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BEFORE THE HONORABLE LAHORE HIGH COURT
RAWALPINDI BENCH, RAWALPINDI

ITR NO. 53 /2025

Pakistan Railway Advisory & Consultancy Services Limited
PRACS House, Railway Station Road, Rawalpindi.

Applicant

VERSUS

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10 JUL 2025

**Exempt
Copy Supp. Section
Lahore High Court
Rawalpindi Bench**

1. Assistant Commissioner Inland Revenue, Unit-XIII Range V, ZONE-III LTU Islamabad.
2. Commissioner Inland Revenue, Unit-XIII Range V, ZONE-III LTU Islamabad.
3. Chief Commissioner Inland Revenue, LTU, Islamabad.
4. Commissioner Refund CTO Islamabad.
5. Appellate Tribunal Inland Revenue, Islamabad.

Respondents

REFERENCE UNDER SECTION 133(1) OF THE INCOME TAX ORDINANCE, 2001 AGAINST THE INPUGNED ORDER BEARING IRS BAR CODE NO. 100000073951712 DATED 05-JUNE-2020 PASSED BY THE ASSISTANT COMMISSIONER INLAND REVENUE UNIT XIII, RANGE-V, ZONE-III LTU ISLAMABAD AND FBR LETTER NO. 4(2)S(IR-LITIGATION/2024/ADRC/PRACS/6935-R DATED 14-JAN-2025 FOR DISSOLUTION OF ADRC AND ATIR ORDER 28-04-2025 RECEIVED ON 14-05-2025 FOR THE TAX YEAR 2017 (JULY 01, 2016 TO JUNE 30, 2017).

The Applicant states as follow: -

1. The Appellant is as State-Owned Enterprises (SOE) of Pakistan Railway.
2. That the Ex-parte order was made by the assistant Commissioner Inland Revenue Unit XIII, Range V, Zone III LTU, Islamabad Dated 05-June-2020 where by the refund of Rs. 45,951,069/- was rejected by the Assistant Commissioner Inland Revenue.
3. That instead of appreciating the fact by ACIR that all the evidences are readily available on FBR ITMS Portal, the ACIR passed the ex-parte order and rejected the genuine refund of Rs. 45,951,069/-.

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Form No: HCJD/C-121

ORDER SHEET
IN THE LAHORE HIGH COURT,
RAWALPINDI BENCH RAWALPINDI
JUDICIAL DEPARTMENT

I.T.R.No.53 of 2025

*Pakistan Railway Advisory and
Consultancy Services*

V/S

Assistant Commissioner etc.

S.No.of order / Proceedings	Date of order /Proceedings	Order with signatures of Judge, and that of parties or counsel, where necessary.
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25.06.2025

Agha Mujeeb Ahmed Khan, Advocate for the applicant.
Malik Itaat Hussain Awan, Advocate for the Applicant with Yousaf Khan, S.O. IR (Hqrs), RTO, Rawalpindi.

This reference application in terms of section 133 of the Income Tax Ordinance, 2001 (the "*Ordinance*") emanates from the order dated 28.04.2025, whereby the Appellate Tribunal Inland Revenue (Division Bench-II), Islamabad (the "*Appellate Tribunal*") proceeded to dispose of appeals of the applicant being not maintainable.

2. Learned counsel for the Respondent, at the very outset, objected to maintainability of this reference application on the ground that the appeals filed by the applicant was maintainable before the "*Appellate Tribunal*" in view of second proviso to sub-section 2 of Section 134A of the "*Ordinance*".

3. We have heard the counsel for the parties and perused the record.

4. Second proviso to sub-section 2 of Section 134A of the "*Ordinance*" reads as under:

"Provided further that SOE may file an appeal to the Appellate Tribunal or a reference to the High Court or a petition for

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leave to appeal to Supreme Court, as the case may be, where sub-section (11) is applicable".

The above said provision explicitly recognizes the right of a State-Owned Enterprise (SOE) to avail appellate remedies in appropriate forums. It stipulates that the SOE is legally competent to file an appeal before the Appellate Tribunal, or to file a reference before the High Court, or to submit a petition for leave to appeal before the Hon'ble Supreme Court of Pakistan, as the circumstances may warrant. However, this right is specifically exercisable in situations where sub-section (11) is attracted. In other words, the appellate remedies provided therein are contingent upon the applicability of sub-section (11), which is the triggering provision that confers the jurisdictional foundation for such proceedings. The phrase "as the case may be" signifies that the remedy to be pursued by the SOE depends upon the forum appropriate to the stage and nature of the dispute and the selection of the appellate forum must be in strict accordance with the statutory hierarchy and remedies provided under the law. In short, this proviso safeguards the right of appeal subject to the condition that the case falls within the ambit of sub-section (11), thereby ensuring that such proceedings are not initiated arbitrarily but in accordance with the statutory framework. Said sub-section 11 of Section 134A of the "Ordinance" reads as under:

"If the Committee fails to decide within the period of sixty days under sub-section (5), the Board shall dissolve the Committee by an order in writing and the matter shall be decided by the court of law or the appellate authority where the dispute is pending under litigation".

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Rawalpindi Bench

The legislative scheme, as reflected from a conjoint reading of second proviso and sub-section (11), envisages a structured dispute resolution mechanism with a defined timeline. The above said sub-section mandates that where the Committee, constituted under sub-section (5), fails to render its decision within a statutory period of sixty (60) days, the Board is duty-bound to dissolve the Committee through a written order. Upon such dissolution, the authority to adjudicate the dispute is transferred to the court of law or the relevant appellate forum where the matter is already pending or subsequently pursued under litigation. The proviso under examination further supplements this procedure by safeguarding the appellate rights of a State-Owned Enterprise (SOE). It provides that in cases where sub-section (11) applies, that is, where the Committee stands dissolved due to inaction, the SOE retains an unequivocal right to file an appeal before the "Appellate Tribunal", or to submit a reference to the High Court, or to file a petition for leave to appeal before the Supreme Court, as may be appropriate to the stage of the proceedings. The expression "*as the case may be*" indicates that the choice of the appellate forum must strictly correspond with the statutory stage of the case and the forum designated by the applicable procedural laws. It is a well-established principle of law that when a statute or procedural framework prescribes a sequence of remedies, the parties are bound to exhaust such remedies in the order in which they are provided. The scheme of the law does not permit a party to bypass the statutory sequence or to approach a higher forum without first availing the remedy before the subordinate or initial forum. Second proviso to sub-section 2 of Section 134A of the "*Ordinance*" evidently prescribes a sequence by first approaching the

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Appellate Tribunal, then to the High Court in a tax reference in terms of Section 133 of the "Ordinance" and then to the Supreme Court where sub-section 11 is applicable. Admittedly, the Committee, appointed under sub-section 5 of Section 134A of the "Ordinance" has failed to decide the matter within prescribed time thus, second proviso to sub-section 2 of Section 134A of the "Ordinance" is squarely applicable as the applicant challenged the order of the Commissioner (Appeal-IV), Inland Revenue, CTO Islamabad before the "Appellate Tribunal" which is the next higher forum for deciding the issue keeping in view the sequence of hierarchy and procedure applicable in terms of above said proviso. This Court in the case of "Messrs NATIONAL LOGISTICS CELL versus ASSISTANT/DEPUTY COMMISSIONER and others" (2025 PTD 614) has dilated upon Section 134A of the "Ordinance"; relevant part reads as under:

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"First proviso to Section 134A(1) of the Ordinance clearly manifests that it shall be "mandatory" for an aggrieved state-owned enterprises (the "SOE") having limit of tax liability of fifty million rupees or above to approach the Board for the appointment of a committee for the resolution of any dispute. The ADR is the result of landmark pronouncements of the Supreme Court of Pakistan on the issue of mediation. In this regard, reference can be made to the judgments reported as Federation of Pakistan and others versus Attock Petroleum Ltd. Islamabad (2007 SCMR 1095), Commissioner Inland Revenue versus Messrs RYK Mills (2023 SCMR 1856), Province of Punjab through Secretary C&W, Lahore, etc. versus M/s Haroon Construction Company, Government Contractor, etc. (2024 SCMR 947). Recently, this Court has also expanded scope of the mediation in the case of Strategic Plans Division and another versus Punjab Revenue Authority and others (PLD 2024 Lahore 545), in which this Court, while dealing with an

issue under the Punjab Sales Tax on Services Act, 2012, has discussed in detail the Anthology of the ADR by highlighting its importance.

3. In view of the above, this writ petition is disposed of with a direction to the Federal Government to establish the necessary committee of the ADR as per provisions of Section 134A(1) of the Ordinance on immediate basis so that the litigant may not suffer and the tendency of overburdening the Court with unnecessary litigation may also curtail. In the meanwhile, since the committee of the ADR has not been established so far and the Petitioner has no forum to get the dispute resolved by way of mediation, it is directed that no coercive measures shall be taken against it, till establishment of the ADR committee”.

5. In view of above discussion, it is held that the appeals of the applicant before the “Appellate Tribunal” were maintainable. Thus, we inclined to allow this reference application by setting aside the impugned order. As a sequel, the appeal preferred by the applicant shall be deemed to be pending before the “Appellate Tribunal”, who shall decide the same afresh after affording an opportunity of hearing to the applicant as well as respondent department, as per law.

6. Office to transmit copy of this order to the concerned quarters in terms of section 133(8) of the “Ordinance”

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(SARDAR AKBAR ALI)
JUDGE


(JAWAD HASSAN)
JUDGE

Form No: HCJD/C-121
ORDER SHEET
IN THE LAHORE HIGH COURT,
RAWALPINDI BENCH, RAWALPINDI
JUDICIAL DEPARTMENT
I.T.R. No.53 of 2025

Pakistan Railway Advisory & Consultancy Services *versus* Asstt: Commissioner etc

S. No. of order/ Proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of parties or counsel, where necessary
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24.06.2025 Agha Mujeeb Ahmed Khan, Advocate for the applicant.
Malik Itaat Hussain Awan, Advocate for the applicant with
Yousaf Khan, S.O. Inland Revenue (Hqrs), R.T.O,
Rawalpindi.

This reference application in terms of section 133 (1) of the Income Tax Ordinance, 2001 (the "*Ordinance*") emanates from *ex-parte* order dated 05.06.2020, whereby the Assistant Commissioner Inland Revenue, Unit XIII, Range V Zone-III, LTU, Islamabad rejected the refund of Rs.45,951,069/- claimed by the applicant and has also challenged the FBR Letter Dated 04.01.2025 as well as ATIR Order dated 28.04.2025 received on 14.05.2025 for the Tax Year 2017 (July 01, 2016 to June 30, 2016).

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2. Against the order dated 28.04.2025 passed by the ATIR, how this Tax Reference is maintainable because already pursuant to the judgment passed by this Court in the case of "*Strategic Plans Division and another vs. Punjab Revenue Authority and others*" (PLD 2024 Lahore 545), there was an amendment made under section 134-A which provides that for an aggrieved state-owned enterprises (the "SOE"), there shall be no appeal but for mandatory ADR with the FBR as per 134(1) proviso. This view was further fortified in the case reported as "*National Logistic Cell vs. Assistant Deputy Commissioner*" [2025 PTD 614 (Rawalpindi Bench)]. In this case counsel of the petitioner states that they have resolved the said committee

after the lapse of time. We have examined the letter dated 14.01.2025 wherein it has been held in paragraph-3 that the committee has failed to decide the case within stipulated time. It was just a refund in which there should be no delay because already the Hon'ble Supreme Court of Pakistan in a judgment of Messrs PFIZER LABORATORIES LIMITED vs. FEDERATION OF PAKISTAN and others (PLD 1998 SC 64) has given a detailed judgment on the refund to be paid to the tax payers.

3. The former seeks time to have instructions from the department that whether the matter can be decided with the constitution of the Alternative Dispute Resolution Committee again within a period of two weeks.

4. Relist for 25.06.2025.

(SARDAR AKBAR ALI)
JUDGE

(JAWAD HASSAN)
JUDGE

Petition No. 704
Date of Presentation 10/07/25
Date of Deposit of Fee
No. of Documents 18
Court Fee 64
Registration & Postage Fee 64
Agent's Fee
Court Fee & Auction Fee 2
Name of Counsel 66
Date of Presentation 10/07/25
Date of Completion of Case
Date of Delivery of Copy 10/07/25

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Examined by Quality Section
Authentic Order No. 107
Qanun-Sharada Order-1004