stated the position succinctly in ***Mst. Salim-un-Nisa and 5 others v. Aziz and another*** **(2009 CLC 860)**:

> *"7. Moreover, it has been settled time and again that the writ lies against the final adjudication. The remand order does not finally decide the dispute, as the authority that decided the case earlier has to re-decide it, therefore, this petition against the remand order is not maintainable as the order passed in revision, being not a final order cannot be interfered with in writ jurisdiction."*

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The same view was taken in ***Malik Rab Nawaz through Legal Heirs v. Mst. Saban and another*** **(2019 MLD 1)** and ***Zahid Iqbal v. Additional District Judge, Lahore and others*** **(2023 CLC 1399)**. More recently, the Peshawar High Court, placing reliance on **Allah Ditta (supra)**, dismissed a petition against an order of remand in ***Syed Raheem v. Muhammad Kareem and others*** **(2024 MLD 282)**.

14. The rule reflects a wider principle. This Court does not ordinarily interfere, in exercise of its constitutional jurisdiction, with orders passed while the proceedings are still pending before the competent forum. In ***Muhammad Raza Hayat Hiraj and others v. The Election Commission of Pakistan and others*** **(2015 SCMR 233)**, the august Supreme Court held that an interlocutory order of an Election Tribunal could be interfered with under Article 199 only where it was patently illegal and, if not struck down, would leave the aggrieved party without remedy. The same reasoning applies with greater force to an order of remand, which does not even determine a step in the proceedings but merely reopens them. The same restraint informs the consistent view of the Hon'ble Supreme Court in fiscal matters that a taxpayer should not bypass the remedies provided under the taxing statute by prematurely invoking Article 199 of the Constitution. In ***Deputy Commissioner of Income Tax/Wealth Tax, Faisalabad and others v. Messrs Punjab Beverage Company (Pvt.) Ltd.*** **(2008 SCMR 308)**, the august Supreme Court set aside the judgment of the High Court which had entertained a writ petition at the stage of a show-cause notice, and deprecated the practice of bypassing the statutory remedies available under the Income Tax Ordinance, 1979 by resort to constitutional jurisdiction where an adequate remedy existed.

15. The rule is, however, one of restraint and not an absolute bar. As held in **Allah Ditta (supra)**, an order of remand which is

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facially perverse, without jurisdiction or otherwise void is open to interference like any other order. An illustration is ***Syed Abdullah Shah and 3 others v. Abdul Ghaffar and another*** **(PLD 1988 Quetta 60)**, where the revisional authority had remanded a case on a plea of limitation which had not been raised in the written statement or before the appellate authority, and was taken only belatedly by amending the revision petition, and on other extraneous grounds. The Balochistan High Court held that the order had been passed in excess of jurisdiction. The question, therefore, is whether the impugned remand is facially perverse, without jurisdiction or otherwise void, so as to warrant constitutional interference.

16. Adverting to the cases in hand, the jurisdiction of the Chief Commissioner to revise the order of the Commissioner under section 122B is not disputed; the petitioner itself invoked it. The only ground which could bring the impugned orders within the exception is the contention that the Commissioner had lost jurisdiction upon the expiry of thirty days, so that there was nothing left to remand. That contention is devoid of force. In our judgment of even date in ***Writ Petition No.5082 of 2025***, titled *Telenor Pakistan (Private) Limited v. Commissioner Inland Revenue, Zone-IV, Large Taxpayers' Office, Islamabad and another*, concerning the same petitioner and payments to the same non-resident, we have examined the nature of the thirty-day period prescribed by section 152(5A). We have held that the said period, under the provision as it then stood, is directory and that its expiry did not divest the Commissioner of jurisdiction to pass an order under sub-section (6). We have further held that the provisos added to sub-section (5A) by the Finance Act, 2023 operate from 01.07.2023 and do not apply to notices furnished before that date. In the present cases, the notices were furnished on 19.11.2021, 24.02.2022 and 30.05.2022, and the original orders were passed on 16.03.2022, 30.04.2022, 03.08.2022 and

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04.08.2022, all before those provisos came into force. For the reasons recorded in that judgment, which are adopted herein, the expiry of the thirty-day period did not, by itself, render the original orders void or preclude a fresh decision on remand. The Commissioner did not lose jurisdiction, and the Chief Commissioner did not revive a jurisdiction which had lapsed. The impugned order is not without jurisdiction or void on that ground.

17. The remaining grounds against the orders of the Commissioner have lost their force. The complaint was that the orders were non-speaking and had been passed without hearing the petitioner. The Chief Commissioner has set them aside for that very reason. He did not decide the matter himself on a hearing afforded at his own level; he remitted it to the Commissioner, for a fresh decision after hearing the petitioner and examining its evidence. The ground that a hearing before a higher forum does not cure the denial of hearing below is, therefore, answered by the impugned orders itself. The petitioner has been given that which it complained of not having received.

18. The plea that the remedies under the Ordinance are illusory is also unpersuasive. The Commissioner has been directed to pass a fresh order after scrutinising the evidence, in accordance with law and the facts of the case. It cannot be presumed that he will not do so merely because orders adverse to the petitioner were passed on earlier applications; those orders, the petitioner states, are themselves under challenge. The fresh order, whatever its outcome, will be open to challenge before the Chief Commissioner under section 122B, as the petitioner itself did in this round. The questions raised on merits, namely the source of the payments, the existence of a permanent establishment, the attribution of income to it, the reach of section 109(1)(e) and the rate of deduction, are matters for the Commissioner to decide in the first instance. Any view expressed

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by this Court on them at this stage would pre-empt the proceedings on remand. This approach accords with the principle that a High Court, in exercise of its constitutional jurisdiction, does not sit as a court of appeal over the competent forum, and ordinarily leaves factual determination to that forum (see *Maqbool Ali and another v. Mst. Raheela and others*, *2025 SCMR 1275*).

19. For the foregoing reasons, no ground for interference with the impugned remand order is made out. The petitions are, accordingly, **dismissed.**

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

Announced in open Court on **29.10.2026.**

(CHIEF JUSTICE) **JUDGE**

Approved for reporting

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ANNEXURE-A

Sr. No.	Case No.	Parties Name
1.	W.P No. 5096 of 2025	Telenor Pakistan (Private) Limited. Vs. Chief Commissioner Inland Revenue Zone-IV and another
2.	W.P No. 5097 of 2025	Telenor Pakistan (Private) Limited. Vs. Chief Commissioner Inland Revenue Zone-IV and another
3.	W.P No. 5098 of 2025	Telenor Pakistan (Private) Limited. Vs. Chief Commissioner Inland Revenue Zone-IV and another
5.	W.P No. 5099 of 2025	Telenor Pakistan (Private) Limited. Vs. Chief Commissioner Inland Revenue Zone-IV and another
4.	W.P No. 5100 of 2025	Telenor Pakistan (Private) Limited. Vs. Chief Commissioner Inland Revenue Zone-IV and another
7.	W.P No. 2514 of 2026	Telenor Pakistan (Private) Limited. Vs. Chief Commissioner Inland Revenue Zone-IV and another

(JUDGE)

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