

**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**

JUDICIAL DEPARTMENT

9588 / Writ  
04-Apr-2022

From,

The Deputy Registrar(Judicial),  
Islamabad High Court,  
Islamabad.

16 APR 2022

M(L)

Chief (L-I)  
S-Lit(SC)  
S(A&A)  
S(A)

Chief (L-II)  
S-Lit(TO)

S(L-DT)  
S(L-IDT)

Chief (L-III)

S(PA)

S(TO-I)

S(TO-II)

S

- 1 ASSISTANT/DEPUTY COMMISSIONER [ENFORCEMENT AND COLLECTION] IR, RANGE I, UNIT III, RANGE I, ZONE CTO, ISLAMABAD
- 2 ADDL COMMISSIONER [AUDIT I] IR, RANGE II ZONE I, CTO, ISLAMABAD
- 3 COMMISSIONER IR [APPEALS IV] G-9/1, MAUVE ROAD, RTO, ISLAMABAD
- 4 CHIEF COMMISSIONER IR, CTO, G-9/1 MAUVE ROAD, ISLAMABAD
- 5 FOP THROUGH CHAIRMAN FBR ISLAMABAD

Subject: W.P. 976/2022 Tax & Banking Tax (SB)

M/s NHA-VS-A/DCIR, etc

Dear Sir,

I am directed to forward for information and immediate compliance a copy of this Court's order dated 31-03-2022 passed by Hon'ble The Honorable Chief Justice in the above noted case.

Yours Faithfully,



Assistant Registrar (Writ)  
For Deputy Registrar (Judicial)

Decided Matter

FBR e-Dox No. \_\_\_\_\_  
Received in M(L) Office on 19 APR 2022

FBR eDOX Dy. No. 80436-R  
Received in Chairman's Sectt.  
on 16 APR 2022

M(L)

**IN THE ISLAMABAD HIGH COURT ISLAMABAD**W.P NO. 976 /2022

M/S National Highway Authority, Through Allah Dad Tareen, General Manager Finance, Bearing CINC 54400-1486309-1, 28 Muave Area, Sector G9-1, Islamabad.

***Petitioner*****VERSUS**

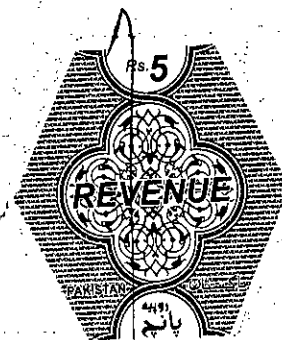
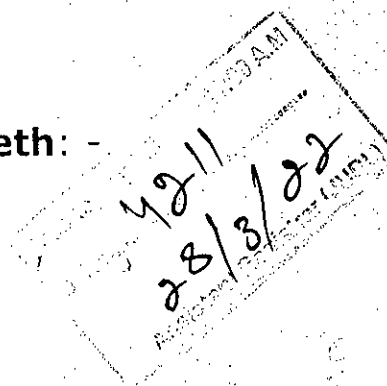
1. Assistant / Deputy Commissioner (Enforcement & Collection) Inland Revenue, Rang I-Unit III, Range-I, Zone CTO Islamabad.
2. Additional Commissioner (Audit-I) Inland Revenue, Range-II, Zone-I CTO Islamabad.
3. Commissioner Inland Revenue (Appeals-IV), G-9/1, Mauve Road, RTO, Islamabad.
4. Chief Commissioner Inland Revenue, CTO, G-9/1, Mauve Road, Islamabad.
5. Federation of Pakistan for the purpose of Service through Chairman Federal Board of Revenue, Islamabad.

***Respondents*****COPY****PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF**

05 APR 2022

**ISLAMIC REPUBLIC OF PAKISTAN 1973 AS AMENDED UPTO**

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Islamabad

**DATE****Respectfully Sheweth: -**

Form No: HCJD/C-121

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD  
(JUDICIAL DEPARTMENT)

W.P. No.976 of 2022

M/s National Highway Authority

Vs.

Assistant/Deputy Commissioner (Enforcement & Collection) Inland  
Revenue, etc.

Petitioner Authority by : M/s Hafiz Ahsan Ahmed Khokhar and Rashid Javed Advocates.

Respondents by : M/s Syed Ishfaq Hussain Naqvi, Syeda Sumera Naqvi, Sadaf Noman, Sajjad Ahmed Mughal Advocates.  
Mr M. Ismail ur Rehman, AC/IR/E&R.

Date of Hearing : 31.03.2022.

**ATHAR MINALLAH, C.J.-** Through this consolidated judgment, the instant petition and W.P. No. 977/2022, titled "M/s National Highway Authority v. Assistant/Deputy Commissioner (Enforcement & Collection) Inland Revenue and others" shall be

decided.

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The National Highway Authority [hereinafter referred to as the "Authority"] has been established under the National Highway Act,

1991 [hereinafter referred to as the "**Act of 1991**"]. Sub section (2) of section 3 of the Act of 1991 explicitly declares the Authority to be a 'body corporate' having perpetual succession and a common seal with power to acquire, hold and dispose of property, and may by its name sue and be sued. The Act of 1991 was promulgated and notified in the official gazette on 29.06.1991. The Authority through the petitions has assailed orders passed by the taxation officer under section 147 of the Income Tax Ordinance, 2001 [hereinafter referred to as the "**Act of 2001**"]. The orders were followed by issuance of recovery notices under section 138 ibid.

3. The learned counsel for the Authority has contended that; the latter is not covered under sub section (5) of section 147 of the Ordinance of 2001; it is neither an "association of persons" nor a "company". He has further contended that the Department for the first time has demanded advance tax under section 147 of the Ordinance of 2001. The learned counsel has argued that the Authority has been established through an Act of the Majlis-e-Shoora (Parliament) and, therefore, it is outside the ambit of the definition of a 'company' under section 80 (2)(b)(ii). The learned counsel has also stressed that without observing the principles of procedural fairness no order could have been passed under section 147 of the Ordinance.

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The learned counsel for the respondent Department, on the other hand, has contended that the expression 'company' has been

defined in section 2(12) read with section 80(2)(b)(ii); the company as defined in the statute includes an entity established under an Act of the Majlis-e-Shoora (Parliament); the Authority had failed to fulfill its statutory obligations under the Ordinance of 2001 and, therefore, the impugned orders were passed; calculations have been made on the basis of declarations made by the Authority itself and, therefore, a disputed question is not involved.

5. The learned counsels for the parties have been heard and the record perused with their able assistance.

6. The Authority has been established under the Act of 1991. Sub section (2) of section 3 ibid has explicitly declared the Authority to be a 'body corporate'. The expression 'company' has been defined in section 2(12) of the Ordinance of 2001 as meaning a company as defined in section 80. The expression 'company' has been described in section 80(2)(b)(ii) of the Ordinance of 2001, as follows:

**"80. Person.—(1)---**

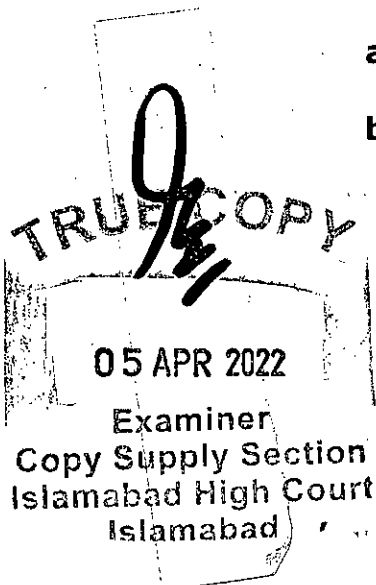
**(2) For the purposes of this Ordinance--**

**a) ---**

**b) "company" means--**

**(i)---**

**(ii) a body corporate formed by or under any law in force in Pakistan;"**



It is obvious from the above definition that a 'body corporate' formed by or under any law in force in Pakistan has been expressly included in the definition of the expression, 'company'. The Act of 1991 undoubtedly has the status of a law enforced in Pakistan and it has declared the Authority to be a 'body corporate'. The Court is, therefore, of the opinion that the Authority is included in the definition of 'company' for the purpose of the Ordinance of 2001 and <sup>Thus</sup> consequently the consequences in the context of section 147 ibid are attracted. A plain reading of section 147 as a whole unambiguously shows that it is a mandatory obligation of a taxpayer to comply with the prescribed requirements on the basis of its own declarations and assessments.

7. In the case in hand, the Authority had failed to comply with its mandatory statutory obligations. The impugned orders passed under section 147 are based on the declarations made by the Authority in its tax returns. There is no dispute regarding the declarations made by the Authority itself. As already noted, the legislature in its wisdom has explicitly made it a duty of the taxpayer to calculate the advance tax in accordance with the prescribed formula and, thereafter make the payment of the advance tax within the specified time. In the case in hand, if the Authority had any objection regarding the calculations which have been made by the tax officer, then the latter was required to file such objections promptly before the taxation officer. However,

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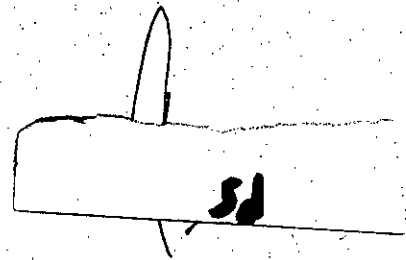
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no objections were filed. Nonetheless, since the calculations appear

to have been made on the basis of the Authority's own undisputed

declarations, therefore, there is no reason to treat them erroneous. However, in order to meet the ends of justice, if the Authority has any objection regarding the assessment/ calculations made by the taxation officer then it shall be at liberty to submit it within two days. In case such objections are filed, then the taxation officer would be expected to consider the same and pass an order in accordance with law. If the Authority files its objections within the time specified above, then the Court expects that recovery proceedings to the extent context of 50% i.e. half of the demanded tax shall be stayed. However, the Authority is expected to deposit the remaining amount of tax demanded vide the impugned orders, failing which the taxation officer shall be at liberty to proceed in accordance with law.

8. The petitions, therefore, stand disposed of in the above terms.



(CHIEF JUSTICE)

Tanveer Ahmed/\*

