

**SUPREME COURT OF AZAD JAMMU AND KASHMIR**

(APPELLATE JURISDICTION)

**PRESENT:**

*Raja Saeed Akram Khan, CJ.*  
*Kh. Muhammad Nasim J*  
*Raza Ali Khan, J.*

1. Civil PLA No.32 of 2023  
(Filed on 06.02.2023)

Commissioner Income Tax (Azad Jammu and Kashmir Council), Muzaffarabad, now Commissioner Inland Revenue (direct taxes).

....PETITIONER

**VERSUS**

1. M/S Aviona (Pvt.) Limited Allama Iqbal Road Mirpur Azad Kashmir through Principal Officer.

....RESPONDENT

2. Deputy Commissioner Income ax (Azad Jammu and Kashmir Council) Company Circle Mirpur Azad Kashmir, now Deputy Commissioner Inland Revenue Company Circle.

.... PROFORMA RESPONDENT

(On appeal from the judgment of the High Court dated 19.11.2022 in income tax appeals No.10, 11 and 12 of 1998)

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FOR THE PETITIONER: Haji Muhammad Afzal Advocate.

FOR THE RESPONDENTS: Mr. Babar Ali Khan, Advocate.

2. Civil PLA No.33 of 2023  
(Filed on 06.02.2023)

Commissioner Income Tax (Azad Jammu and Kashmir Council), Muzaffarabad, now Commissioner Inland Revenue (direct taxes).

....PETITIONER

**VERSUS**

1. M/S Aviona (Pvt.) Limited Allama Iqbal Road Mirpur Azad Kashmir through Principal Officer.

....RESPONDENT

2. Deputy Commissioner Income ax (Azad Jammu and Kashmir Council) Company Circle Mirpur Azad Kashmir, now Deputy Commissioner Inland Revenue

Company Circle.

.... PROFORMA RESPONDENT

(On appeal from the judgment of the High Court dated 19.11.2022 in income tax appeals No.10, 11 and 12 of 1998)

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FOR THE PETITIONER: Haji Muhammad Afzal Advocate.

FOR THE RESPONDENTS: Mr. Babar Ali Khan, Advocate.

3. Civil PLA No.34 of 2023  
(Filed on 06.02.2023)

Commissioner Income Tax (Azad Jammu and Kashmir Council), Muzaffarabad, now Commissioner Inland Revenue (direct taxes).

....PETITIONER

**VERSUS**

1. M/S Aviona (Pvt.) Limited Allama Iqbal Road Mirpur Azad Kashmir through Principal Officer.

....RESPONDENT

2. Deputy Commissioner Income ax (Azad Jammu and Kashmir Council) Company Circle Mirpur Azad Kashmir, now Deputy

Commissioner Inland Revenue  
Company Circle.

.... PROFORMA RESPONDENT

(On appeal from the judgment of the High  
Court dated 19.11.2022 in income tax  
appeals No.10, 11 and 12 of 1998)

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FOR THE PETITIONER: Haji Muhammad  
Afzal Advocate.

FOR THE RESPONDENTS: Mr. Babar Ali Khan,  
Advocate.

4. Civil PLA No.35 of 2023  
(Filed on 06.02.2023)

Commissioner Income Tax (Azad Jammu and  
Kashmir Council), Muzaffarabad, now  
Commissioner Inland Revenue (direct taxes).

....PETITIONER

**VERSUS**

1. M/S Aviona (Pvt.) Limited Allama Iqbal  
Road Mirpur Azad Kashmir through  
Principal Officer.

....RESPONDENT

2. Deputy Commissioner Income ax (Azad

Jammu and Kashmir Council) Company  
 Circle Mirpur Azad Kashmir, now Deputy  
 Commissioner Inland Revenue  
 Company Circle.

.... PROFORMA RESPONDENT

(On appeal from the judgment of the High  
 Court dated 19.11.2022 in income tax  
 appeals No.10, 11 and 12 of 1998)

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FOR THE PETITIONER: Haji Muhammad  
 Afzal Advocate.

FOR THE RESPONDENTS: Mr. Babar Ali Khan,  
 Advocate.

5. Civil PLA No.36 of 2023  
 (Filed on 06.02.2023)

Commissioner Income Tax (Azad Jammu and  
 Kashmir Council), Muzaffarabad, now  
 Commissioner Inland Revenue (direct taxes).

....PETITIONER

**VERSUS**

1. M/S Aviona (Pvt.) Limited Allama Iqbal  
 Road Mirpur Azad Kashmir through  
 Principal Officer.

....RESPONDENT

2. Deputy Commissioner Income ax (Azad Jammu and Kashmir Council) Company Circle Mirpur Azad Kashmir, now Deputy Commissioner Inland Revenue Company Circle.

.... PROFORMA RESPONDENT

(On appeal from the judgment of the High Court dated 19.11.2022 in income tax appeals No.10, 11 and 12 of 1998)

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FOR THE PETITIONER: Haji Muhammad Afzal Advocate.

FOR THE RESPONDENTS: Mr. Babar Ali Khan, Advocate.

6. Civil PLA No.37 of 2023  
(Filed on 06.02.2023)

Commissioner Income Tax (Azad Jammu and Kashmir Council), Muzaffarabad, now Commissioner Inland Revenue (direct taxes).

....PETITIONER

**VERSUS**

1. M/S Aviona (Pvt.) Limited Allama Iqbal Road Mirpur Azad Kashmir through Principal Officer.

....RESPONDENT

2. Deputy Commissioner Income tax (Azad Jammu and Kashmir Council) Company Circle Mirpur Azad Kashmir, now Deputy Commissioner Inland Revenue Company Circle.

.... PROFORMA RESPONDENT

(On appeal from the judgment of the High Court dated 19.11.2022 in income tax appeals No.10, 11 and 12 of 1998)

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FOR THE PETITIONER: Haji Muhammad Afzal Advocate.

FOR THE RESPONDENTS: Mr. Babar Ali Khan, Advocate.

Date of hearing: 20.03.2023

**ORDER:**

**Raja Saeed Akram Khan, CJ.**— At the very outset, the learned counsel for the petitioner was confronted that the instant petitions for leave to appeal have been filed without sanction of the Government as is required under the provisions of section 29 of the Azad Jammu and Kashmir Law Department Manual, 2016, thus, how the same are competent. He submitted that in view of the

provisions of section 133 of the Income Tax Ordinance, 2001, the Commissioner Income Tax is empowered to file appeal, PLA etc. However, on Court's query that after the 13<sup>th</sup> amendment in the Constitution the Income Tax Department is a Department of Azad Jammu and Kashmir Government; whether the instant petitions could be filed without due authorization of the Government, he failed to satisfy the Court and halfheartedly tried to convince the Court while referring to Article 57 of the Azad Jammu and Kashmir Interim Constitution, 1974 and some other provisions of Income Tax Ordinance, 2001, but miserably failed to justify the filing of PLAs without sanction of the Government.

2. The learned Advocate representing the respondents submitted that after the 13<sup>th</sup> amendment the Income Tax Department is a Department of Government of Azad Jammu



and Kashmir. He submitted that the employees of the Income Tax Department also come within the definition of civil servants of AJK Government and the provisions of the AJ&K Civil Servants Act, 1976 and the rules made thereunder are applicable on them and AJ&K Service Tribunal has the jurisdiction to hear their cases. He further stated that when the amendment was not made in the Constitution even at that time no appeal, PLA, etc. could be filed by the Commissioner Income Tax without authorization of the competent authority.

3. In the matter in hand, the petitioner failed to justify the filing of the petitions (supra) without proper sanctioning of the Government. Admittedly, after the 13<sup>th</sup> amendment in the Interim Constitution, 1974, the Income Tax Department is one of the Departments of Government of Azad Jammu and Kashmir and this Constitutional position

has been provided in Article 31(5) of the Azad Jammu and Kashmir Interim Constitution, 1974 that all the taxes including the income tax shall be levied for the purposes of the territories of Azad Jammu and Kashmir by or under the authority of any Act of the Assembly. Before 13<sup>th</sup> amendment, the Kashmir Council was the competent to levy the taxes and executive authority was also with the Kashmir Council. Now the situation has been changed and being a Department of Azad Jammu and Kashmir Government the provisions of section 29 of the Azad Jammu and Kashmir Law Department Manual, 2016 are fully applicable on the Income Tax Department and without complying with the same the Commissioner Income Tax was not competent to file instant petitions for leave to appeal. As the instant petitions have incompetently been filed without proper sanction of the Government,

therefore, no need to discuss the facts and the merits of the case as the same will be a futile exercise.

In view of the above all the titled petitions being incompetently filed are hereby dismissed on this sole ground. No order as to costs.

**CHIEF JUSTICE**

**JUDGE**

**JUDGE**

Mirpur,  
20.03.2023