ORDER SHEET

IN THE HIGH COURT OF SINDH KARACHI

Income Tax Reference Application Nos. 340 of 2016,
ITRA Nos. 124 & 125 of 2017

Date	Order with signature of Judge

Hearing of case.

1. For hearing of CMA No. 123/17.
2. For hearing of CMA No. 125/17.
3. For hearing of main case.

13.08.2025.

Mr. Hamza Waheed, Adovcate along with Mr. Sami-ur-Rehman, Advocate for Applicant in ITRA No. 340 of 2016.
M/s. Atir Aqeel Ansari and Muhammad Ajmal Khan, Advocates for Respondents.
Mr. Muhammad Aqeel Qureshi, Advocate for Respondent in ITRA No. 340 of 2016 and for Applicants in ITRA Nos. 124, 125 of 2017

The Reference Application No. 340 of 2016 has been filed by M/s. Pakistan Reinsurance Company Ltd.; whereas ITRA Nos. 124 & 25 of 2017 have been filed by the Commissioner Inland Revenue, Karachi against M/s. Pakistan Reinsurance Company Ltd. in respect of orders dated 03.10.2016 and 19.12.2016 passed in ITA No. 1125/KB-2015, ITA Nos. 940/KB/2014 and ITA No. 941/KB/2014. Admittedly M/s. Pakistan Reinsurance Company Ltd. is a State-Owned Enterprise in terms of State-Owned Enterprises (Governance and Operation) Act, 2023 and in the similar situation we have already decided this issue in ITRA No. 182 of 2018 and other connected matters *(M/S Karachi Port Trust Vs. The Commissioner Inland Revenue)* vide order dated 11.08.2025. However, learned Counsel for the Applicant / Respondent Pakistan Reinsurance Company Ltd. (M/s. Hamza Waheed and Atir Aqeel Ansari) have opposed referral of these matters to the ADR Committee on the ground that these matters pertain to the period prior to the amendment brought in Section 134A of the Income Tax Ordinance, 2001; hence it cannot be made applicable retrospectively. They submit that no right of appeal has been provided to SOE, which is against the rights accrued to the Applicant; and therefore, these matters must be

decided on its own merits. They further contended that per settled law no amendment in tax matters can be applied retrospectively if it affects a vested right already accrued to a taxpayer. Lastly it is contended that cases of Commissioner Inland Revenue cannot be referred to ADRC. Order dated 11.08.2025 passed by this Bench in ITRA No. 182 of 2018 and other connected matters reads as follows:-

> "Mr. Faheem Ali Memon, Advocate undertakes to file Vakalatnama on behalf of Inland Revenue Department in all these matters.
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> Reference Application Nos. 182 of 2018, 588, 589 of 2010, 65, 66 of 2011 have been filed by Karachi Port Trust **(KPT)**; whereas ITRA Nos. 03 & 04 of 2013 have been filed by the Commissioner of Income Tax, Karachi against KPT in respect of orders dated 19.03.2018, 18.06.2010, 09.12.2010 and 16.08.2012 in ITA No. 53/KB of 2015 and connected matters.
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> Admittedly KPT is a State-Owned Enterprise in terms of State-Owned Enterprises (Governance and Operation) Act, 2023 and pursuant to Section 134A of the Income Tax Ordinance, 2001 a mechanism has been provided for State Owned Enterprises ("SOE") to approach FBR in respect of adverse orders passed by the Inland Revenue Department. The most significant and the relevant amendment made, which in our view is fully applicable to the present Applicant (KPT), is that now it is ***mandatory*** for SOE to go for ADR, whereas the limit of Rs. 50 million is also not applicable.
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> However, learned Counsel for the Applicant / KPT has opposed referral of these matters to the ADR Committee on the ground that these matters pertain to the period prior to the amendment brought in Section 134A of the Income Tax Ordinance, 2001; hence it cannot be made applicable retrospectively. He submits that no right of appeal has been provided to SOE, which is against the rights accrued to the Applicant; and therefore, these matters must be decided on its own merits. He has contended that per settled law no amendment in tax matters can be applied retrospectively if it affects a vested right already accrued to a taxpayer. In support he has relied upon various reported cases[1].
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> Heard learned Counsel for the Applicant and perused the record. It is not in dispute that notwithstanding the fact that Section 134A was amended in its current form in the year 2024, this Court as well as the Honourable Supreme Court, in several cases have been pleased to refer all such matters of SOE's to ADR Committee. Reliance may be placed on orders passed the Supreme Court in **Civil Petition No. 2106 of 2024** ***(Commissioner Inland Revenue, Corporate Zone, Regional Tax Officer, Islamabad v. M/s Islamabad Electric Supply Company Limited, (IESCO), Islamabad),*** **Civil Appeals No. 649, 650, 651, 652 of 2022** ***(M/s. State Life Insurance Corporation of Pakistan v. The Assistant Commissioner of Income Tax, Karachi & others)*** **and Civil Petition Nos. 886-K, 887-K and 888-K of 2023** ***(M/s. Trading Corporation of Pakistan v. The Commissioner of Income Tax, Karachi).***

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[1] Muhammad Saifullah v. Lahore Development Authorities (PLD 2021 Lahore 168), Messrs National Steel Mills and Re-Rollers v. Collector, Sales Tax and Federal Excise, Peshawar (2011 PTD 1076), Manzoor Ali v. United Bank (2005 SCMR 1785), The Essential Industries v. Central Board of Revenue (PLD 1969 Lahore 24), Shahnawaz v. Pakistan (2011 PTD 1558), Fawad Mukhtar v. Commissioner Inland Revenue (2022 SCMR 426), Kurdistan Trading Corporation v. C.I.R (2014 PTD 339), Allied Engineering Services v. Commissioner of Income Tax (2015 PTD 2562), Anwar Yahya v. Pakistan (2017 PTD 1069), Justice Qazi Faez Isa v. President of Pakistan (PLD 2022 SC 119) and Sapphire Textile Mills v. Federation of Pakistan (SBLR 2023 Sindh 1007).

This Court in the cases reported as **2024 PTD 1507** ***(Civil Aviation Authority of Karachi v. Federation of Pakistan & others*** and **2024 PTD 1571** ***(Trading Corporation of Pakistan v. Federation of Pakistan through Secretary Finance Division Islamabad)*** has also decided this issue in its constitutional jurisdiction.

Insofar as an SOE is concerned, it is true that it can neither file any appeal nor can obtain any restraining orders from appropriate Appellate Authority after passing of assessment orders; however, notwithstanding this, the matters are to be referred to ADR Committee. It is also a matter of record that as and when any action has been taken by the department for recovery of the adjudged amount through coercive measures, SOE's have approached this Court in its constitutional jurisdiction and while referring the matters to ADR Committee, this Court has given appropriate protection to such SOE's against any adverse or coercive action by the department.

As to the argument that a right of appeal has been withdrawn or taken away; whereas, the amendment was brought subsequently is concerned, we are not impressed at all inasmuch no adverse action is being taken against the SOE's by applying this amendment retrospectively, if at all. In the instant matter the SOE has already availed two forums of Appeal(s) and has come to this Court in its Reference jurisdiction under Section 133 of the Ordinance, whereas these cases are of 2010 onwards, and therefore, no justifiable ground is made out not to refer these cases to ADRC.

Lastly, in our considered view, this amendment in the Ordinance is procedural in nature, and does not affect the right of an SOE in any manner to agitate its application retrospectively. It is an effort on the part of Government to fix its house first as it is just like withdrawing money from one pocket and putting it into the other, and in this exercise, it is the litigation cost which has to be borne by the Applicant and ultimately the Government itself. By this amendment it is asking SOE's not to burden the Courts enabling them to attend to the cases of private parties, wherein substantial amount of revenue is involved. Further it gives an opportunity to an SOE to approach FBR for an Alternate Dispute Resolution through its own constituted Committees. Once the law prescribes that referral to ADRC is mandatory for an SOE, no exception can be drawn on this ground that the amendment was brought subsequently and some right of appeal has been taken away. In fact a complete mechanism has been provided to secure the interests of SOE and no exception can be drawn; whereas, in the cases of *Civil Aviation Authority* (supra) as well as *Trading Corporation of Pakistan* (supra), this Court[2] has already dealt with these issues in detail and it would be advantageous to refer to the findings in the case of *Civil Aviation Authority of Pakistan* (supra), which reads as under:-

"5. As to the fiscal laws and settlement of such disputes by way of ADR, a brief discussion of ADR in the context of fiscal statutes may be helpful. An ADR mechanism in fiscal laws was introduced for the first time through the Finance Act, 1996 when Section 47A was introduced in the Sales Tax Act, 1990 and an Indirect Taxes Settlement Commission was formed, whereby any aggrieved tax-payer could approach the Commission constituting 3 Members to be appointed by the Government. However, In the year 2000, this section was omitted. Thereafter, ADR was introduced in all Fiscal Laws in the year 2004, including the Customs Act, 1969[3], Income Tax Ordinance, 2001[4], Sales Tax Act, 1990[5] and the Federal Excise Act, 2005[6]. As of 2005, the new ADR additions to the law provided

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[2] one of us (Muhammad Junaid Ghaffar J.)

[3] *S.195C-Customs Act, 1969 / Chapter XVII Customs Rules, 2001.*

[4] *S.134A-Income Tax Ordinance, 2001 / R.231 C Income Tax Rules, 2002.*

[5] *S. 47A-Sales Tax Act, 1990 / Chapter X Sales Tax Rules, 2004.*

[6] *S.38-Federal Excise Act, 2005 / Rule 53 Federal Excise Rules, 2005*

a window to operate side by side with the existing conventional Appellate system; with simple procedures and lesser technicalities, recommendations of independent experts and an out-of-court settlement with the tax authorities. Initially, when this scheme was launched it had its teething problems for a number of reasons, including, but not limited to, the authority of FBR in terms of Section 134A(2) of the Ordinance not to accept the decision of an ADR committee, if it was in favor of the taxpayer; a right of further appeal if the taxpayer was not satisfied with the order of FBR; and composition of ADRC Committees which were headed by officers of FBR. This didn't work well and came under a lot of criticism by the taxpayers requiring corrective measures; hence, finally, from 2018 onwards certain amendments were brought in. These changes to the law included, inter alia, the decision of ADRC was made binding on the parties; the Taxpayer was required to withdraw its pending case from the Court; tax-payer was required to make an offer of settlement before approaching ADRC and he could not retract from the offered amount of tax. Thereafter some further amendments were also made in 2020 and it was provided that only such matters can be referred to ADRC wherein the amount of 100 million or more was in dispute; the decision of ADRC was not to be treated as a precedent in any other case and a further relief in the sense that all pending proceedings were stayed on constitution of ADR Committees. At the same time, there were some other restrictions in the referral of cases to ADRC, such as matters wherein criminal proceedings have been initiated; or where interpretation of question of law is involved could not be referred to ADRC. It was reiterated that the scope of ADR revolves around facts and circumstances; the burden of proof rests on the applicant; the applicant has to state and explain quite clearly: what is already agreed; what is disputed; what evidence is being produced; what are the applicant's contentions and why should, the matter be resolved in his/her favor. The most significant and much-awaited amendments were brought about with the composition of ADR Committees, which were now to be headed by a retired judge, not below the rank of a judge of a High Court as Chairperson; a Chief Commissioner or Chief Collector having jurisdiction over the case; and a person to be nominated by the taxpayer from a panel notified by the Board comprising of (a) chartered accountants, cost and management accountants and advocates having a minimum of ten years' experience in the field of taxation; or (b) officers of the Inland Revenue Service who stood retired in BS 21 or above; or (c) reputable businessmen as nominated by the Chambers of Commerce and Industry. Finally, on 06.05.2024 Tax Laws (Amendment) Act, 2024 was promulgated, whereby, the newly amended Section 134A of the Ordinance is to apply mutatis mutandis on the Sales Tax Act, 1990 and the Federal Excise Act, 2005; the limit of Rs.100 Million has been reduced to Rs.50 Million. The most significant and relevant amendment made, which in our view is fully applicable to the present Petitioner, is that now it is mandatory for SOE to go for ADR, whereas, the limit of Rs.50 Million is also not applicable. Earlier, the management of an SOE was reluctant to go for mediation in any business transaction due to fear of prosecution, but through the newly amended provisions, they have been protected from any suit, prosecution or other legal proceedings. Since referral to ADR is now mandatory for SOE, a right to appeal has also been provided to SOE when the matter is not decided by ADRC within the stipulated period.

8. After going through the above provisions and gathering the intent of the Federal Government, to us, it clearly reflects that an internal mechanism has been evolved for the quick disposal of tax disputes between SOEs and FBR. The reason being that at the end of the day, in any such disputes, it is, in fact, the Federal Government who is the ultimate loser, by way of litigation costs besides delay in settlement of such disputes from the courts of law. The Petitioner before us is owned by the Government and is being asked to pay a certain amount of tax by FBR

which is also under the Revenue Division of the Federal Government and ultimately, even if the Petitioner is required to pay any tax; the cost of such payment of tax is to be borne by the Federal Government. It is just like withdrawing money from one pocket and putting it into the other, and in this entire exercise, it is the litigation cost and delay which must be borne by the Federal Government additionally. Resultantly, it is the Federal Government alone which is the loser and besides incurring costs, the time consumed by the courts in deciding such matters could be reserved and allocated to disputes of private parties before the Court. So in all fairness, we are of the considered view that in terms of Section 134A of the Ordinance, duly amended by the Finance Amendment Act, 2024, the Petitioner is mandatorily required to approach FBR for resolution of its dispute coupled with the fact that the Petitioner claims that its case has been supported by the Ministry of Law and Justice Division.

11. It may further be observed that though courts are the creature of law and constitution, whereas, Article 199 of the Constitution also confers ample jurisdiction upon the High Courts; but such jurisdiction otherwise, is to be exercised by way of discretion and circumspection, and while doing so, Court must look into the locus standi of the parties coming to the Court. We are mindful of the fact that the Petitioner before us may be an aggrieved person for any other issue, but insofar as the present facts and circumstances are concerned, we are of the view that for such purposes, it is not so, until and unless the ADR mechanism provided under Section 134A of the Ordinance, OR the mechanism as provided for Resolution of Dispute under Rule 8(2) of the 1973 Rules are exhausted. Till such time we do not see the Petitioner as an aggrieved person being a Federal Government authority for impugning the action of another authority created and vesting in the same Federal Government. It is not even a case of any Federal Government against a Provincial Government which may have created an exception.

12. Lastly, we are constrained to observe that the Courts are already burdened with excessive litigation as against its total strength and the number of judges, including the infrastructure. Hence, any further unnecessary burden has to be avoided and must be nipped in the bud at the very outset. In this, the Government has to act fairly, sensibly and with a helping hand as the majority of litigation in the High Courts is under Article 199 of the Constitution which is either against the Provincial or the Federal Government. Presently, the Courts are acting robustly to induce out of court settlement as and when possible, to the fullest extent. It is a change in mindset and needs support from all litigants, including the Government. In fact, the Government has already taken a step forward by amending Section 134A of the Ordinance in question, and this is to be appreciated as a timely step forward; but at the same time, it has failed to guide and persuade its Divisions and Authorities to go for such route of settling its disputes with the Tax Departments. If the Petitioner's Counsel, under instructions, had agreed to referral of this matter to ADR under the aforesaid provision of law, this would have definitely saved precious time of this Court in writing this opinion. By fostering a pro-settlement bias, courts can contribute to a more harmonious and efficient dispute resolution landscape, where parties are empowered to resolve conflicts collaboratively and constructively[5]. Encouraging mediation aligns with the broader goals of justice systems worldwide: to resolve disputes in a manner that is fair, efficient, and conducive to the long-term well-being of all involved parties[6]. The Supreme Court has recently adopted a pro-mediation approach, and in Province of Punjab[7] while quoting Justice Sandra Day O'Connor, it is observed that "The courts of this country should not be the places where resolution of disputes begins. They should be the places where the disputes end after alternative methods of resolving disputes have been considered and tried.[8]". The Supreme Court has further stated that we wish to underline that courts must encourage

> out of court settlements through Alternate Dispute Resolution ("ADR"), in particular mediation. The essence of mediation lies in its voluntary and confidential process, where a neutral third party, the mediator, assists disputants in reaching a consensus. Unlike in litigation, where the outcome is often a zero-sum game, mediation thrives on the principle of win-win solutions, preserving relationships and allowing for creative resolutions that legal parameters might not accommodate .."
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> In view of such position, these Reference Applications are disposed of, whereas, in terms of Section 134A of the Income Tax Ordinance, 2001, these matters stand referred to FBR to form a Committee as required under the new amended provision and till such time the matters are finally decided by the said Committee, no coercive measures be adopted against the Applicant (KPT) for recovery. Once a decision has been given by the Committee, the Applicant, if aggrieved, may seek further remedy, if so available in accordance with law.
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> Office to place copy of this order in connected cases."

Accordingly, in view of the above observations in **ITRA No. 182 of 2018** ***(M/S Karachi Port Trust Vs. The Commissioner Inland Revenue)*** and other connected matters, these matters stand referred to FBR in terms of Section 134A of the Income Tax Ordinance, 2001 to form a Committee as required under the new amended provision and till such time the matters are finally decided by the said Committee, no coercive measures be adopted against the Applicant (M/s. Pakistan Re-Insurance Company Ltd.) for recovery. Once a decision has been given by the Committee, the Applicant, if aggrieved, may seek further remedy, if so available in accordance with law.

Office to place copy of this order in the connected cases.

CHIEF JUSTICE

J U D G E

Ayaz