

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE MUNIB AKHTAR
MR. JUSTICE JAMAL KHAN MANDOKHAIL
MR. JUSTICE IRFAN SAADAT KHAN

C.A.430/2026

(On appeal under the proviso to section 134A(13) of the Income Tax Ordinance, 2001 against the order dated 21.03.2025 made by the ADR Committee)



Universal Service Fund, Islamabad
vs

... **Appellant**

Federation of Pakistan through Secretary,
Revenue Division, Ministry of Finance,
Islamabad and others

... **Respondents**

For the Appellant : Mr. Shahid Jamil Khan, ASC
Mr. Muhammad Naeem UI Haq, ASC
Assisted by Mr. Waqas Ahmed, AHC

For Respondents No.2-3 : Mrs. Asma Hamid, ASC

Federation : Mr. Qalb-e-Abbas, S.O. Finance

Date of Hearing : 19.06.2026

ORDER

Munib Akhtar, J.: While this matter arises out of the Income Tax Ordinance, 2001 ("Ordinance") it comes to the Court by an unconventional route. Tax matters invariably come by way of leave petitions from judgments of High Courts given in tax references filed before the latter, whether by the taxpayer or the Commissioner (herein after referred to as the "Department"). This matter however is brought by way of a specially created (and strictly limited) appeal under the proviso to subsection (13) of s. 134A. The Department takes a preliminary objection that, in the facts and circumstances of the case, the appeal is not maintainable. The taxpayer (who, subject to determination of the said objection, is referred to as the "appellant") of course asserts the right of appeal. That is the first point that requires

determination. Should the preliminary objection be overruled then the matter will move to a consideration of the dispute on the merits, which (briefly stated) is whether the appellant was obligated, in the facts and circumstances of the case, to deduct advance tax as required by s. 153 on payments made by it to certain parties. The tax year is 2023.

2. It will be convenient to begin with a look at s. 134A. That section, as its marginal note (i.e., heading) attests, sets up a framework for “alternate dispute resolution” of tax disputes (“ADR”) by a committee specially created for such purposes by and in terms of the section (herein after referred to as the “ADR Committee”). Now, it is to be noted that s. 134A has gone through several changes since its introduction in 2004, both by way of complete substitution or amendments (from time to time) of the various iterations that resulted from such substitutions. The section, as added in 2004 (original, or first, iteration), was substituted (i.e., in its entirety) by means of the Finance Act, 2018 (second iteration). This was so substituted by the Finance Act, 2020 (third iteration). This was in turn substituted by the Finance Act, 2022 (fourth iteration). This was then substituted by the Finance Act, 2023 (fifth iteration). It is to be noted that the fifth iteration was amended in certain respects relevant for present purposes by the Tax Laws (Amendment) Act, 2024 (“2024 Act”), with effect from 03.05.2024. The fifth iteration (as amended) was substituted by the Income Tax (Amendment) Act, 2026 (with effect from 26.01.26), being the sixth, and current, iteration. We will, in the main, be concerned with the fifth iteration (as amended by the 2024 Act) and the current, sixth iteration. Regrettably, it must be said that the continual and, in recent years, rapid changes in the law have created a tangled web, a small indication of which is that s. 134A has “expanded” from seven subsections in the first iteration to 20 in the current. Numerous amendments to the section even in between iterations have, as it were, caused it to wax and wane by the addition or omission of subsections. It has been no easy task to wade through the ensuing statutory morass.

3. It is also to be noted that it is common ground that the appellant is a state-owned enterprise (“SOE”) within the meaning

of the State-Owned Enterprises (Governance and Operations) Act, 2023 (“SOE Act”). SOEs are invariably liable to tax under the Ordinance and the appellant is no different. Now s. 134A had, in all its versions up to the fifth iteration as originally enacted, not referred specifically to SOEs. It dealt with taxpayers generally. Broadly speaking, it made permissible for a taxpayer to have its tax dispute resolved through ADR. It was however not mandatory for that mechanism to be availed. All this was changed, insofar as the SOEs were concerned, by the amendments made to the fifth iteration by the 2024 Act, when specific provision was made for such taxpayers. In particular, the changes relating to the first two subsections are relevant for present purposes. By the 2024 Act these were wholly substituted. For convenience, the position of subsections (1) and (2) in the fifth iteration as originally enacted, and then as brought about by the 2024 Act, is set out below in tabular form, insofar as presently relevant (emphasis supplied):

Subsections (1) and (2) of fifth iteration, as originally enacted	Subsections (1) and (2) of fifth iteration, as those subsections stood substituted by the 2024 Act
134A. Alternative Dispute Resolution.– (1) Notwithstanding any other provision of this Ordinance, or the rules made thereunder, an aggrieved person in connection with any dispute pertaining to – (a) the liability of tax of one hundred million rupees or above against the aggrieved person or admissibility of refund, as the case may be; (b) the extent of waiver of default surcharge and penalty; or (c) any other specific relief required to resolve the dispute, may apply to the Board for the appointment of a committee for the resolution of any hardship or dispute mentioned in detail in the application, which is under litigation in any court of law or an appellate authority, except where criminal proceedings have been initiated. (2) The application for dispute resolution under sub-section (1) shall be accompanied by an initial proposition for resolution of the dispute, including an offer of tax payment	134A. Alternative Dispute Resolution.– (1) Notwithstanding any other provision of this Ordinance, or the rules made thereunder, an aggrieved person in connection with any dispute pertaining to— (a) the liability of tax of fifty million rupees or above against the aggrieved person or admissibility of refund, as the case may be; (b) the extent of waiver of default surcharge and penalty; or (c) any other specific relief required to resolve the dispute, may apply, except where criminal proceedings have been initiated, to the Board for the appointment of a committee for the resolution of any hardship or dispute mentioned in detail in the application: <i>Provided that where the aggrieved person is a state-owned enterprise (SOE), the limit of tax liability of fifty million rupees or above mentioned in clause (a) of sub-section (1) shall not apply and it shall be mandatory for such aggrieved SOE to apply to the Board for the appointment of a</i>

	committee for the resolution of any dispute under this section: ... Explanation.—State-owned enterprise shall have the same meaning as assigned thereto in the State-Owned Enterprises (Governance and Operations) Act, 2023 (VII of 2023). (2) The application for dispute resolution under sub-section (1) shall be accompanied by — (a) an initial proposition for resolution of the dispute, including an offer of tax payment; and (b) an undertaking that the applicant shall accept the decision of the Committee which shall be binding on him in all respects and shall on receipt of the decision immediately withdraw any and all pending litigation or cases of any kind in respect of the dispute, mentioning details thereof: Provided that if the applicant is an SOE, <u>it shall withdraw any and all such pending litigation and cases immediately and mention the details thereof in the undertaking:....</u>
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4. As will be noted, in the fifth iteration as originally enacted it was permissible (“may”) in terms of subsection (1) for a taxpayer (and this applied to all taxpayers in general) to apply for ADR subject to the limitations and conditions as set out therein. This was, in fact, the position that had existed in all previous iterations as well. However, when the first two subsections were substituted by the 2024 Act express provision was made for SOEs. In terms of the first proviso to subsection (1) it became mandatory for SOEs to refer all disputes for ADR; even the pecuniary limit was removed. Secondly, in terms of the second subsection, while other taxpayers had simply to give an undertaking that pending litigation or cases would be withdrawn on the decision of the ADR Committee, the first proviso made it mandatory for SOEs to “immediately” withdraw any and all such proceedings.
5. It is now necessary to pause in our examination of s. 134A and take a look at the facts and circumstances of the case. The appellant filed its return for the tax year 2023 and in terms of s. 120 it became a deemed assessment order. This was sought to be

amended by the Department under s. 122 for a number of reasons, of which only one is relevant for present purposes. The appellant was intimated that as it had failed to make deductions as required by s. 153 in respect of payments (which ran to tens of billions of Rupees) to certain persons (being licensees under the Pakistan Telecommunication (Reorganization) Act, 1996), it was liable to the application of s. 21(c) in respect of such payments. The said payments totaled around Rs. 17.7 Billion. Section 21(c), inter alia, disallows the deduction, for purposes of determining tax liability, of payments in respect of which no deduction has been made under s. 153. It may be noted that it is not in dispute that absent the application of s. 21(c) the appellant would be allowed to treat the payments in question as permissible expenditure. The appellant was called upon to show cause why the deemed assessment order ought not to be amended on this account; the potential tax liability would run to several billion Rupees. It will be seen that since the claimed application of s. 21(c) rested entirely on whether the appellant was obligated to make the deductions under s. 153 the crucial question (and the essence of the dispute on the merits) was whether this was indeed so. The appellant disputed the notice but in the event, by order dated 31.01.2024, it was held that the appellant had been so obligated and hence that s. 21(c) did apply. This resulted in a tax liability of Rs. 4,793,282,885/-. The stance of the appellant was set out in the order amending the deemed assessment as follows:

“The reply of the taxpayer authenticates the fact that it has declared an expenditure amounting to PKR.17,764,840,062/- on account of subsidy grant for projects against the contracts awarded by the company to the cellular companies i.e. PTCL, PTML, PMCL and Telenor etc. after following the auction/tender bidding process for the award of the contracts. The taxpayer was confronted to explain the non-deduction of tax under section 153(1) while making this payment to the cellular companies. Taxpayer has furnished its reply explaining the whole process of awarding the contracts to the cellular companies as per the agreements with the telecom companies and USF rules and that the USF fund is part of the Fund account of the GoP whose possession, management, control and its income, undertakings, properties and assets are vested with the Government of Pakistan. Moreover, MOA of the company exhibits that the company is established to provide an enabling environment that facilitates utilization of network

and to award contracts by tender or auction to the contractors for execution of the projects. The contracts of these communication network projects are awarded to the successful bidders (telecommunication companies) and the amount is accordingly released for contracts as per the terms of the agreements. The taxpayer identifies un-served and under-served areas for providing access to telecommunication services to people in those areas and then, in accordance with the rule 23 of the Universal Service Fund Rules, 2006, prepares feasibility of projects for providing access to telecommunication services to people in those areas.

It is pertinent to mention that the stance of the taxpayer that "the taxpayer is only acting as conduit on behalf of the government of Pakistan to make it possible for telecommunication companies to provide telecommunication services to the people of unserved or under-served areas" and "that the payment of subsidy grants for projects is not subject to withholding either under section 153(1)(b) or 153(1)(c) as the taxpayer is neither receiving nor providing any services under the contract and in addition to the above the challenged amount is paid by the taxpayer on behalf of the Government to meet the cost differential of building and maintaining the infrastructure["]]. Furthermore, the proper performance of the contract with the successful bidders does not meet the definition of contracts provided in Circular 11 of 1991 of the Federal Board of Revenue is not tenable. As in support of its contention, the taxpayer neither furnished copies of projects undertaken and complete copies of the contracts made with the successful bidders (telecommunication companies) nor presented any bank statements reflecting any cash flow to the provider by the Federal Govt and from the provider to the selected bidders. Similarly, the ledgers i.e., advertisement/publicity ledger, technical and monitoring audit fee ledger as well as legal and professional charges fee ledger etc. are not supported by any concrete evidence/invoices or CPRs."

The findings recorded by the Department against the appellant were as under (emphasis supplied):

"Without prejudice to the above, examination of the reply and further nature of the transactions with the telecom companies as elaborated by the taxpayer "that, even otherwise and without prejudice to the above, the payment of these subsidy grants for projects merely by way of agreement between the Government and the payees which does not make them liable to tax deduction under section 153(1)(c) of the Ordinance. Besides this, the Government itself also considers such payment as a subsidy grant and does not withhold tax on such payments to the taxpayers which is ultimately paid to the telecom operators by the taxpayers".

Scrutiny of the submitted record reflects that the contracts whereby the appellant made payments/claims to be paying subsidy to the successful bidders are not the

contracts for civil, mechanical, electrical works, labor or carriage contracts to be assessed u/s 153(1)(c) *rather for providing telecommunication services to people in previously un-served or underserved areas as opined by the taxpayer. Hence, it is an admitted fact that the said payments were being made by the appellant to various USF service providers (telecommunication companies) in lieu of provision of USF services (comprising of telephony and internet services) in unserved and under-served areas under the auspices of various contractual agreements.*

In light of the above, the undersigned is of the opinion that the appellant being a company limited by guarantee falls within the ambit of a prescribed person in terms of section 153(i)(b) of the Ordinance and as such, was required to withhold tax under section 153 (1)(b) of the Ordinance from payments made for the provision/rendering of services by USF service providers under the auspices of specific contracts. Thus, nature of the transactions with the telecom companies as elaborated by the taxpayers required the compliance of section 21(c) of the Ordinance which is rightly attracted on account of inability of the appellant to withhold tax under section 153(1)(b). These subsidy grants are then released to the successful bidders in accordance with subsidy payments in terms of agreement, hence USF is not federal government rather a public limited company making payments to the telecom companies after awarding contracts for the telecom projects. Owing to the nature of the transactions executed by the company with the telecom companies for the execution and implementation of telecom projects, this provision of access to Tele services is not free of cost and is charged at different rates by the said companies. The taxpayer company USF is a normal company, established to earn business income. It is also argued by the taxpayer in its reply that in pursuance of rule 26 of the Universal Service Fund Rules, 2006 such subsidy grants are released to the successful bidders in accordance with the subsidy payments as per the terms delineated in the agreements executed between the appellant and various telecom operators. The impugned payments being made by the appellant have been notified as "subsidy" under Rules 2(xi), 2(xx), 23(1)(2), 24(6A)(11)(12), 26(1) and 26(3) of the Universal Service Fund Rules, 2006 and that such payments are subsidy grants and cannot be construed as payments being made in pursuance of a contract, liable to tax deduction under section 153(1)(c) of the Ordinance, therefore, disallowance of the same under section 21(c) of the Ordinance was not justified. It is also argued that the payees of such "subsidy grants" have duly declared /recognized such receipts in their audited financial statement and have declared such income in their income tax returns for the tax year 2022. Attention has been drawn to the second proviso to section 21(c) of the Ordinance which stipulates that where the tax required to be deducted from a payment has been paid by the payee, the same shall be considered as tax paid for the purposes of section 21(c) of the Ordinance.

This stance of the taxpayer that it has merely disbursed the grants to the telecommunication service provider on behalf of the Federal Government, as envisaged under section 33A(1) of the Telecommunication (Reorganization) Act, 1996 and that the taxpayer has not made any payments but has only disbursed the grants under the orders of the Federal Government, accordingly, while disbursing the grants the taxpayer has neither availed any service nor has received any supply of goods, is not tenable in the eyes of law, owing to the facts that taxpayer failed to furnish any exemption certificates. In this view, and contrary to the arguments made by the taxpayer, the reliance should not be made on mere nomenclature of "subsidy" assigned to the payments as per the USF rules, rather the actual nature of the payments is to be taken into account. It is the actual substance and nature of the transaction, (as enunciated by the taxpayer itself in detail) on the basis of which taxability is determined. The name given to the transaction is irrelevant and the actual transaction and substance has to be unearthed to reach a conclusion regarding the mode and manner of the taxability of the same....

As a matter of fact, taxpayer's stance that the such payments are subsidy grants and cannot be construed as payments being made in pursuance of a contract, liable to tax deduction under section 153(1)(c) of the Ordinance and disallowance of the same under section 21(c) of the Ordinance is not justified is rejected."

6. It appears that the appellant filed an appeal, on or about 29.02.2024, to the Commissioner (Appeals) against the amended assessment order. This was, of course, simply recourse to a remedy available under the Ordinance. While that appeal was still pending, the fifth iteration of s. 134A was amended by the 2024 Act. As noted above, it now became mandatory for an SOE to apply for ADR under the section. By order dated 04.12.2024 the appellate authority, expressly referring to the 2024 Act, informed the appellant that it had to approach the ADR Committee and that the appeal stood disposed of accordingly.

7. The appellant filed an application in relation to the tax dispute before the ADR Committee, on or about 13.02.2025. By order dated 21.03.2025 the ADR Committee (briefly stated) held that the appellant had indeed been under an obligation to make deductions under s. 153. It however, limited the effect of this failure to a tax liability of Rs. 1,533,018,333/- (being the aggregate amount that ought to have been deducted plus surcharge thereon), holding that if such amount was paid by a

stipulated date (28.03.2025), that would suffice to “annul” the application of s. 21(c) on the whole of the payments made to the licensees.

8. The appellant, it appears, was not satisfied with the decision of the ADR Committee. While the relief given was certainly considerable the tax liability still amounted to a substantial sum. The appellant’s stance from the beginning had been that it was under no obligation to make deductions. An examination of the record shows that the question for the appellant then became as to what legal recourse it had against the decision of the ADR Committee. On the date of the decision s. 134A of course stood in the form of the fifth iteration, as amended by the 2024 Act. Now, as noted, for taxpayers in general the section was merely permissive; taxpayers were not obliged to seek recourse to ADR. The section further provided (in subsection (8)) that the decision would be binding on the Department only if the taxpayer communicated its acceptance of the same by, inter alia, withdrawing the pending litigation within a stipulated period. It is to be noted that the undertaking to be given by all taxpayers in terms of subsection (2)(b) (reproduced above) used the term “shall” thrice. It could be regarded as having three elements: (i) to accept the decision of the ADR Committee, which would (ii) “be binding on [the taxpayer] in all respects”; and that (iii) the taxpayer would withdraw pending litigation. However, a conjoint reading of this with subsection (8) made clear that it was in fact open for taxpayers in general not to accept the decision of the ADR Committee. This meant that if the taxpayer was not satisfied with the decision it could continue with the pending litigation as regards the tax dispute, at whatever stage the relevant proceedings were at the time that the dispute was referred for ADR.

9. The position of an SOE was however completely different. In terms of the first proviso to subsection (2) it had to “immediately” withdraw any pending litigation while mandatorily applying for ADR under the first proviso to subsection (1). It was for this reason why, in the case at hand, the Commissioner (Appeals) intimated the appellant that its appeal stood disposed of by reason

of the changes made by the 2024 Act to s. 134A. But what if the SOE was not satisfied by the decision of the ADR Committee? It was after all a taxpayer, in dispute with the Department over a tax matter. What legal recourse did it then have? It appears that the appellant concluded that in terms of and under the Ordinance it had no legal recourse against the decision. In particular, it could not revive/renew the appeal that had been pending before the Commissioner (Appeals). In other words, the effect of the first proviso to subsection (2) was that the decision of the ADR Committee became binding on the SOE. Remedies under the Ordinance, to the extent availed up to the mandatory reference to ADR, stood expressly closed. That necessarily meant that recourse to further such remedies stood foreclosed, since the Ordinance sets up a carefully crafted, stage wise hierarchy of forums in this regard up to, and including, a tax reference to the High Court. Clearly, in the case at hand, the remedy already availed, the appeal to the Commissioner (Appeals), stood closed. Since that statutory remedy was no longer available the other remedies under the Ordinance, by way of a further appeal to the Appellate Tribunal and thereafter a reference to the High Court necessarily stood foreclosed. In our view, the appellant was correct in concluding that it had no legal options under the Ordinance against the decision of the ADR Committee. It followed that if at all the appellant wished to challenge the legal validity of the decision it could only do so by filing a petition under Article 199 of the Constitution in the concerned High Court. This the appellant promptly did, filing a case, being WP 1181/2025, in the Islamabad High Court on or about 24.03.2025. Although the relief claimed was broadly stated, the essence of the case brought was a challenge to the legal validity of the decision of 21.03.2025. This necessarily also brought into question before the High Court the correctness of the Department's amended assessment order dated 31.01.2024.

10. There matters stood when the law was changed yet again and s. 34A substituted afresh by the Income Tax (Amendment) Act, 2026 to take its current form as the sixth iteration. It is now necessary to examine this version. Subsection (1) is essentially in the same form as before, making it mandatory in its first proviso

for SOEs to apply for ADR under the section. The second subsection, however, is materially different in certain aspects relevant for present purposes. Subsection (2) has been given the following shape in the sixth iteration (emphasis supplied):

“(2) The application for alternative dispute resolution under sub-section (1) shall be accompanied by –

(a) initial proposition for resolution of the dispute; and

(b) an undertaking that *if the applicant accepts the decision of the Committee*, it shall be binding on him in all respects and shall on receipt of the decision within fifteen days withdraw any and all pending cases of any kind in respect of the dispute, mentioning details thereof:

Provided that in case of *SOE which is, directly or indirectly, wholly owned by the Federal Government*, the decision of the Committee shall be final and binding on the Commissioner and the SOE.”

This subsection requires close attention. It will be noted (see the table above in para 3) that while, as before, clause (b) requires taxpayers in general to give an undertaking the nature of that undertaking has been altered. Previously the undertaking comprised of the three elements noted in para 8 above. Now, however, the undertaking need only state that if the taxpayer accepts the decision of the ADR Committee it will be binding on it in all respects and that the taxpayer will then withdraw pending litigation. Subsection (8) of the current iteration is in the same terms as in the fifth iteration, and has been considered above. The combined effect of these provisions is that it makes clear and express what had earlier been implicit: the decision of the ADR Committee would be binding on a taxpayer only if it accepted the same. If not, it could then continue availing the legal remedies already invoked by way of pending litigation.

11. The position of the SOEs has also been materially altered. The proviso to subsection (2) now provides, not for the immediate withdrawal of all pending litigation by the SOEs as had been previously the case, but that the decision of the ADR Committee would be final and binding on the SOE and the Department. But there is another crucial difference. The proviso does not apply to all SOEs. It only applies to such SOEs as are, directly or

indirectly, wholly owned by the Federal Government. It follows from this that the position of the SOEs as are *not* (directly or indirectly) wholly owned by the Federal Government has been harmonized with taxpayers in general. Put differently, the first two subsections of s. 134A, in the fifth iteration as amended by the 2024 Act, had divided taxpayers into two categories: taxpayers in general on the one hand and all SOEs on the other. The current sixth iteration creates three categories: (i) taxpayers in general; (ii) all SOEs and (iii) such SOEs as are, directly or indirectly, wholly owned by the Federal Government. The first two categories applied, and continue to apply, at the stage of whether s. 34A was or is to be invoked at all. Here, there were and are only two categories, the first and the second, in both the fifth and sixth iterations. This is clear from the first proviso to subsection (1) which (as before) makes it mandatory for all SOEs to refer tax disputes to ADR regardless of the amount involved. For taxpayers in general the provision is only permissive. However, once the ADR Committee has given its decision then (and this is the effect of the proviso to subsection (2) of the current iteration) the taxpayers split into the first and third categories: SOEs that do not fall in the latter stand subsumed in the first. In other words, it is no longer the case that an SOE that is not, directly or indirectly, wholly owned by the Federal Government is bound by the decision of the ADR Committee. Unlike the position prior to the sixth iteration, it can, like all other taxpayers, not accept the decision and continue to take recourse to legal remedies availed (and here the proviso to subsection (11) would also have to be taken into account). Finally, and for purposes of completeness, what of the situation where the ADR Committee fails to give its decision within the stipulated period, which is set at 90 days in subsection (5) of the sixth iteration (previously, under the fifth iteration, it had been 45 days (extendable by another 15 days))? In such a case subsection (11) becomes applicable. The main part applies to all taxpayers, including all SOEs, and provides that the ADR Committee would stand dissolved and thereupon “the matter shall be decided by the court of law or Appellate Tribunal or tax authority, as the case may be”. The proviso to the subsection however, creates a crucial

distinction, which is important for present purposes. This is considered below.

12. It follows from the foregoing that in terms of s. 134A as it stands in terms of the sixth iteration it is of crucial importance to determine whether an SOE is or is not, directly or indirectly, wholly owned by the Federal Government. But the distinction so created also has another important consequence. What of those cases where an SOE had, prior to the sixth iteration, challenged a decision of the ADR Committee given under the fifth iteration as amended by the 2024 Act? The sixth iteration deals with this point in subsections (12) and (13):

“(12) All petitions filed by the SOEs, directly or indirectly, wholly owned by the Federal Government, against the decision of the Committee made prior to commencement of the Income Tax (Amendment) Act, 2026 (Act No. IX of 2026) and pending before the Federal Constitutional Court, the Supreme Court or a High Court shall, upon commencement of the Income Tax (Amendment) Act, 2026 (Act No. IX of 2026), abate.

(13) Notwithstanding anything contained in sub-section (12), petitions filed by SOEs, which are not wholly owned by the Federal Government, against the decision of the Committee made prior to commencement of the Income Tax (Amendment) Act, 2026 (Act No. IX of 2026) and pending before a High Court, shall upon commencement of the Income Tax (Amendment) Act, 2026 (Act No. IX of 2026) abate:

Provided that such SOEs may prefer an appeal to the Federal Constitutional Court or the Supreme Court, as the case may be, against the decision of the Committee, within a period of sixty days from commencement of the Income Tax (Amendment) Act, 2026 (Act No. IX of 2026).”

13. Subsection (12) applies only to those SOEs as are, directly or indirectly, wholly owned by the Federal Government. It brings within its net such decisions of the ADR Committee as had been given before the coming into force of the Income Tax (Amendment) Act, 2026 (i.e., the sixth iteration) and as were under challenge before a High Court, this Court or the Federal Constitutional Court (“FCC”). The specific mention of these Courts only (and not the Appellate Tribunal or tax authority) confirms the analysis carried out in the paras herein above: an SOE had no recourse to

remedies under the Ordinance against the decision of the ADR Committee and could only challenge the same by way of a writ petition in the High Court concerned. By the time the sixth iteration came into force, such a challenge could either be pending before the High Court or, having been decided there, by way of a leave petition or appeal (if leave had been granted) in this Court or the FCC. Subsection (12) provides that all such proceedings abate. It will be recalled that in terms of the proviso to subsection (2) of s. 134A of the sixth iteration the decision of the ADR Committee, where the taxpayer is an SOE directly or indirectly wholly owned by the Federal Government, attains finality and is binding on both the SOE and the Department. The purpose and effect of subsection (12) is clearly to ensure that even those decisions of the ADR Committee as were given prior to the sixth iteration in cases involving such SOEs attain finality. In other words, the subsection harmonizes the position of ADR Committee decisions both prior to the sixth iteration and those given after it came into force. If the taxpayer concerned is an SOE that, directly or indirectly, is wholly owned by the Federal Government, in all cases the decisions of the ADR Committee attain finality: the tax dispute is over.

14. Subsection (13) applies to SOEs as are *not* wholly owned by the Federal Government. Furthermore, it applies only to a challenge to a decision of the ADR Committee given before the sixth iteration came into force as was pending in a High Court (i.e., there is no mention of either this Court or the FCC). Furthermore, and most crucially for present purposes, while any such challenge in the High Court is to abate, the proviso allows for the filing of an appeal against the decision to this Court or the FCC, as the case may be. The question is, why these differences? To answer this question, which is of importance for present purposes, it will be necessary firstly to recall that, as noted above, in relation to the decision of the ADR Committee, the sixth version subsumes the position of an SOE that is not wholly owned by the Federal Government into that of taxpayers in general. Such an SOE, like taxpayers in general, may choose to accept the decision or may refuse to do so. If the latter, then what are the legal remedies available to the SOE? It appears that it may have two

options. It can either, like taxpayers in general, continue to avail the legal remedies already pursued at the time that it had to (of course, mandatorily) refer the dispute for ADR. In such a scenario, it would (again, in common with taxpayers in general) essentially ignore the decision of the ADR Committee and continue with its legal proceedings. But, under the sixth iteration it appears also to have another option, this time against the decision of the ADR Committee itself. This is contained, somewhat anomalously, in the proviso to subsection (11) of s. 134A. The main provision states that if the ADR Committee fails to decide the tax dispute within the 90 days stipulated by subsection (5), it shall be dissolved and thereupon “the matter shall be decided by the court of law or Appellate Tribunal or tax authority, as the case may be”. As noted above, this applies in the case of taxpayers in general, including all SOEs. However, the proviso then proceeds to state as follows (emphasis supplied):

“Provided that in case of SOE, *except an SOE, which is, directly or indirectly, wholly owned by the Federal Government*, either party may prefer an appeal to the Federal Constitutional Court or the Supreme Court, as the case may be, within a period of sixty days *against a decision of the Committee* or where no decision is made, upon receiving order of dissolution of the Committee.”

The proviso applies only when the taxpayer is an SOE and that also only to one which is not wholly owned, directly or indirectly, by the Federal Government. It does not cover any other category of taxpayer. In the case of such an SOE it appears to give both the Department and the SOE (“either party”) the option (“may”) to take the matter by way of an appeal directly to this Court or the FCC *either* when the ADR Committee stands dissolved without giving a decision *or* against such a decision if given.

15. The position in terms of the sixth iteration, of an SOE that is not, directly or indirectly, wholly owned by the Federal Government, may therefore be summed up as follows. Such a taxpayer may, in line with other taxpayers in general, either accept or reject the decision of the ADR Committee. If the latter, it then has two options. Firstly, like other taxpayers in general, it may continue taking recourse to remedies already availed under

the Ordinance, thereby essentially ignoring the decision of the ADR Committee. But, secondly, and this time it alone has another option: to challenge the decision of the ADR Committee itself. The legal recourse, should this route be taken, is set out in the proviso to subsection (11): it is by way of direct appeal against the decision itself to either this Court or the FCC, as the case may be.

16. Once the foregoing is kept in mind, the form and purpose of subsection (13) becomes clear: it is to harmonize the position vis-à-vis decisions of the ADR Committee given against such SOEs before the coming into force of the sixth iteration with that obtaining in terms of the latter. This is why the subsection refers only to petitions pending in a High Court on the date that the sixth iteration came into force: if by then the matter had already moved on to this Court or the FCC, either by way of a leave petition or (if leave stood granted) an appeal, that was of no moment since then the situation already stood harmonized with what the sixth iteration seeks to achieve. A petition pending in the High Court however had to abate. But if the subsection had simply stopped there, then in respect of the challenge to the concerned ADR Committee decision the position would not be harmonized. Hence the proviso: an appeal would lie in such circumstances against the decision to either the FCC or this Court, as the case may be.

17. For the proviso of subsection (13) to apply, two conditions had to be fulfilled. Firstly, the SOE concerned had *not* to be wholly owned, either directly or indirectly, by the Federal Government. Secondly, at the time the sixth iteration came into force it had to have a petition pending in a High Court against a decision of the ADR Committee. And this, finally, brings us to the present matter, for the instant appeal has been presented under this provision. The appellant's case is that it is an SOE that is not, directly or indirectly, wholly owned by the Federal Government. It is also its case that it is aggrieved by a decision of the ADR Committee given on 21.03.205, i.e., prior to the coming into force of the sixth iteration and that it had a petition pending in a High Court against such decision at the relevant time (i.e., WP 1181/2025). The relevant conditions being fulfilled, the appellant's case is that

the appeal is maintainable. (It may be noted that WP 1181/2025 was formally withdrawn on or about 26.03.2026.)

18. The Department on the other hand objects to the appeal's maintainability. The ground taken is that the appellant is an SOE that, directly or indirectly, is wholly owned by the Federal Government. In effect, the Department's position is that it is subsection (12) and not (13) that applies. We turn therefore to consider this issue.

19. As is clear, the crux of the matter is as to what it is meant by the phrase "wholly owned"? It is to be emphasized that the question arises here in a specific statutory context, which is enfolded in a fiscal statute. The context is limited and particular: whether there is a right of appeal to this Court against the decision of the ADR Committee. A determination of the issue must therefore move within a tight and narrow locus. Whatever meaning is to be attributed to the phrase here, it must be regarded as being of limited application and effect. In other statutory or factual contexts, catering to other purposes and effects that may be entirely distinct and separate (and indeed far removed) from subsections (12) and (13), the question may well be answered differently. Indeed, that answer may be at odds with, and even diametrically opposed to, the conclusion that is reached here. If so, that would simply be a consequence of the narrow and tight limits within which the question is raised in this matter. This aspect must be kept in mind at all times.

20. In our view, in the context in which the issue arises here, the phrase "wholly owned" has to be given a strict and literal meaning. "Wholly" means precisely that: in its entirety, completely, to the fullest extent, leaving nothing behind or outside its scope, no matter how minor it may be. Thus, e.g., the maxim *de minimis non curat lex* would have no application here. The reason is that it is on the contextual scope and effect of the phrase that the question, whether the appellant can, or cannot, continue to have recourse to a judicial remedy, turns. It is also to be noted that the right granted in terms of the proviso, in effect, simply continues a legal challenge already being pursued, by allowing for

an appeal on the abatement of the petition in the High Court. In other words, the question is whether by mere change in law an existing and availed judicial remedy can be extinguished or allowed to be pursued, though in a different form. It is well settled that whenever and wherever possible the better interpretation is to allow for the preservation of recourse to Courts and for judicial remedies to continue. Hence, the strict and literal meaning that has to be given to “wholly owned”. The same approach ought also to be taken to the words “directly or indirectly”, which give further shape and contour to the phrase. More precisely, the word “indirectly”, which seeks to enlarge the scope of “wholly” beyond what is “directly” owned, cannot be given too expansive or broad an effect. It must be contained to what would be the natural limits of its meaning.

21. With the foregoing in mind we turn to look at the legal nature of the appellant. It is a company incorporated in 2006 under the Companies Ordinance, 1984 (“1984 Ordinance”), and is of course now governed and regulated by the Companies Act, 2017 (“2017 Act”). It is in form a company limited by guarantee and without a share capital (this form is herein after referred to as a “guarantee-company”). The question therefore becomes as to what, in the context and for purposes of subsections (12) and (13) in particular and s. 134A in general, does it mean for a guarantee-company to be “wholly owned”, directly or indirectly, by the Federal Government?

22. To address this point and to show that the appellant is indeed wholly owned by the Federal Government, learned counsel for the Department took us through the legislative provisions in terms of, and for, which the appellant was incorporated. Learned counsel first referred to s. 33A of the Pakistan Telecommunication (Reorganization) Act, 1996 (“1996 Act”). This section falls in Chapter IIIA of the statute, which was inserted in 2006. It requires the Federal Government to establish a fund under its control to be known as the Universal Service Fund (“USF”). The USF comprises of various amounts as set out in subsection (4) of s. 33A; these include prescribed contributions from licensees under the statute. Subsection (1) of s. 33B provides that the “Federal Government

shall have the power to administer the USF in such manner as may be prescribed”. Prescribed has its usual meaning and the relevant power to frame rules is conferred by s. 57: clause (ab) of its subsection (2) deals specifically with the USF. Learned counsel submitted that in exercise of these powers the Federal Government has framed the Universal Service Fund Rules, 2006 (“USF Rules”), as amended from time to time. Reliance was placed in particular on the following rules (as presently relevant):

“10. Creation of USF company.— (1) The Federal Government shall within sixty days of the commencement of these rules cause incorporation of a USF company limited by guarantee in accordance with the Ordinance. The Federal Government may within seven days of such incorporation transfer an amount of fifty million rupees in the account of USF Company to enable it to meet its initial needs and capital expenditure.

(2) The Secretary, Information Technology, and two officers of the Federal Government nominated by the Secretary shall subscribe their names to the memorandum and articles of association of the company.

11. Composition of the Board.—(1) The Board shall consist of the following, namely:—

- | | | |
|-----|--|---------------|
| (a) | Secretary of the Division concerned with Information Technology and Telecommunication; | Chairman |
| (b) | Executive Director, National Information Technology Board | Vice Chairman |
| (c) | Member Telecom, Ministry of Information Technology | Member |
| (d) | Chairman of the Authority | Member |
| (e) | Nominee of fixed-line licensees | Member |
| (f) | Nominee of mobile cellular licensees | Member |
| (g) | Nominee of data licensees | Member |
| (h) | Representative of consumer groups; and | Member |
| (i) | Chief Executive Officer | Member |

(2) The Secretary of the USF Company shall also act as Secretary of the Board

(3) The Board shall regulate its own procedures in accordance the provisions of the Ordinance and memorandum and articles of association of the company.

(4) The Federal Government may increase the number of members of the Board at any time by following the procedure mentioned in the Ordinance, however, while doing so it shall have to keep the representation of licensees proportionate to their representation provided in sub-rule(1).

12. Appointment and tenure of members. — (1) The members representing licensees and consumer groups in the Board shall be nominated by the Federal Government.

(2) The Federal Government shall nominate any registered Body having mandate to watch consumers' interest but having no interest or control of Federal, Provincial or local Governments for the provisions mentioned in sub-rule (2) of rule 10.

(3) The tenure of the members of the Board shall be in accordance with the provisions of the Ordinance. ...”

23. Learned counsel submitted that Rule 3 provided that the Federal Government is to have “possession, management and control of the [USF]” and its income, undertakings, properties and assets. Chapter III (which includes the rules reproduced above) relates to the USF company, which is defined in Rule 2(xxv) as being a company limited by guarantee registered by the Federal Government under the 1984 Ordinance “to perform such duties and functions as may be assigned to it under [the] rules”. The appellant is of course that guarantee-company. Referring to the composition of the Board as set out in Rule 11(1) learned counsel submitted that of the nine members the first four were appointed ex-officio and for present purposes ought to be regarded as nominees of the Federal Government. As regards the next four members, being the nominees/representatives of the various groups, they had to be nominated by the Federal Government as provided by sub-rule (1) of Rule 12. Thus, they ought also to be regarded as nominees of the Federal Government for present purposes. The last member, the Chief Executive Officer, had to be appointed by the Board. Since the Board was otherwise comprised of nominees of the Federal Government, the Chief Executive Officer ought also (even if indirectly) be regarded as the nominee of the Federal Government. Thus, the entire Board comprised only of Government nominees. Learned counsel also referred to various returns/forms required to be filed by companies under the provisions of company law (now the 2017 Act) and submitted that all the persons listed as its members were nominees of the Federal Government. Referring in particular to the annual return filed by the appellant for 2023, learned counsel submitted that it showed that the company had three members, being the Secretary, Ministry of Information Technology and Telecommunication, the

Member, Telecom and the Chairman, Pakistan Telecommunication Authority. Thus, it was submitted, on any view of the matter, the members and Board of the appellant comprised (directly or indirectly) only of nominees of the Federal Government, which ought therefore to be regarded as wholly owning it. Hence, the appellant did not come within the scope of the proviso to subsection (13) of s. 134A. Learned counsel also placed strong reliance on the definition of “public sector company” set out in s. 2(54) of the 2017 Act. It was submitted that the appellant came within the meaning of this definition and when its various elements (which applied disjunctively) were considered the conclusion could only be that it was wholly owned by the Federal Government. It was submitted on such basis that the appeal was not maintainable and liable to be dismissed. Learned counsel for the appellant on the other hand submitted that it was not an entity wholly owned (directly or indirectly) by the Federal Government and that the appeal was therefore maintainable. The preliminary objection was liable to be dismissed.

24. In order to resolve the preliminary objection three laws to which the appellant is subject will have to be considered. These are the 2017 Act, the SOE Act and the USF Rules, the first two being primary and the last subordinate legislation. The appellant is a guarantee-company. As is well known, the vast majority of companies created under company law are limited by shares. In respect of such entities, the question of determining as to who would “wholly own” it for purposes of the proviso to subsection (13) is relatively easy: it would have to be shown that the Federal Government, directly or indirectly, owned the whole of the shareholding. Since shares are property, the Federal Government would own the whole of the share capital and thus wholly “own” the company. Now, companies limited by shares are themselves divided into various categories which range from single member companies, to private companies, to public companies to listed companies. The number of members that such companies can have therefore range from at least one member to many thousands. Likewise, the number of shares held by any particular member of any such company may range from one share to 100% of the shareholding. (Ordinarily the voting power of each member

is proportionate to the shares held by him since the majority of companies have shares of one class only. However, this position may vary in respect of those companies where there are shares of different classes, and shares even of the same class may carry voting rights weighted differently. That may affect any consideration of who can be regarded as “wholly owning” it. However, for purposes of the present analysis it suffices to consider companies having a share capital of only one class which are uniform in all respects.) Regardless of what shape or form a company limited by shares takes, for present purposes one need only look at the share capital and make a determination accordingly as to whether it is, or is not, wholly owned (directly or indirectly) by the Federal Government.

25. The position of a guarantee-company is however different. Here, there is no shareholding towards which the inquiry can be directed, i.e., there is no “property” which can be regarded as belonging to this or that person. The company only has members, each of whom has but one vote. Ordinarily, one cannot sensibly speak of a person who is a member of such a company as “belonging” to any one. Nonetheless the question needs to be addressed; the proviso to subsection (13) requires a resolution. How then is the question of who “wholly owns” such a company to be determined? In our view, it must be shown that all the members of the guarantee-company are (directly or indirectly) the nominees of the Federal Government. It is only then that it can be said to “wholly own” the company (howsoever imperfect such characterization may ordinarily otherwise be). Therefore, if such be the case with regard to the appellant then it is outside the scope of the proviso to subsection (13) and the appeal would not be maintainable. If the position is otherwise, then the preliminary objection would have to be dismissed. Determining the persons who are, or (for reasons as will become apparent presently) must in law be deemed to be, the members of the appellant must therefore be the focus of the analysis.

26. Before proceeding further, it will be convenient to first deal with the submission based on the definition of a “public sector company” set out in s. 2(54) of the 2017 Act. As noted, strong

reliance was placed by learned counsel for the Department on this definition. It is in the following terms (as presently relevant):

“public sector company” means a company, whether public or private, which is directly or indirectly controlled, beneficially owned or not less than fifty-one percent of the voting securities or voting power of which are held by the Government or any agency of the Government or a statutory body, or in respect of which the Government or any agency of the Government or a statutory body, has otherwise power to elect, nominate or appoint majority of its directors and includes a public sector association not for profit, licenced under section 42:...”

This definition looks at a company from two perspectives and sets minimal threshold requirements for each. If such requirements are met in either case the company is a “public sector company”. The two perspectives are (i) ownership or control (direct or indirect or even beneficial) by the Government (or any agency thereof or a statutory body) of not less than 51% of the underlying “voting securities” or “voting power” or (ii) where even “otherwise” the Government (or any agency thereof or a statutory body) has power to “elect, nominate or appoint” the majority of the directors. Since the power to elect directors is normally proportionate to the voting power held, the “otherwise” in the second perspective caters for the situation where the Government, etc. may hold less than 51% of the voting power and yet (for whatever reason) still have the power to elect, nominate or appoint the majority of the directors. In our view, with respect, s. 2(54) does not provide any guidance for resolving the issue at hand. The reason is that it is cast in terms of minimal threshold requirements which, if crossed, trigger the definition. The appellant may well in those terms be a “public sector company”. However, the issue at hand is a determination of whether the Federal Government directly or indirectly “wholly owns” the appellant. The question before the Court is, in other words, cast in maximal terms. Even if the minimal threshold is crossed that is not enough. It is not until the maximal situation is reached, and that too only in terms of “ownership”, that it can be said that the proviso to subsection (13) of s. 134A is not applicable. And, as already noted, if the “ownership” falls below the maximum even in the slightest degree then it cannot, for present purposes, be

regarded as being “wholly” such. Finally, the reference at the end of the definition, whereby a “public sector association” (which is not a defined term) licensed under s. 42, is brought within its scope means only that if such an “association” has either of the two characteristics, it too would be regarded as a “public sector company”. The factum of the licence would not take it out of the scope of s. 2(54). The definition relied upon proceeds along entirely different lines and does not, with respect, provide any assistance. We turn therefore to consider who are, or ought in law to be regarded as being, the members of the appellant.

27. Section 130 of the 2017 Act requires companies to file an annual return containing such information as may be required by the statute or rules framed in this regard. As noted, the annual return for 2023 shows that the appellant had three members, all of whom can be regarded as nominees of the Federal Government. If this were all that there was to it then clearly the preliminary objection would have to be sustained. However, regard must also be had to the Board of directors. The reason for this is that s. 153 of the 2017 Act provides, in its clause (i), that a person who is not a member of a company cannot be its director. This clause is subject to certain exceptions set out in its proviso, which comprises of four sub-clauses. If any of these apply then the requirement of membership does not. Of these, only the third and fourth sub-clauses need be noticed. The former applies to the chief executive of the company. The latter applies to a person “representing a creditor or other special interests by virtue of contractual arrangements”. Now, the appellant’s Board, as set out in Rule 11(1) of the USF Rules, comprises of nine members. The last noted member (clause (i)) is the chief executive, and to him the third sub-clause of the proviso to s. 153(i) applies. He need not be a member of the appellant. What however of the others? Of the first four (clauses (a) to (d)), who are all ex-officio, three (being the first, third and fourth) are already shown in the annual return as being the members of the appellant. But what of the remaining and in particular the directors listed in clauses (e) to (h)? Can these directors be regarded as representing “special interests”, to whom the fourth sub-clause of the proviso applies, thereby obviating the need for them to be members of the appellant? In

our view, the answer must be in the negative. The reason is that even if the groups identified (fixed-line licensees, mobile cellular licensees etc.) in the clauses can be regarded as “special interests” for the purposes of s. 153(i), the fourth sub-clause requires that they be entitled to nominate directors “by virtue of contractual arrangements”. However, none of the directors are nominated by these groups by any such arrangement. They have the right to nominate by reason of the USF Rules. It follows that, of the appellant’s Board, the directors listed in clauses (e) to (h) must be members of the appellant for them to be at all its directors. If they are not members of the appellant then they simply cannot be its directors. It must also be kept in mind that being an entity created by and under company law, the 2017 Act must at all times apply to the appellant. Any matter required or directed by this statute can be disapplied (or applied in some other manner) only if other primary legislation so provides. Such a result cannot be obtained by subordinate legislation such as the USF Rules. In fact, the USF Rules themselves (as presently relevant) require compliance with company law. Thus, sub-rule (1) of Rule 10 clearly states that the USF company is to be incorporated “in accordance with the [1984] Ordinance”, a reference that must now mean the 2017 Act. Therefore, the requirement of s. 153(i) must be regarded as applicable to the appellant.

28. What then is the position that emerges? It must be remembered that s. 130(4) of the 2017 Act provides that all information set out in the annual return must “have been previously entered in one or more registers kept by the company for that purpose”. The relevant register here is the members’ register. Section 129 provides that such register is “prima facie evidence of any matter which by this Act is directed or authorized to be inserted therein”. In other words, the information contained in the members’ register, and from there replicated in the annual return, is not conclusive. As is obvious, it cannot override any particular or specific requirement of the statute itself but must comply, and be in conformity, with the same. It follows from this that since the directors specified in clauses (e) to (h) of Rule 11(1) were not (apparently) entered in the members’ register, only two conclusions are possible. Either those persons were never

directors of the appellant at all (because they were not its members), or they must in law be deemed to be its members who (for whatever reason, be it inadvertence or ignorance of the law or otherwise) were not entered in the members' register. (Of course, they would remain members of the appellant only as long as they are its directors.) In our view, the latter is the better view to take. The appellant must always be in compliance of the USF Rules and must therefore have a Board constituted and comprising of directors as set out in Rule 11(1). But it must also always be in compliance of the 2017 Act, which for present purposes means s. 153(i). To conclude, on account of what is set out in the annual return, that the directors in question were not members of the appellant would be a direct non-compliance of s. 153(i), which would mean that they were not (ever) on the appellant's Board. That would be simply too disruptive of the company's affairs and leave a gaping hole in its compliance with the USF Rules. But if it is kept in mind that the annual return and the members' register are only prima facie evidence of what is required by the statute, it is possible to deem the directors in question to be, as a matter of law, members of the appellant. That would ensure compliance both with the requirements of s. 153(i) and Rule 11(1). All difficulties would be resolved and there would be no "holes" in the legal position. Accordingly, we conclude and hold that the persons who are directors of the appellant in terms of clauses (e) to (h) of Rule 11(1) must at all times (though only as long as they are directors) be deemed also to be its members as a matter of law.

29. The question then becomes as to the position of these directors/members. More particularly, are they to be regarded as nominees of the Federal Government? If so, then all the members of the appellant would be its nominees and hence it could be said that it was wholly owned (directly or indirectly) by the latter. In this regard, learned counsel for the Department relied in particular on sub-rule (1) of Rule 12: the directors as set out in clauses (e) to (h) "shall be nominated by the Federal Government". In our view, with respect, this conclusion is not sustainable for two reasons. Firstly, sub-rule (1) of Rule 11 expressly describes the directors at clauses (e) to (g) as "nominees" of the respective licensees. To be a nominee of someone is to be nominated by that

someone. In our view, all that Rule 12(1) achieves is that it gives the Federal Government, as it were, a vetting or veto power over such nominees. In other words, the concerned director would first have to be nominated by the relevant licensee group but would not, for that reason alone, become a director of the appellant. Such nominee would have also to be acceptable to the Federal Government and, in that sense, be “nominated” by it to the Board. In other words, there would be a two-stage process. It must always be initiated by the licensee group concerned by putting forward its nominee and then (but only then) also be liable to “nomination” by the Federal Government. For present purposes, however, the primary focus would always be on the nomination by the concerned licensee group. The director concerned would be its nominee. And that would determine also his position as a member of the appellant. He would be a nominee of the group that sent him to the appellant, not of the Federal Government. As regards the director listed at clause (h), he has to be the “representative” of “consumer groups”. Here, it could be said that the director would be nominated, in the strict sense, by the Federal Government. But he would still have to represent someone else, i.e., the consumer groups. That would be his position both as a director of the appellant and its member. This conclusion is bolstered by sub-rule (2) of Rule 12. Although the sub-rule refers to Rule 10(2) that is clearly a mistake; the reference can only be to the director listed at clause (h) of Rule 11(1). The requirement that the Federal Government have no interest or control over the “registered body” nominated for purposes of clause (h) means that the person nominated cannot, for present purposes, be regarded as a nominee of the Federal Government, either as director or member of the appellant.

30. It follows from the foregoing that on a correct interpretation and application of the USF Rules and for the limited purposes at hand, the directors listed at clauses (e) to (h) of Rule 11(1) would, in their capacity both as directors and as members of the appellant, not be regarded as nominees of the Federal Government but rather as nominees of the licensees and the consumer groups. The question therefore of whether the Federal Government “wholly

owns” the appellant for purposes of the proviso to subsection (13) of s. 134A would have to be answered accordingly.

31. Secondly, the foregoing is bolstered when we turn to look at the third law which applies to the appellant, being the SOE Act. Being an SOE, the appellant must obviously also be in compliance with the requirements of this statute. The board of directors of an SOE that is a company incorporated under the 2017 Act is required to comply with s. 12 of the SOE Act. This is found in Chapter 5 of the statute. The section, as presently relevant, is as follows (emphasis supplied):

“12. Composition of the Board of a company.—(1) A Board of a company shall consist of independent directors, ex-officio directors and the chief executive officer of the company, with the requisite skills, competence, knowledge, experience and approach so that the Board as a group includes core competencies and diversity required to assist the company achieve its primary objective.

(2) *The majority of the board shall consist of independent directors. ...*”

Thus, the Board is to comprise of three “elements”: independent directors, ex-officio directors and the chief executive. An “independent director” is defined in s. 2(i) as meaning “a director who is not an ex-officio director and is not disqualified under section 11”. The latter provision simply excludes certain categories of persons and has no application for present purposes. The SOE Act appears to use the terms “ex officio director” and “nominee director” interchangeably. The latter is a defined term (see s. 2(h)) and, inter alia, means a director who represents the Federal Government. Thus, an independent director is one who is not an ex-officio or nominee director, i.e., is not a nominee of the Federal Government.

32. The conclusion that emerges from a conjoint reading of the foregoing provisions is that an SOE that is a company incorporated under the 2017 Act *must* have independent directors, and that such directors *must* constitute the majority of the Board. Since s. 12(1) expressly sets out independent directors in contradistinction to ex-officio directors (who are in any case also excluded from the definition), it follows that the former *cannot* be

nominees of the Federal Government. They must be independent of the latter.

33. Before proceeding further, it will be pertinent also to look at some of the other sections in Chapter 5, which deals with “Responsible Management”. It opens with s. 9, which provides that it applies to all SOEs, “notwithstanding anything contained in any other law for the time being in force”. In terms of well settled principles the non-obstante clause applies only to the extent of any conflict between the respective statutes (and no further), the other laws relevant here being the 2017 Act and the USF Rules. Section 10 constitutes a Boards Nomination Committee, whose responsibilities are specified in subsection (2). Clause (a) of this subsection makes the said Committee responsible for “identifying and recommending candidates to the Federal Government for appointment as independent directors which the Federal Government is empowered to appoint to Boards”. This provision, in our view, only applies where the Federal Government is specifically empowered under the law applicable to that SOE to appoint independent directors to its Board. That is not the case with the appellant. But even if it were to be considered as applying to all SOEs regardless, the director(s) so appointed must be independent directors. They cannot be nominees or representatives of the Federal Government since that would reduce their position to ex officio or nominee directors. And that would be the antithesis of what an independent director is supposed to be, and the manner in which he is to act. Furthermore, the SOE Act lays down, even for the aforesaid Committee, an elaborate mechanism and procedure for identifying and recommending an independent director: see s. 10(3). In this context it must also be noted that an independent director once appointed by the Federal Government does not serve at the latter’s pleasure. Under the SOE Act, he can only be removed from office in two ways: (i) on the recommendation of the aforesaid Committee (see s. 10(2)(d) read with the proviso to s. 13(1)); or (ii) in terms of the procedure and only for the reasons expressly set out in s. 13(2). It is clear that a primary objective sought to be achieved by the SOE Act is that the position of independent directors, and their independence from the Federal Government, is secured in

substance and reality, and not just in form and name. Its provisions must be construed accordingly.

34. When we apply the foregoing analysis to the appellant, in our view it necessarily follows that the directors listed in clauses (e) to (h) of Rule 11(1) of the USF Rules must be regarded either as the “independent directors” contemplated by the SOE Act or at the very least (in order to ensure substantive conformity and consistency with that statute) as directors independent of the Federal Government. (The position of the chief executive is less clear but need not be looked into for present purposes.) To conclude otherwise would mean that the appellant would have no independent directors, which would be a flagrant breach of the statute. These four directors do not constitute the majority of the appellant's Board. If that breaches the law then it must of course be rectified by appropriate action. However, that aspect does not impact directly on the issue at hand and we say no more of it. What is of crucial importance is the required independence, in terms of the SOE Act, of the directors set out in clauses (e) to (h). And that of course also affects their position as members of the appellant. If they are to be independent as directors they must also be independent as members. The two go hand in hand.

35. The position that emerges from the foregoing analysis may be summarized as follows. Since the directors set out in clauses (e) to (h) cannot be nominees of the Federal Government (as indicated by a reading of both the USF Rules and the SOE Act), and since they must also be members of the appellant (as indicated by a reading of the 2017 Act) it follows that a substantial number of the appellant's members are not nominees of the Federal Government. That means that for purposes of the proviso to subsection (13) of s. 134A, the appellant is not wholly owned, directly or indirectly, by the Federal Government. In other words, the said provision applies and the appeal is maintainable. The preliminary objection stands dismissed.

36. We turn therefore to examine the point in issue on the merits of the dispute. As noted above, the decision of the ADR Committee turns on whether, as a matter of law, the appellant

was required to deduct tax under s. 153 when making payments to various persons, licensees under the 1996 Act. Subsection (1), as presently relevant, was in the following terms for the tax year 2023:

“153. Payments for goods, services and contracts.— (1) Every prescribed person making a payment in full or part including a payment by way of advance to a resident person—

(a) for the sale of goods including toll manufacturing, except where payment is less than seventy-five thousand Rupees in aggregate, during a financial year;

(b) for the rendering of or providing of services except where payment is less than thirty thousand Rupees in aggregate, during a financial year;

(c) on the execution of a contract, including contract signed by a sportsperson but not including a contract for the sale of goods or the rendering of or providing services,

shall, at the time of making the payment, deduct tax from the gross amount payable (including sales tax, if any) at the rate specified in Division III of Part III of the First Schedule...”

37. Section 153 is of a class of sections that relate to the advance deduction or collection of tax. The correct approach to take for the interpretation and application of the section was recently considered in *Commissioner Inland Revenue Lahore v Coca-Cola Pakistan Ltd. Lahore 2026 SCMR 130, 2026 PTD 29, 2025 SCP 364*. This also was a case where the Department’s claim was that there ought to have been a deduction under s. 153. Since the taxpayer did not so act, it faced the application of s. 21(c), which is of course the situation here. It was held as follows (pg. 133):

“4. Section 153, like a number of other provisions in the Ordinance, requires for the advance payment of tax by way of deduction. Other provisions provide for advance payment of tax by way of collection. If the person who is required to so deduct or collect fails to do so then, among other consequences, s. 161 is activated. The section makes the person in default personally liable for the payment of the amount of tax that was not deducted or collected and the recovery provisions of the Ordinance become applicable, per s. 163, “as if it were tax due under an assessment order”. Thus, a failure to abide by the duty to deduct or collect advance tax has severe penal consequences and he becomes,

in essence, a taxpayer in default. Other consequences adverse to the person in default (such as the aforementioned s. 21(c)) also become applicable. In our view, suchlike provisions, and therefore s. 153, when viewed from the perspective of the person who is said to be under a duty to collect or deduct the advance payment of tax, may be regarded as akin or analogous to a charging provision. This is so because of the severe penal consequences that can result from a failure to abide by the statutory duty. These advance payment provisions therefore have to be strictly construed. This need not be with the same rigidity and literalness with which a charging section, in terms of well settled tax jurisprudence, is interpreted. Nonetheless, such provisions cannot be regarded simply as recovery mechanisms and dealt with accordingly. The severe penal consequences for a person who defaults on a duty to deduct or collect, as the case may be, militate against any such approach. The interpretation must be tight and narrow.”

The gloss that must be added to the foregoing is that if there is more than one reasonable interpretation possible of the section, i.e., as to whether there was any obligation to deduct, the one more favorable to the person allegedly required to so act ought to be adopted. This, again, follows from settled tax jurisprudence, being a principle that lies at the core of tax law. The resolution of the issue at hand must be informed by, and take, the foregoing approach.

38. The stance taken by the appellant as to why it was not obligated to deduct tax under s. 153, as set out in the order amending the deemed assessment (herein after “the amending order”) has been extracted above, as have the findings recorded by the concerned officer (“DCIR”) rejecting the same (see para 5). It may be noted that the finding in the amending order was that it was clause (b) of s. 153(1) that applied in the facts and circumstances of the case; the appellant’s stance that (if at all) the matter came within the ambit of clause (c) was not accepted.

39. Section 153(1) is concerned with contracts in which the obligation of one side (herein after “the payer”) is to make payment to the other (herein after the “payee”). (The question whether the section applies also to, and in, non-contractual transactions and situations does not require examination here.) Now, in the vast majority of contracts rights and obligations, and more particularly benefits, move only between the parties thereto. Indeed, the

obligations assumed by one party towards the other are invariably the benefits conferred on the latter and vice versa (or give rise to or have the effect of being the benefits flowing under the contract). However, in a small minority of contracts the benefits thereof are for persons not party to the bargain. Such persons are usually referred to as third party beneficiaries. Typically, the question that arises is whether, and if so in what circumstances, can such a party sue (or, indeed, be sued) for enforcement or purposes of the contract. That however is not of relevance here. What is relevant is that in such contracts the benefits arising, or intended to arise, out of the performance of the contract (that can, subject to what is stated below, be regarded as the discharge of obligations) by one party are not to go to the other side of the bargain, but to someone else. In the specific context here relevant, the said benefits would be, or arise out of, the discharge by the payee of its obligations under the contract.

40. In light of what the appellant's position was before the DCIR and the findings recorded by the latter it is clear that in the matter at hand the contracts in question involved third party beneficiaries. The contracts themselves were between the appellant on the one hand and licensees under the 1996 Act on the other. The appellant was the payer, and the licensees were the payees. However, the benefit accrued wholly or substantially to those who were not party to the contracts. Those beneficiaries were the persons residing in "unserved" or "underserved" areas, which are terms defined in the USF Rules (see clauses (xxiii) and (xxiv) of Rule 2) as being "lots" having, respectively, no or no adequate coverage or provision for telecommunication services. "Lot" is itself defined in Rule 2(xvi) as meaning "a geographic area identified for the grant of funding from the [USF] and shall not be smaller than a village or larger than a telecom region created by the Authority". The appellant is under a statutory obligation in terms of Chapter V of the USF Rules to prepare and award contracts for projects (referred to therein as "special projects") the purpose of which is the provision of telecommunication services to unserved or underserved areas. The funding for such projects comes from the USF. When all of these provisions are read together it is clear that the benefits of the contracts in question

were wholly or substantially for third parties and not the appellant. Indeed, the nature of the beneficiaries was such that it would not be incorrect to characterize the contracts as being for the benefit of the public at large (since a portion of the public is invariably so regarded, and certainly ought to be so considered here). In this regard, the crucial finding of fact made in the amending order (emphasized in the extract reproduced in para 5 above) must be kept in mind. Thus, in the contracts at hand the discharge by the licensees (i.e., the payees) of their obligations thereunder was directed towards or was, or accrued, to the benefit of the public.

41. Putting the matter somewhat differently, in the instant case, the payer (i.e., the appellant) was expending public money (as it was statutorily obliged to do) to fund projects for the benefit of the public (who were the beneficiaries thereof either wholly or substantially), said projects being undertaken by the payees (i.e., the licensees). When considered from this perspective in our view the question requiring resolution becomes the following: is a payer, in respect of payments made under a contract which is entirely or substantially to the benefit of third parties unrelated to the payer (and being, as here, the public at large), obligated to deduct advance tax in terms of clause (b) of s. 153(1)?

42. To address this question, the relevant portion of subsection (1) may be stated as follows (emphasis supplied): “Every prescribed person making a payment ... to a resident person ... *for* the rendering of or providing of services...” shall deduct tax at the specified rate. It is important to keep in mind that s. 153(1) applies to transactions and situations that have not been randomly or haphazardly gathered together in one place. Rather, they are those that move within a certain legal framework. That frame is provided by the law of contracts, which constitutes the necessary legal backdrop in light of which the application of the section is to be considered. Once this is recognized then, in the specific context of clause (b), the contractual framework can be regarded as comprising of different elements. One is the services that have to be provided or rendered. There is then the person who provides or renders the services. Thirdly, there is the person

who makes payment for the services. Fourthly, there is the person for whom the services are being provided or rendered, i.e., to whose benefit they enure. Finally, there is the payment itself.

43. Learned counsel for the Department submits that it suffices, for purposes of making s. 153(1)(b) applicable, to identify the payer only in its capacity as the originator of the payment. Once, in addition to that, the recipient of the payment (i.e., the payee) is determined and it is confirmed that the payment is “for” the rendering or providing of services, that concludes the matter for purposes of the section. It matters not who is to benefit from the services being provided or rendered, i.e., whether it is the payer or some third party beneficiary. In other words, the recipient(s) of the services being provided or rendered is/are of no relevance. They simply need not be taken into account. In this sense even the payer is not relevant. Once the payment and its originator (i.e., the payer) are identified and linked in the specified way (by reason of the “for”) to the payee, the section becomes applicable; if the payer does not make the required deduction it becomes liable accordingly. On this basis, it is contended that the appellant was obligated to deduct tax on the payments made and, having failed to do so, must face the consequences including the application of s. 21(c). The approach advocated by learned counsel is certainly one interpretation. But it is not, with respect, the only sense in which s. 153(1)(b) can be understood. There is another sense, in which the “for” may be regarded as operating differently. For convenience, the approach urged by learned counsel for the Department is herein after referred to as the “first sense”, while the other, examined below, is referred to as the “second sense”.

44. In the second sense the section is attracted, and the obligation to deduct triggered, for payments made by the payer to the payee “for” providing or rendering services to the payer. This sense recognizes that the rendering or providing of services can have meaning only if it is also determined as to whom they are being provided or rendered. Of course in the vast majority of cases, the contractual rights, obligations and benefits move only between the parties thereto. The payer is both the recipient of the services (i.e., to whom they are provided or rendered), the

beneficiary thereof, and the one paying for the same. In such situations, there is complete identity between the two senses in which the “for” can be understood and applied. They are aligned. Ordinarily therefore, the legal backdrop in which s. 153(1)(b) operates, howsoever viewed, produces the same result insofar as the application of the section is concerned. However, once third party beneficiaries are introduced into the matrix (and such contracts would only be a small minority of cases), there can be disconnect between the one paying for the rendering or providing of services and the one to whom they are being rendered or provided. In such a situation the “for” operates in the second sense. The section would not be applicable, since in this sense the obligation to deduct arises only if the services are being provided or rendered to the payer. That however would not be the situation. The second sense can, in a way, be regarded as being even more literal than the first sense. This is because in the first sense the phrase “rendering of or providing of services” is, really speaking, shorthand for referring to the contractual obligations of the payee. Here, the “for” merely links the contractual obligations on the two sides. On the side of the payer, that obligation is the payment while on the side of the payee it is the rendering or providing of services. The section is triggered when the obligor on one side (the payer) discharges his obligation (i.e., makes the payment) to the obligor on the other side (the payee). In this sense, who is the recipient of those services (i.e., to whom the benefit thereof is directed or accrues) is of no moment. As noted, this is the sense that is pressed by learned counsel for the Department. However, when the provision is read even more literally than that, i.e., in the second sense, then the “for” links not the contractual obligations on the two sides but the recipients (respectively) of the payment and the services rendered or provided. In this sense the section applies to what actually flows under the contract, i.e., the payment and the services, and to whom. It is therefore triggered only when the payer is the recipient of the services being rendered or provided.

45. As already noted, in the vast majority of transactions and situations the two senses produce the same result because the rights and obligations of the parties (howsoever viewed), and the

benefits accruing or flowing from the one to the other (again, howsoever viewed) remain only inter se. They merge into each other. However one approaches the section, the position remains the same and, therefore, so does the obligation of the payer to deduct tax. But when third party beneficiaries are involved there is a divergence. If the section is applied in the first sense it results in the obligation to deduct arising. However, if applied in the second sense there is no obligation to deduct. This is because there the requirement that the payer be the recipient of the payee's obligation (i.e., the one who obtains the benefit of, or accruing or flowing from, the providing or rendering of services) is not met. The recipient is the third party beneficiary. In our view both senses of interpreting and applying s. 153(2)(b) are reasonable. Again, this is because it must be remembered at all times that the section operates in the legal framework provided by the law of contracts. In the first sense, that backdrop is a contract where the rights and obligations, and the benefits of and from the contract, are only between the parties. In the second sense, the backdrop changes and third party beneficiaries are also within the contract. In the former, there is undoubtedly the obligation to deduct tax on the payer. However, in the second there ought not to be any such obligation, for the reasons set out in para 37 above. The contracts at hand fall in the latter category, especially when, as a matter of fact, the third party beneficiaries here are the public at large. The appellant is not the recipient of the services rendered or provided by the licensee. The second sense prevails.

46. Before concluding, one point may be made. We recognize that there can be a difference between the providing or rendering of a service and the benefits flowing or accruing in terms thereof. (Again, it must be remembered that this would be an unusual and atypical situation.) The services may be provided or rendered to one who is party to the contract while the benefits accrue or arise to one who is not. If that were so then it may be erroneous to conflate the two. In the case at hand, however, the contracts were entered into to give effect to "special projects", i.e., in order to provide telecommunication services to unserved or underserved areas. It was in the very nature of such services that they were intended for (indeed, could only be provided to) the residents of

such areas, i.e., the third party beneficiaries being the public at large. They could not ipso facto be provided or rendered to the appellant. Thus, the difference under consideration in this para did not arise in the facts and circumstances of the case. Both the persons to whom the services were being provided or rendered and those obtaining the benefit thereof were the same, and not the appellant.

47. In view of the foregoing discussion and analysis the question posed in para 41 is answered in the negative. The appellant was not under an obligation to deduct tax under s. 153(2)(b). Accordingly, the appeal is allowed. The impugned decision of the ADR Committee is set aside as is the amending order, to the extent here relevant. It is declared that s. 21(c) had no application to the facts and circumstances of the case.

Sd/-
Judge

Sd/-
Judge

Sd/-
Judge

Announced at Islamabad this 20 day of October, 2026

Sd/-
Judge

Naveed /-

Approved for reporting