

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(Special Original Jurisdiction)**

WRIT PETITION NO. 17727 OF 2017

In the matter of:

An Application under Article 102 of the Constitution of the People's Republic of Bangladesh.

And

In the matter of:

Grameen Kalyan, Grameen Bank Bhaban (8th Floor), Section-2, Mirpur, Dhaka represented by its Managing Director.

... Petitioner

-Versus-

The National Board of Revenue, Rajashya Bhaban, Segunbagicha, Dhaka represented by its Chairman and others.

... Respondents

Mr. Fida M. Kamal, Senior Advocate with
Mr. Abdullah-Al-Mamun, Senior Advocate,
Mr. Sarder Jinnat Ali,
Mr. Md. Umber Ali,
Mr. Md. Delower Hossin,
Mr. Khaja Tanvir Ahmed and
Mr. Syed Muntazim Ali, Advocates

...For the petitioner

Mr. A. M. Jamiul Hoque (Faisal), D.A.G with
Mr. Md. Abdus Samad Azad, D.A.G,
Mr. Mohammad Delawar Hosain, A.A.G,
Mr. Ariful Alam, A.A.G,
Ms. Sabikun Nahar, A.A.G,
Mr. Md. Arifur Rahman, A.A.G and
Mr. Mohammad Abdul Mannan, A.A.G

...For the respondent no. 2

**Heard on 13.08.2026, 20.08.2026,
07.09.2026 and 10.09.2026.**
Judgment on 10.09.2026.

Present:

Mr. Justice Md. Mozibur Rahman Miah
And
Mr. Justice Rezaul Karim

Md. Mozibur Rahman Miah, J.

This matter has been referred by the Hon'ble Chief Justice of Bangladesh vide his order dated 13.05.2026.

On an application by the petitioner, namely, "Grameen Kalyan" under Article 102 of the Constitution of the People's Republic of Bangladesh, a Rule Nisi was issued in the following terms on 14.01.2018:

"Let a Rule Nisi be issued calling upon the respondents to show cause as to why the impugned order contained in Nathi No. ৬(২০)/সাগ-২৮৭(কোং)/কঃঅঃ-১৪/রিভিউ/১৭৩/২০১৭-২০১৮ dated 27.11.2017 issued by the respondent no. 2, as evidenced by Annexure-'A' to the writ petition reviewing his own order contained in Nathi No. ৬(২০)/সাগ-২৮৭(কোং)/কঃঅঃ-১৪/রিভিউ/২০১৭-২০১৮/৩৮ dated 14.11.2017, as evidenced by Annexure-'B' to the writ petition should not be declared to have been issued without lawful authority and is of no legal effect and/or pass such other or further order or orders as to this court may seem fit and proper.

At the time of issuance of the rule, this court also passed an interim order staying operation of the Nathi No. ৬(২০)/ সাঃ-২৮৭(কোঃ)/ কঃঅঃ-১৪/রিভিউ/১৭৩/২০১৭-২০১৮ dated 27.11.2017 issued by respondent no. 2, as evidenced by Annexure- 'A' to the writ petition for a period of 6 (six) months which was subsequently extended from time to time."

The salient facts leading to issuance of the rule are:

The petitioner is an assessee in Circle-287 (Companies), Taxes Zone-14, Dhaka bearing e-TIN-642965369474. As per object clause 1 of its Memorandum of Association, it provides financial support in the form of loans and grants to the bank's staff and the members of the Grameen Bank and their families. The petitioner, with a view to fulfil its objectives as set down in its Memorandum of Association, received an endowment fund of Tk. 320,18,54,404/- out of donations/grants and loans received from different donors/organization being channelized through Grameen Bank. The petitioner once decided to invest out of its endowment fund through an affiliated organization, as set down in clause 8, and, selected Grameen Telecom on condition that, Grameen Telecom shall share the income to meet the expenses, and, it entered into following agreements with Grameen Telecom:-

- (i) Memorandum of Understanding dated 11.4.1999 regarding loan;
- (ii) Agreement dated 15.1.2003 regarding investment in the equity of Grameenphone Ltd;

- (iii) Deed of Assignment of Shares dated 18.3.2003;
- (iv) Deed of Assignment of Shares dated 21.3.2004;
- (v) Deed of Further Assignment of Shares dated 15.5.2004;
- (vi) Agreement dated 23.9.2004 regarding 3% shares of Grameenphone Ltd. off-loaded by Marubeni Corporation; and
- (vii) Deed of Assignment of Shares dated 15.5.2005.

Afterwards, the petitioner entered into a fresh Equity Participation Agreement dated 13.04.2011, a registered instrument, with Grameen Telecom in pursuant to section 2(2)(bb) of the Income Tax Ordinance, 1984 (shortly, “the Ordinance”) with a stipulation that the income from such joint investment would be made at 57.5% by Grameen Telecom, and, 42.5% by Grameen Kalyan in the purchase of shares in Grameen Phone Limited, and, eventually transferred Tk.53,25,62,941/- to Grameen Telecom with stipulation that the income forthcoming from such investment would also be divided at 57.35% that would go to Grameen Telecom, and 42.65% to the petitioner. Thereafter, the petitioner filed returns of income under section 75(2)(d)(iii) of the Ordinance disclosed income, being its share of dividend, and then taxes deducted at source, and, paid tax at the rate applicable for dividend enacted every year in the Finance Act, along with income from its business from the Assessment Years 2004-2005 to 2016-2017, which has been accepted by the taxes department in regular assessments in all the years, and, no objection was raised whatsoever. The petitioner filed its income tax returns for the Assessment Years 2012-2013, 2013-2014, 2014-2015, 2015-2016 and 2016-2017 showing income as per audited accounts, and, paid tax under section 74 of the Ordinance which has been duly credited in the Tax

Calculation/Refund Form (I.T.30). The petitioner however challenged the assessments made by the DCT for the Assessment Years 2012-2013, 2013-2014, 2014-2015 and 2015-2016 before the Commissioner of Taxes (Appeals), and, then second appeals before the Taxes Appellate Tribunal, and, being aggrieved by the order passed by the Tribunal also filed reference applications vide Income Tax Reference (ITR) No. 107/2015, 621/2015, 622/2015 & 573/2016 before this Hon'ble Court. But as regards to the assessment year 2016-2017, it is lying with the Commissioner of Taxes (Appeals) in connection with an appeal filed by the petitioner. At that juncture, the Additional Commissioner of Taxes, Inspecting Range-1, Taxes Zone-14, Dhaka (hereinafter referred to as the Respondent No. 3) passed orders upon initiating a proceeding under section 120 of the Ordinance in a hastily manner cancelling the assessments, whereof the Deputy Commissioner of Taxes revised the assessments, and issued assessment orders, Tax Calculation Sheet and demand notice. The petitioner then challenged the said order in Writ Petition No. 14364 of 2017, whereupon this Hon'ble Court directed to take legal steps before the authorities below, and, accordingly, the petitioner filed revision petitions under section 121A of the Ordinance before the Commissioner of Taxes (Respondent No. 2) who entertained the applications, but upon hearing the petitions, rejected the same, without touching the grounds furnished in the revision petitions of all the assessment years separately, in a single order, and, maintained the orders passed by the Additional Commissioner of Taxes. The petitioner then informed the said order of the Hon'ble Court by filing a supplementary-affidavit annexing the order passed by the Commissioner of Taxes

(Respondent No. 2) whereupon, the Hon'ble Court heard the Writ Petition No.14364 of 2017, on 24.11.2017, and instant rule and order of stay. Thereafter, the Commissioner of Taxes issued a notice vide নথি নং ড(২০)/সা-২৮৭(কোং)/কঃঅঃ-১৪/রিভিউ/২০১৭-২০১৮/৩৯ dated 16.11.2017 stating therein that, in the earlier order dated 14.11.2017 passed by him, he by mistake recorded, payment of 'undisputed portion of tax' “ভুলবশতঃ প্রদেয় আয়কর অপরিশোধিত এর পরিবর্তে পরিশোধিত উল্লেখ করা হয়েছে”, being a pre-condition to filing the revision, as set down in sub-section 4 of section 121A of the Ordinance as paid, but ultimately the same had not been paid. In issuing the notice, the Commissioner of Taxes, ignored the entire assessment records of the petitioner for all the assessment years in which it is clearly recorded that the undisputed portion of tax was paid in all the years for which clearance was also issued by the DCT upon which the appellate authorities admitted the appeals. However, the petitioner filed an application through an authorized lawyer stating therein that, taxes were paid under section 74 of the Ordinance at the time of filing of the returns of income in all the years, hence, there arises no necessity of reviewing the earlier order, but the Commissioner rectified his earlier order under section 173 of the Ordinance rejecting the revisions on 27.11.2017 on the ground of non-payment of undisputed portion of tax as laid down in sub-section 4(b) of section 121A of the Ordinance which has been impugned in the instant writ petition.

Mr. Fida M. Kamal, learned senior counsel along with Mr. Sarder Jinnat Ali, learned counsel appearing for the petitioner at the very outset submits that, when the DCT has confirmed payment of undisputed tax in his certificate contained in I.T.59, before the Taxes Appellate Tribunal long

before, in respect of Assessment Years 2012-2013, 2013-2014, 2014-2015 and 2015-2016, hence, the opinion of non-payment of undisputed portion of tax, is mere conjecture, and, the order passed under section 173 of the Ordinance by the Respondent No. 2 is not maintainable in law.

The learned counsel next submits that an order of rectification under section 173 of the Ordinance cancelling earlier order, on the plea that undisputed portion of tax was not paid under sub-section 4(b) of section 121A of the Ordinance when, after scrutiny by the Taxes Appellate Tribunal the assessments attained finality under sub-section (5) of section 159 of the Ordinance and the appeal for the assessment year 2016-2017 has been admitted by the Commissioner of Taxes (Appeals), is a clear violation of law and hence, not maintainable.

The learned counsel further contends that the petitioner has filed reference applications in respect of Assessment Years 2012-2013, 2013-2014, 2014-2015 and 2015-2016 framing questions of law for answer of the Hon'ble Court, as such, cancellation of the assessments at this stage under section 120 of the Ordinance and maintaining the same by Respondent No. 2 through his rectification order is not maintainable in law.

The learned counsel lastly submits that it is a settled issue that, the Commissioner cannot review and rectify his own order, hence, the order passed by Respondent No. 2 reviewing his own order is beyond jurisdiction and clearly a malice in law, and, therefore, it constitutes *coram non judice*, hence, not maintainable in law and finally prays for making the rule absolute.

On the contrary, Mr. Md. Abdus Samad Azad, learned Deputy Attorney-General appearing for the respondent no. 2 by filing an affidavit-

in-opposition by controverting all the assertion made by the learned senior counsel for the petitioner at the very outset submits that the assessee-petitioner failed to fulfil the pre-requisite conditions as required under the provision of section 74 (1) of the Ordinance and failed to submit the necessary *challans* or pay orders in support of payment of tax as against the Dividend Income and Income from other sources under section 33 of the Ordinance the assessee concealed the income by declaring false, fabricated, manipulated and created income as a 'Dividend Income for the purpose of avoiding payment of real and correct tax and the assessee-petitioner misguided the court in this respect.

The learned Deputy Attorney-General further submits that under section 120 of the Ordinance for the Assessment Years: 2012-2013 to 2016-2017 as the assessment orders passed therein earlier by the DCT is erroneous insofar as it prejudicial to the interests of the revenue initiation of the proceeding under section 120 of the Ordinance was well within the lawful authority and very much sustainable in law.

The learned Deputy Attorney-General next contends that the Commissioner of Taxes, Taxes Zone-14, Dhaka issued impugned order under sections 121A/173 dated 27.11.2017 asserting therein that, in the earlier order passed by him, he committed a mistake, saying that “দাখিলকৃত রিটার্নের ভিত্তিতে প্রদেয় আয়কর পরিশোধিত। ফলতঃ ২০১২-২০১৩, ২০১৩-২০১৪, ২০১৪-২০১৫, ২০১৫-২০১৬ ও ২০১৬-২০১৭ করবর্ষের জন্য দাখিলকৃত রিভিশন মামালাসমূহ আয়কর অধ্যাদেশ, ১৯৮৪ এর ১২১এ(২) ও ১২১এ (৪)(এ)(বি) ধারার শর্ত পরিপালন করায় শুনানীর জন্য গৃহীত হলো” which is being a pre-condition for filing revision, as set down in sub-section (4) of section 121A of the Ordinance, but fact remains actually the

same has not been paid by the petitioner, Grameen Kalyan and eventually he (respondent no. 2) rectified the same order under section 173 of the Ordinance for correction of such inadvertent errors still the assessee-petitioner did not pay the admitted liability under section 74 (1) of the Ordinance as it was clearly detected and also established in the revise assessment orders of the Additional Commissioner of Taxes under section 120 of the Ordinance.

The learned Deputy Attorney-General further submits that the assessee declared income as 'Dividend Income' escaping the actual and correct income of the assessee-petitioner under the head 'Income from other sources' under section 33 of the Income Tax Ordinance, 1984 by paying lower rate of tax applicable for Dividend Income @ 20% though the higher rate is applicable for the Income from other sources @ 37.50% in accordance with the provision of the Income Tax Ordinance, 1984.

The learned Deputy Attorney-General also submits that the Commissioner of Taxes passed the impugned order as per law who issued the impugned order under sections 121A/173 of the Ordinance for correction of the errors having given reasonable opportunity of being heard to the assessee-petitioner within the lawful authority and there is no violation of Article 27 & 41 of the Constitution of the People's Republic of Bangladesh but the assessee-petitioner misguided the court and misinterpreted the provision of law in the case.

He next submits that the impugned revision order under section 121A of the Ordinance dated 14.11.2017 and the impugned notice under sections 121A/173 of the Ordinance for correction of errors and order passed thereof

are all within the lawful authority and based on legal aspect which has not caused any irreparable loss and injury in any way to the petitioner and also did not violate the fundamental rights of the petitioners as enshrined in Article 27 & 31 of the Constitution of the People's Republic of Bangladesh and therefore, the Rule and order of stay issued by the Hon'ble High Court is liable to be vacated and discharged.

The learned Deputy Attorney-General goes on to submit that the order dated 14.11.2017 has simply been corrected on 27.11.2017 by replacing the word "অপরিশোধিত" in place of incorrect word "পরিশোধিত" which was inadvertently written earlier, since the *challan* submitted for showing tax deducted at source by the Grameen Kalyan was not correct at all since the said *challans* are related with Grameen Telecom not Grameen Kalyan and hence Grameen Kalyan cannot claim tax deposited through the said *challans*, and hence it goes counter in making payment of admitted tax under section 74 of the Ordinance which was actually required correction of earlier order and as such the order passed under sections 121A/173 of the Ordinance is lawful and hence the rule may kindly be discharged.

The learned Deputy Attorney-General also submits that the assessee-petitioner failed to fulfil the pre-requisite conditions as required under section 74(1) of the Ordinance and also failed to submit the necessary *challans* or pay orders in support of payment of tax as against the alleged claimed Dividend Income and/or Income from other sources under section 33 of the Ordinance in its name not in the name of Grameen Telecom and therefore, the assessee misreported and misinterpreted the income by declaring false, fabricated, manipulated and created income as 'Dividend

Income' for the purpose of avoiding payment of real and correct tax and as such the rule may kindly be discharged being not fulfilled the condition provided in section 121A(4)(b) of the Ordinance.

The learned Deputy Attorney-General next submits that the only point of law raised by the assessee-petitioner was whether or not the Joint Commissioner of Taxes rightly treated the income of the assessee, Grameen Kalyan received from Grameen Telecom as per agreement sharing the profit earned as "income from other sources" or of "dividend income", and the same being voluntarily settled by the petitioner by withdrawing ITR No. 363 of 2019 that upheld the Tribunal's order and thus the said revision filed under section 121A of the Ordinance has been rightly rejected on 14.11.2017 and thereafter, made correction thereof under section 173 of the Ordinance on 27.11.2017 due to non-depositing tax liability under section 74, which is a pre-condition to entertain the revision under section 121A of the Ordinance and hence the rule issued in the instant Writ Petition is liable to be discharged since there has been no illegality in passing the order impugned in the Writ Petition No. 14364 of 2017 dated 14.11.2017 as well as order dated 27.11.2017 passed in the instant writ petition under sections 121A/173 of the Ordinance and finally prays for discharging the rule.

Be that as it may, we took notice of the submission so placed by the learned senior counsel for the petitioner and that of the learned Deputy Attorney-General, perused the writ petition, supplementary-affidavit filed by the petitioner including the Annexure appended thereto vis-à-vis the affidavit-in-opposition so filed by the learned Deputy Attorney-General for respondent no. 2 and the document annexed as of Annexure.

Since in the Writ Petition No. 14364 of 2017, we have exhaustively discussed and addressed all the relevant issues raised by the petitioner and countered by the respondent no. 2, we thus don't feel it expedient to repeat the same in adjudicating the instant writ petition since the order impugned in the instant writ petition is nothing but the continuation of the action taken by the respondents against which filing of a fresh writ petition could have easily been avoided rather could seek a supplementary rule in conjunction of earlier writ petition.

Having said that, in the impugned order dated 27.11.2017 simply a correction has been made by replacing a word “অপরিশোধিত” in place of “পরিশোধিত” incorrectly made in earlier order dated 14.11.2017 which has been passed while dismissing the revision and impugned in the Writ Petition No. 14364 of 2017.

Simply put, we have to examine if the petitioner had at all paid admissible tax while filed the said revision under section 121A of the Ordinance taking into account of its income other than income it alleged to gains as dividend income in compliance with section 121A(4)(b) of the Ordinance. The emphatic answer is “No” basing on the materials available on record and clear negation expressed repeatedly in the affidavit-in-opposition filed by the respondent no. 2. Now it would also be profitable if we revisit the relevant portion of the impugned order (as has been corrected) dated 27.11.2017 which are as follows:

“অতিরিক্ত কর কমিশনার, পরিদর্শী রেঞ্জ-১, কর অঞ্চল-১৪, ঢাকা
কর্তৃক ২০১২-১৩, ২০১৩-১৪, ২০১৪-১৫, ২০১৫-১৬ ও ২০১৬-১৭
করবর্ষসমূহের জন্য আয়কর অধ্যাদেশ, ১৯৮৪ এর ১২০ ধারায়

প্রণীত আদেশের বিরুদ্ধে করদাতা প্রতিষ্ঠান বিগত ২৯/১০/২০১৭ইং তারিখে রিভিশন মামলা দায়ের করেন। আয়কর নথির রেকর্ড পরীক্ষান্তে দেখা যাচ্ছে যে, অতিরিক্ত কর কমিশনার, পরিদর্শী রেঞ্জ-১, কর অঞ্চল-১৪, ঢাকা বিগত ২৬/০৯/২০১৭ইং তারিখে আলোচ্য করবর্ষসমূহের ক্ষেত্রে আয়কর অধ্যাদেশ, ১৯৮৪ এর ১২০ ধারার আদেশ প্রদান করেন, যার বিরুদ্ধে রিভিশন মামলাসমূহ নির্ধারিত সময়সীমার মধ্যে দায়েরকৃত। এছাড়াও রিভিশন ফিস বাবদ প্রতিটি করবর্ষের জন্য পরিশোধিত টাঃ ২০০/= (টাকা দুই শত) মাত্র এর চালানের কপি (চালান নং-৩২০৯, ৩২৪৪, ৩২৪৬, ৩২৪৯ ও ৩২৫০, তারিখ ১৯/১০/২০১৭ইং, বাংলাদেশ ব্যাংক, ঢাকা) দাখিল করা হয়েছে। কিন্তু দাখিলকৃত রিটার্নের ভিত্তিতে প্রদেয় কর পরিশোধিত নয়। ফলতঃ করদাতা প্রতিষ্ঠানের ২০১২-১৩, ২০১৩-১৪, ২০১৪-১৫, ২০১৫-১৬ ও ২০১৬-১৭ করবর্ষসমূহে জন্য দাখিলকৃত রিভিশন মামলা আয়কর অধ্যাদেশ, ১৯৮৪ এর ১২১এ (২) ও ১২১এ (৪এ) ধারার শর্ত পরিপালন করলেও ১২১এ (৪বি) ধারা পরিপালন না করায় বর্ণিত করবর্ষসমূহের জন্য দাখিলকৃত রিভিশন মামলা আমলে নেয়া গেল না এবং রিভিশন মামলাসমূহ প্রত্যাখ্যান (Reject) করা হলো।

অন্য কোন আপত্তি শুনানীকালে উত্থাপন করা হয়নি।

আয়কর অধ্যাদেশ, ১৯৮৪ এর ১২১এ /১৭৩ ধারায় উল্লিখিত ভাবে ২০১২-১৩, ২০১৩-১৪, ২০১৪-১৫, ২০১৫-১৬ ও ২০১৬-১৭ করবর্ষসমূহের রিভিউ আদেশ সংশোধন করা হলো। সংশোধিত আদেশের অনুলিপি করদাতা প্রতিষ্ঠান ও উপকর কমিশনার, সার্কেল-২৮৭ (কোম্পানীজ), কর অঞ্চল-১৪, ঢাকা এর নিকট প্রেরণ করা হোক।”

As per the above provision of section 121A(4)(b), the petitioner has admittedly not paid tax when it filed returns of the assessment years impugned in the writ petitions under section 75(2)(d)(iii) so it was legally bound to pay tax as per section 74 of the Ordinance having no scope to walk away treating payment of tax by Grameen Telecom at source as its own payment.

On top of that, section 173 of the Ordinance has clearly mandated the respondent no. 2 to correct error on its own motion which it done within 13(thirteen) days of passing earlier order in the revision even by giving prior notice to the petitioner as it has also been reflected in the impugned order where it has been asserted that “কিন্তু রিভিউ আদেশটিতে ভুলবশতঃ প্রদেয় আয়কর অপরিশোধিত এর পরিবর্তে পরিশোধিত উল্লেখ করা হয়েছে, ঐ আয়কর অধ্যাদেশ, ১৯৮৪ এর ১৭৩ ধারায় সংশোধনের নিমিত্তে করদাতা প্রতিষ্ঠানের কোন বক্তব্য/আপত্তি আছে কি না জানানোর জন্য অনুরোধ করে পত্র প্রেরণ করা হয়। উক্ত পত্রের পরিপ্রেক্ষিতে করদাতা প্রতিষ্ঠানের ক্ষমতাপ্রাপ্ত প্রতিনিধি সরদার জিন্নাত আলী, এডভোকেট হাজির হয়ে লিখিত ব্যাখ্যা দাখিল করেন। তাঁর সাথে বিষয়টি নিয়ে আলোচনা হয়। কিন্তু তিনি করদাতা প্রতিষ্ঠান-গ্রামীণ কল্যাণ এর নামে আলোচ্য কর বৎসরসমূহের জন্য দাখিলকৃত রিটার্ণের ভিত্তিতে প্রদেয় করের বিপরীতে পরিশোধিত করের কোন প্রমাণ দাখিল করতে পারেননি”.

All in all, we simply don't find any iota of illegality in the impugned order which warrants any interference by us at all.

In the result, the rule is discharged however without any order as to costs.

The order of stay passed at the time of issuance of the rule and extended from time to time stands vacated.

The respondents are directed to do the needful relating to the unpaid tax from the petitioner by issuing necessary demand notice immediately.

Let a copy of this judgment and order be communicated to the respondents forthwith.

Rezaul Karim, J.

I agree.