

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

WRIT PETITION NO. 14364 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, represented by its Managing Director Mr. Md. Imamus Sultan, Grameen Bank Bhaban (8th Floor), Section-2, Mirpur, Dhaka, Bangladesh.

... Petitioner

-Versus-

The National Board of Revenue represented by its Chairman, Rajashya Bhaban, Segunbagicha, Dhaka 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 15.07.2026, 30.07.2026,
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 26.11.2017:

"Let a Rule Nisi be issued calling upon the respondents to show cause as to why the impugned order vide Nathi No. ৬(২০)/সিঃ-২৮৭(কোঃ)/কঃঅঃ-১৪/রিভিউ/২০১৭-২০১৮ dated 14.11.2017 as evidenced by Annexure-'H' to the writ petition passed by respondent no 2 without addressing the grounds arising out of the orders under section 120 dated 26.09.2017 passed by respondent no. 3 as evidenced by Annexure-'F' series to the writ petition and proceedings and others under section 120 in respect of the assessment years 2012-2013, 2013-2014, 2014-2015, 2015-2016, and 2016-2017 should not be declared to have been done

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 demand notice dated 02.10.2017, issued by respondent no. 4, as evidenced by Annexure I series to the writ petition was stayed for a period of 6 (six) months which was subsequently extended time to time.”

It is to be noted here that the petitioner subsequently filed another writ petition being No. 17727 of 2017 against the order dated 27.11.2017 passed by respondent no. 2 rejecting all the revision on reviewing the order dated 14.11.2017. However, the above writ petition along with Writ Petition No. 17727 of 2017 was taken up for hearing and by judgment and order dated 17.10.2023, this court comprising Mr. Justice Muhammad Khurshid Alam Sarkar and Mr. Justice Sardar Md. Rashed Jahangir were pleased to dispose of both the writ petitions vide judgment which is reproduced below in verbatim:

“Both the Rules have been issued by a Division Bench presided over by his Lordship Mr. Justice Zubayer Ralman Chowdhury.

In the writ petition No. 14364 of 2017, the Rule was issued on 26.11.2017 in the following manner,

"Let a Rule Nisi be issued calling upon the respondents to show cause as to why the impugned order vide Nathi No. ৬(২০)/সাঁঃ-২৮৭ (কোঃ)/কাতার-১৪/রিভিউ/২০১৭- Rob dated 14.11.2017, as evidenced by Annexure H, passed by respondent no. 2, without addressing the grounds arising out of the orders under section 120 dated 26.09.2017, passed by respondent no. 3, as evidenced by Annexure F series and proceedings and orders under section 120, in respect of the assessment years 2012-2013, 2013-2014, 2014-2015, 2015-2016 and 2016-2017 shall not be declared to have been passed without any lawful authority and to be 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 this Rule an interim Order was passed in the following manner:

"Pending disposal of the Rule, let operation of the Demand Notices dated 02.10.2017, issued by respondent no. 4, as evidenced by Annexure I series, be stayed for a period of 6 (six) months from date."

And, in the writ petition No. 17727 of 2017, the Rule was issued on 14.01.2018 in the following manner;

"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)/সাঁঃ-২৮৭ (কোং)/ কঃঅঃ-১৪/ রিভিউ/১৭৩/২০১৭-২০১৮ dated 27.11.2017, issued by respondent no. 2, as evidenced by Annexure A. reviewing his own order contained in Nathi No. ৬(২০)/স-২৮৭ (লো)/ কাজা-১৪/ রিভিউ/২০১৭-২০১৮/৩৮ dated 14.11.2017, as evidenced by Annexure B, shall not be declared to have been passed without any lawful authority and to be 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 this Rule an interim Order was passed in the following manner:

"Pending disposal of the Rule, let operation of the impugned order being Nathi No. 1 (20)/সাঁঃ-২৮৭ (কোং)/কঃঅঃ-১৪/রিভিউ/১৭৩/২০১৭-২০১৮ dated 27.11.2017, issued by respondent no. 2, as evidenced by Annexure A, be stayed for a period of 6 (six) months from date."

Subsequently, on 08.05.2023 both the matters were fixed on 07.06.2023 for their hearing by a Division Bench presided over by Madam Justice Farah Mahbub

but on 09.05.2023 both the matters were 'ordered to be out of list' by the aforesaid Bench. Thereafter, at the instance of the Attorney General Office, both the matters were fixed for hearing before a Division Bench presided over by his Lordships Mr. Justice Md. Iqbal Kabir and on 05.06.2023 in the midst of hearing of the matters their Lordships felt embarrassed and referred both the matters to the Hon'ble Chief Justice for necessary Order(s). Pursuant thereto, the Hon'ble Chief Justice has referred both the matters to this Bench and, accordingly, both the matters were fixed for their final disposal by this Bench.

For the last few months both the matters have extensively been heard for few days analogously.

Upon hearing the learned Advocates for the petitioners' side and the learned Attorney General Mr. A M. Aminuddin together with Ms. Tahmina Poly, the learned Assistant Attorney General, on perusal of the petitioner's application as well as the affidavit-in-opposition filed by the respondents together with their annexures and having read the relevant statutory laws, it appears to this Court that for an effective and fair disposal of these Rules, if the petitioner is given an opportunity to prefer appeal against the Orders dated 26.09.2017 passed by the Additional Commissioner of Taxes, (Inspection Range-1), Taxes Zone-14, Dhaka,

(respondent No.3) under Section 120 of the Income Tax Ordinance, 1984 upon setting aside the Revision Order dated 14.11.2017 passed by the Commissioner of Taxes, Taxes Zone-14, Dhaka under Section 121A of the Income Tax Ordinance, 1984 (Annexure-H to the Writ Petition No. 14364 of 2017) and, also, upon setting aside the Order dated 27.11.2017 passed under Section 121A/173 of the Income Tax Ordinance, 1984 by the Commissioner of Taxes, Taxes Zone-14, Dhaka, respondent No. 2, (Annexure-A to the Writ Petition No. 17727 of 2017), then, justice will be done for now.

To this end, the learned Senior Advocate Mr. Fida M. Kamal makes a humble prayer before this Court that if the Court passes the aforesaid Order, the delay in preferring the appeal may be condoned.

Accordingly, the prayer is allowed. The Order dated 14.11.2017 passed by the respondent No.2 (Commissioner of Taxes, Taxes Zone-14, Dhaka) under Section 121A of the Income Tax Ordinance, 1984 (which is impugned in Writ Petition No. 14364 of 2017 and annexed therewith as Annexure-H) and the Order dated 27.11.2017 passed by the respondent No. 2 (Commissioner of Taxes, Taxes Zone-14, Dhaka) under Section 121A/173 of the Income Tax Ordinance, 1984 (which is impugned in the Writ Petition No. 17727 of

2017 and annexed therewith as Annexure-A) are hereby set-aside. And, the delay, which has been occurred by now in preferring the appeal, is hereby condoned subject to the condition that the petitioner shall prefer appeal in accordance with law within 60 (sixty days) from today.

In the result, both the Rules are disposed of with the above Observations and Directions.

However, there shall be no Order as to costs.

Communicate this Order at once.”

However, against the said judgment passed in Writ Petition No. 14364 of 2017, National Board of Revenue and others preferred an appeal before the Appellate Division bearing Civil Petition For Leave To Appeal No. 3807 of 2023 and a full bench of that Division by judgment and order dated 11.03.2024 disposed of the said appeal which in verbatim is reproduces as under:

“The petitioners filed this Civil Petition for Leave to Appeal against the judgment and order dated 17.10.2023 passed by the High Court Division in Writ Petition No. 14364 of 2017 disposing of the Rule with some observations and direction and obtained the order of status quo and stay from the learned Judge-in-Chamber on 13.12.2023 and 14.12.2023.

Considering the facts and circumstances of the case, we are inclined to set aside the judgment and order dated 17.10.2023 passed by the High Court Division in Writ Petition No. 14364 of 2017.

However, the Division Bench of the High Court Division presided over by Mr. Muhammad Khurshid Alam Sarkar, J., is directed to hear and dispose of the Rule on the basis of the Rule issuing terms afresh on merit, as expeditiously as possible, preferably within 03(three) months from the date of receipt of this order.

Accordingly, this Civil Petition for Leave to Appeal is disposed of with the above observations and directions.

The office is directed to communicate the order to the High Court Division at once.”

Then in compliance with the direction as laid out in the above judgment of the Appellate Division, this court comprising Mr. Justice Muhammad Khurshid Alam Sarkar and Mr. Justice S. M. Moniruzzaman heard the matter and discharged the rule on 04.08.2024 but they reverted back from releasing a full text of judgment and eventually released the following judgment on 29.08.2024:

“Earlier on 17.10.2023, this Court permitted the petitioner, as per the petitioner's prayer, to file an appeal against the impugned order dated 14.11.2017. However, when the Government filed Civil Petition for Leave to appeal before the Hon'ble Appellate Division against this Court's aforesaid Order dated 17.10.2023, this Court's aforesaid Order was set aside by the Honourable Appellate Division upon remanding' back the case to this Court for passing a Judgment on merit. Thereafter, on numerous occasions this Court heard the case

and, eventually, suggested the parties to resolve the dispute amicably and when no amicable settlement was reached, finally, on 04.08.2024, this Court discharged the Rule merely by announcing the result.

On the next day, at the time of preparation for writing the Judgment, it was detected from the file that at the time of issuance of this Rule on 14.01.2018, one of us, namely, his Lordship Mr. Justice S. M. Maniruzzaman, had represented one of the parties of this case (namely, National Board of Revenue) in the capacity of the Deputy Attorney General before his elevation to Bench. It is evident from the Order-sheet dated 14.01.2018 that he conducted the hearing on behalf of the Government of Bangladesh on the said date. Therefore, the unsigned Judgment and Order dated 04.08.2024 should be recalled.

At this juncture, this Court found it appropriate to place this matter in the daily cause list for passing necessary Order and, accordingly, the matter was posted in the daily cause list on 08.08.2024 for passing necessary Order but due to an unavoidable situation, this Court could not perform its regular activities/function on the said date and necessary Order could not be passed on 08.08.2024.

In the meantime, the learned Advocate for the petitioner Mr. Sarder Jinnat Ali has filed an application with a prayer for recalling the unsigned Order dated 04.08.2024 on the aforesaid

ground. He further prayed for extension of the extension interim Order dated 14.01.2018.

Subsequently, due to reconstitution of this Bench, this Court was not in a position to pass necessary Order. Thereafter, upon being constituted this Bench by the Hon'ble Chief Justice of Bangladesh for this purpose, this Court sits today for passing necessary Order.

Under the above circumstances, we are of the view that this matter should be heard and disposed of by any other appropriate Bench having similar jurisdiction.

Accordingly, the undrafted and unsigned Judgment and Order passed by this Court earlier on 04.08.2024 is hereby recalled and vacated, and the interim Order of Stay dated 14.01.2018 is extended for a further period of 03 (three) months.

Let the file be placed before the Hon'ble Chief Justice of Bangladesh to make arrangements for hearing of this matter by any other competent Bench.”

Against the above backdrop, the matter has been referred to this court by the Hon’ble Chief Justice of Bangladesh vide his order dated 13.05.2026 as aforesaid and we heard the learned counsels for the petitioner and that of the learned Deputy Attorney-General exhaustively and now going to pass the following verdict.

The salient facts leading to issuance of the rule and interim order that derived from the writ petition, supplementary-affidavits filed by the

petitioner and those of the affidavit-in-opposition and supplementary affidavit-in-opposition filed by the respondents are as follows:

The petitioner is a company formed under section 28 of the Companies Act, 1994, and an assessee in Circle-287 (Companies), Taxes Zone-14, Dhaka bearing e-TIN-642965369474 and a Company Limited by Guarantee and Licensed under section 28 of the Companies Act, 1994 as well as incorporated vide No.C-388(08)/96 dated 06.11.1996. As per object clause 1 of the Memorandum of Association, it provides financial support in the form of loans and grants to the staffs and the members of the Grameen Bank and their families. Further, as per object clause 2 of the Memorandum of Association, the petitioner is required to provide matching funds under varying terms and conditions, to projects or enterprises owned and managed by the employees of Grameen Bank. Again, as per object clause 3 of the Memorandum of Association, the petitioner is authorized to extend loans to other affiliated organizations of Grameen Bank. 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/- as of donations/grants and loans from donors/organizations being channelized through Grameen Bank including those received from Grameen Bank itself. The petitioner then entered into an agreement on 13.04.2011 with one, Grameen Telecom in pursuant to section 2(20)(bb) of Income Tax Ordinance, 1984 with a stipulation that the income from joint investment would be made at 57.35% by Grameen Telecom and 42.65% by the petitioner, Grameen Kalyan in the purchase of shares in Grameen Phone Limited, and thus, the petitioner ultimately transferred Tk. 53,25,62,941/- to Grameen Telecom being its

share of investment at 42.65% as described in schedule-‘Ga’ (গা তফসিল) to the agreement for investment. It was also stipulated in the agreement that the income forthcoming from such investment, would also be divided at 57.35% which will go to Grameen Telecom, and 42.65% to the petitioner and said agreement was registered one. The petitioner under joint venture, invested the same in Grameen Phone Limited, in the purchase of shares, received dividend, after deduction of tax as per second schedule of Income Tax Ordinance, 1984 allocated share of dividend and the petitioner received 42.65% as per agreement, which has been disclosed in its returns, in all the assessment years, and the Deputy Commissioner of Taxes (hereinafter referred to as DCT, the respondent No. 4) did assessment with due application of mind with regards to the fact and of the law regarding dividend income and have been completed assessments of all the assessment years with the approval of the Inspecting Additional Commissioner of Taxes. The petitioner being a person of the venture, enjoys exemption of tax as of dividend income (since full tax has been deducted at source), as aforesaid and part B to the Sixth schedule of Income Tax Ordinance, 1984 (precisely, “the Ordinance”). The petitioner filed returns of income under section 75(2)(d)(iii) of the Income Tax Ordinance, 1984 and disclosed its income, being its share of dividend, and taxes deducted at source, and has been paying the balance tax at the rate applicable to dividend enacted every year as per 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 has raised. The petitioner is a large tax payee and the assessments of all the

years have been approved by the higher authorities and there had been no difference of opinion amongst the authorities, on the point of dividend received by the petitioner from its investments through Grameen Telecom under a equity participation agreement which is evident from Annexure-‘C’ series to the writ petition. However, the petitioner company against the assessment orders preferred appeals to the Commissioner of Taxes (Appeals), and, then second appeal before the Tribunal, and upon being adjudicated by the Tribunal, the assessments attained finality pursuant to section 159(5) of the Income Tax Ordinance, 1984. Then the petitioner company not being satisfied with the Tribunal's order, filed Reference Applications being Nos. 107/2015, 621/2015, 622/2015 & 573/2016 which was pending for the decision of the High Court Division and as regards Assessment Year 2016-2017 before the Commissioner of Taxes (Appeals), Taxes Appeal Zone-2, Dhaka.

The respondent No. 3 having approving assessment yet without hearing the petitioner initiated, proceedings under section 120 of the Ordinance at the behest of Central Intelligence Cell (briefly, CIC) issued notices vide নথি নং ১২০-ধারা/রেঞ্জ-১/কঃঅঃ-১৪/২০১৭-২০১৮/৬২ তারিখ ৭/৯/১৭ for the Assessment Years 2013-2014, 2014 2015, 2015-2016 and 2016-2017 and then vide নথি নং ১২০ ধারা/রেঞ্জ-১, কঃ অঃ ১৪/২০১৭-২০১৮/১১৭ তারিখ ১১.০৯.২০১৭ for the Assessment year 2012-2013. As the respondent No. 3 went on to proceed with the matter initiated under section 120 of the Ordinance, the petitioner on 21.09.2017 filed an application for adjournment of the hearing, which was duly received by the office of respondent no. 3 however, the respondent No. 3 ultimately passed orders all

dated 26.09.2017 in respect of the Assessment Years 2012-2013, 2013-2014, 2014-2015, 2015-2016 and 2016-2017 as has been annexed as of Annexure-‘F’ series to the writ petition without hearing the petitioner which has been impugned in the instant writ petition. Against the said orders, the petitioner then filed revisional applications under section 121A of Income Tax Ordinance, 1984 which was ultimately heard and upon hearing all the revisions those also rejected on 14.11.2017 which has also been impugned in the instant writ petition annexing the same as of Annexure-‘H’ to the supplementary-affidavit filed on 23.11.2017.

It is worthwhile to mention here that during pendency of the rule and in course of hearing by different benches of this Division, the petitioner filed a series of supplementary-affidavits and applications. In the same vein, the respondents also filed supplementary-affidavits-in-opposition and applications. But since the petitioner has challenged the propriety of Annexure-‘F’ series to the writ petition and that of Annexure-‘H’ to the supplementary-affidavit dated 23.11.2017, so, we will only dwell on those affidavits and applications if we find those to have any nexus with those two impugned decisions.

Mr. Fida M. Kamal, learned senior counsel along with Mr. Sarder Jinnat Ali, learned counsel appearing for the petitioner upon taking us to the writ petition and supplementary-affidavit dated 23.11.2017 at the very outset submits that, the respondent No. 2 while disposing of the applications under section 121A of the Income Tax Ordinance, 1984 failed to discharge his statutory liability and passed the impugned decision dated 14.11.2017 (Annexure-‘H’ to the supplementary-affidavit dated 23.11.2017) and failed

to consider that the income from dividend retains its character as "dividend", it disclosed in the financial statements and income tax return, tax on such income was deducted at source at the rate 20%, tax credit was allowed and there is no prejudice of revenue and now it cannot be branded the said dividend as an income from other sources other than "dividend" when tax on dividend had been deducted at source, and non-consideration of this salient point, the respondent No. 2 has thus committed gross illegality in passing the order dated 14.11.2017 and as such the same is liable to be declared to have been passed without lawful authority and is of no legal effect.

The learned counsel next submits that the respondent No. 2 has failed to consider that since share of dividend having been once included in total income and thus initiation of proceeding under section 120 of the Ordinance is tantamount to pay tax twice and thus the notice and the order under section 120 of the Ordinance and all other actions taken thereof are illegal and suffers from legal infirmity and as such, the order dated 14.11.2017 is void *ab initio* and the same is liable to be declared to have been passed without lawful authority and is of no legal effect.

The learned counsel further submits that the petitioner in its revision applications filed under section 121A of the Ordinance took as many as 12 grounds yet the respondent No. 2 while passing the decision did not consider those nor addressed the same as per law which rendered the impugned order arbitrary, illegal and as such the impugned order dated 14.11.2017 unsustainable in law and therefore, proceeding initiated under section 120 of the Ordinance that culminated vide impugned order dated 14.11.2017 passed

under section 121A of the Ordinance is also liable to be declared to have been passed without lawful authority and is of no legal effect.

The learned counsel also submits that the Respondent No. 2 failed to consider the legal aspect that, since income from dividend retains its character as "dividend", it was disclosed in the financial statement and income tax return and tax on such income was deducted at source at the rate 20%, so there is no prejudice of revenue and then it can be branded as "income from other sources" other than dividend when taxes on dividend was deducted as source, hence, initiation of proceedings and orders passed under section 120 as well as under section 121A of the Ordinance are unsustainable in law and as such the same are liable to be declared to have been passed without lawful authority and is of no legal effect.

The learned counsel next submits that the respondent No. 2 having not considered the issue that, since the authorities accepted dividend, allowed credit of tax from year to year and as there has been no changes in the structure of Joint Venture, so invocation of section 120 of the Ordinance is impermissible in law, as the dividend income is exempt (in the form of rebate) from further tax under Part-B of 6th Schedule of the Ordinance and as the respondent No. 2 having not passed order in this respect hence the order passed under section 121A and under section 120 of the Ordinance respectively are liable to be declared to have been passed without lawful authority and is of no legal effect.

The learned senior counsel wrapped up his submission contending that the petitioner waived the right of appeal and filed applications under section 121A of the Ordinance and against an order passed under section

121A, there is no forum and as such, the writ petition is very much maintainable 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 controverting all the assertion made in the writ petition at the very onset submits that the assessee-petitioner company, Grameen Kalyan on several occasions lend money to Grameen Telecom and with the said money Grameen Telecom bought shares of Grameen Phone and as per the Equity Participation Agreement dated 13.04.2011 (Annexure-‘B’ to the writ petition), Grameen Telecom is the absolute owner of the shares of Grameen Phone whether the petitioner can never claim ownership over the shares of Grameen Phone yet Grameen Telecom was contractually bound to transfer profit (লভ্যাংশ) at the rate 42.65% out of the dividend income to the petitioner, Grameen Kalyan (As per clause (1) and (2) to the agreement dated 13.04.2011) and since Grameen Telecom is the shareholder of Grameen Phone, it is entitled to get dividend (if there is any) and the said income from dividend is to be transferred to the petitioner after deducting tax payable on it under section 54 of the Ordinance but the petitioner, Grameen Kalyan in its tax returns has been showing the aforesaid income as “dividend income” even showing Advance Income Tax (AIT) paid by Grameen Telecom as of its own but no taxes was at all paid thereon.

The learned Deputy Attorney-General further submits that the income of Grameen Kalyan, which constitutes 42.65% of ‘dividend income’ actually earned by the Grameen Telcom and it is not any dividend income of the petitioner, Grameen Kalyan, because Grameen Kalyan is admittedly neither

the shareholder of Grameen Phone nor the owner of the dividend and the portion of dividend which was transferred to the petitioner, was actually fresh income of the petitioner as per the agreement dated 13.04.2011 executed between Grameen Kalyan and Grameen Telecom and hence, the said income cannot be treated as dividend income of the petitioner, Grameen Kalyan rather the same can only be treated as "income from other sources" for the petitioner and regular tax shall be payable on that.

The learned Deputy Attorney-General next contends that the petitioner shall not be entitled to get any adjustment of AIT supposed to be paid against the dividend as the said AIT be deducted against the dividend income of Grameen Telecom and the income or profit earned by Grameen Kalyan is fresh income which is taxable under the respective provision of the Ordinance on regular basis.

The learned Deputy Attorney-General goes on to submit that the question of treating the income as "**income from other sources**" instead of "dividend income" had raised by the assessee-petitioner in Income Tax Reference (ITR) Application No. 363 of 2019 for the assessment year 2017-2018 before this Hon'ble court and the assessee-petitioner, ultimately had not pressed the said ITR matter and accordingly the same was dismissed as being not pressed vide order dated 09.11.2023 (Annexure- '9' to the 2nd supplementary affidavit-in-opposition dated 24.07.2024) and as such, it can safely be said that the assessee-petitioner has admitted that the disputed income on which regular tax has not been paid is not any "dividend income" rather the same is "income from other sources".

Insofar as regards to not giving the petitioner opportunity to participate in the hearing in the proceeding initiated under section 120 of the Ordinance, the learned Deputy Attorney-General submits that before being disposed of the said proceeding petitioner was duly notified who ultimately escaped hearing and from the order dated 14.11.2017 passed by the Commissioner of Taxes rejecting the revisions application filed by the petitioner under section 121A of the Ordinance since the learned counsel for the assessee-petitioner appeared and made his submissions producing necessary documents so the allegation of breach of natural justice is factually untrue and not sustainable.

The learned Deputy Attorney-General further adds that law requires the assessee to be given an opportunity of being heard and accordingly the assessee by notices dated 07.09.2017 and 11.09.2017 was informed about the initiation of the proceeding under section 120 of the Ordinance and was asked to appear before the authorities on 21.09.2017 for hearing but the assessee did not avail the opportunity in participating the hearing rather willfully skipped it by dropping a time petition though revise of erroneous order as contemplated in 120 of the Ordinance was totally based on documents earlier submitted by the assessee in its return and no extra document is taken into account and despite of that very fact, the assessee-petitioner was allowed 2(two) weeks time for preparation but the assessee with the malafide intention to delay in realizing revenue process and with a view to delay the proceeding, ultimately did not take part in the hearing but since it got full opportunity in the hearing of revisions, there has been no reason to assert that point any further.

The learned Deputy Attorney-General then submits that in the year 2017, it appeared to the Joint Commissioner of taxes that the DCT while making the assessment of the assessee-petitioner for the assessment year 2012-2013, 2013-2014, 2014-2015, 2015-2016 and 2016-2017 has erroneously treated the income of the assessee from 'other sources' as 'dividend income' which was prejudicial to the interest of Revenue and accordingly a notice was served to the Petitioner informing it that a proceeding under section 120 of the Ordinance would be taken. However, while conducting assessment of the returns submitted by the petitioner for the assessment year 2017-2018, the concerned DCT then treated the portion of dividend income of Grameen Telecom that was transferred to the Grameen Kalyan (instant Petitioner) as **“income from other source”** and suggested tax thereon. However, challenging the same, the petitioner as appellant then preferred an appeal being taxes appeal no. 549/Cir287/2018-2019 before the commissioner of taxes (appeal) but the said appeal was rejected and against the same, the petitioner preferred appeal before Taxes Tribunal being ITA No. 6881 of 2018-2019 which was again rejected and the petitioner ultimately as applicant then filed ITR No. 363 of 2019 in the High Court Division challenging the Judgment of the Tribunal raising the issue for treating the disputed income as "income from other sources" instead of “dividend income” as question of law but during pendency of the said (ITR) Reference Application, the petitioner paid all the tax for the assessment year 2017-2018 as per the judgment passed by the Tribunal in ITA No. 6881 of 2018-2019 and eventually prayed to dismissal of the ITR Application No. 363 of 2019 for not being pressed and accordingly, the

same was dismissed by this Hon'ble court vide order dated 09.11.2023 having no scope to take different view in not paying taxes in respect of previous assessment years impugned in the instant writ petition again terming the income as dividend income.

The learned Deputy Attorney-General also submits that by not pressing the ITR No. 363 of 2019, the petitioner has in fact agreed to the assessment of taxes department and has agreed to the point of law that the income/profit gained from Grameen Telecom has rightly been treated as "income from other source" instead of "dividend income" but despite such acceptance for the assessment year 2017-2018, the petitioner refused to deposit the admitted tax for the assessment years ranging from 2012-2017 and hell-bent on proceeding with the Writ Petition only to delay in making payment of legally, justified and admitted tax to the government.

The learned Deputy Attorney-General next submits that as per law regular appeal or revision can only be filed after depositing admitted tax under section 74 of the Ordinance. However, after obtaining the judgment and order dated 17.10.2023 passed earlier in the instant Writ Petition No. 14364 of 2017, this respondent waited till the 57th day of passing of the said Judgment with the hope that the petitioner would deposit the admitted tax and file the appeal but to its utter dismay, the petitioner had neither filed any appeal nor deposit admitted tax and to avoid further delay in the process of recovery of taxes, this respondent had to file an appeal on 13.12.2023 being Civil Petition For Leave To Appeal No. 3807 of 2023 and obtained an order of stay of the operation of the impugned judgment dated 17.10.2023 which was ultimately dispose of on 11.03.2024.

The learned Deputy Attorney-General then submits that the petitioner by not pressing ITR Application No. 363 of 2019 from the High Court Division rather has admitted that regular tax is payable on the income it gained from the investment in Grameen Phone but in an ulterior motive to escape payment and/or to delay the payment of admitted and justifiable tax it without any plausible reason keep on proceeding with the instant writ petition merely depriving the government from receiving a huge amount of tax and the aforesaid behavior of the petitioner is nothing but explicit malafide one and as such, the petitioner is not entitled to any equitable relief under the Writ Jurisdiction of this Hon'ble court for not being come in clean hand.

The learned Deputy Attorney-General further submits that the assessee's petitioner's suo moto declaration of Dividend income against purchase of Grameen Phone Limited's 42.5% shares is totally false and the challans of Grameen Telecom submitted in the name of Grameen Kalyan is also false and intentional one which is not lawful and hence the assessee's declaration of Dividend Income as well as shown challans as tax liability is not admissible in the eye of law and that income is to be treated as an "Income from other sources" under section 33 of the Income Tax Ordinance, 1984 and as such the impugned orders have been passed righty and hence the Rule may kindly be discharged.

The learned Deputy Attorney-General also contends that the assessee-petitioner failed to fulfil the pre-requisite conditions as required under the provision of the section 74(1) of the Income Tax Ordinance, 1984 and the assessee-petitioner has also failed to submit the necessary challans or pay

orders in support of payment of tax as against the alleged 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 thus the assessee-petitioner has clearly misreported and misinterpreted the income by declaring false, fabricated, manipulated and allegedly shown the income as 'Dividend Income' for the purpose of avoiding payment of lawful tax and thereby the assessee-petitioner has clearly misguided the court in this respect.

The learned Deputy Attorney-General further submits that by not pressing the ITR Application No. 363 of 2019, the petitioner has in fact agreed to the assessment order of taxes department and has agreed to the point of law that the income gain from the Grameen Telecom has rightly been treated as "income from other source" instead of "dividend income" but despite such acceptance for the assessment year 2017-2018, the petitioner has been refusing to pay the admissible tax for the assessment years ranging from 2012 to 2017 and rather proceeding with the instant Writ Petition only to delay in making payment of legally admitted tax.

The Deputy Attorney-General concludes that, application for revision under section 121A of the Ordinance is not maintainable against any appealable order unless the right of appeal against the impugned order has been expressly waved by the assessee, which indicates that any one making an application for revision under section 121A of the Ordinance can be entertained if any disputed point of law is there and not on facts when in the instant case, the only point of law raised by the assessee-petitioner was whether or not the Joint Commissioner of Taxes has rightly treated the income of the assessee, Grameen Kalyan received from Grameen Telecom

as "income from other sources" or of "dividend income", and the same being voluntarily settled eventually by withdrawing ITR Application No. 363 of 2019 upholding the Tribunal order and hence, the revisions filed under section 121A of the Ordinance has thus been rightly rejected on 14.11.2017 and thereafter correction was made on that very revision order under section 173 of the Ordinance on 27.11.2017 for non-depositing admissible tax under section 74, which was a pre-condition for filing Revision under section 121A(4)(b) of the Ordinance against which this petitioner again filed Writ Petition No. 17727 of 2017 and hence the rule is liable to be discharged since there has been no illegality in passing the impugned orders dated 26.09.2027 and 14.11.2017.

Be that as it may, we have considered the submission so advanced by the learned senior counsel for the petitioner and that of the learned Deputy Attorney-General for the respondent no. 2. Together, we have carefully examined the writ petition, supplementary-affidavit and the documents annexed therewith filed by the petitioner vis-à-vis the affidavit-in-opposition and relevant supplementary-affidavits-in-opposition filed by the respondent no. 2.

It is admitted position that the petitioner as a **first party** entered into an Equity Participation Agreement with Grameen Telecom on 13.04.2011 (Annexure-‘B’ to the writ petition) as of **2nd party**. In that agreement, amongst others, there have been two pertinent conditions being nos. 1 and 2 which we feel it expedient to reproduce below:

“১। দ্বিতীয় পক্ষকে প্রথম পক্ষ কর্তৃক যে ৫৩,২৫,৬২,৯৪১/- (তিপান্ন কোটি পঁচিশ লক্ষ বাষাট্টি হাজার নয়শত একচল্লিশ) টাকা বিভিন্ন ভাবে আর্থিক

সহায়তা হিসাবে প্রদান করা হয়েছে তার বিনিময়ে দ্বিতীয় পক্ষ গ্রামীনফোনের তাদের বিনিয়োগ থেকে প্রাপ্য লভ্যাংশের ৪২.৬৫% প্রথম পক্ষকে যথানিয়মে প্রদান করবে।

২। প্রথম পক্ষ দ্বিতীয় পক্ষের নিকট গ্রামীনফোনের ইকুইটিতে বিনিয়োগের জন্য যে আর্থিক সহায়তা প্রদান করেছে সেজন্য প্রথম পক্ষ দ্বিতীয় পক্ষের নিকট কখনও গ্রামীনফোনের শেয়ার দাবী করতে পারবে না।”(making bold by us to add emphasis)

So in condition no. (2), there has been explicit stipulation as laid out that the petitioner can never claim any share from Grameen Phone that is, in other words, it turns out, the petitioner is not any shareholder of Grameen Phone. So under no circumstances, can the petitioner claim the financial benefits it derived out of its investment in Grameen Phone to the extent of 42.65% as dividend income. Now who can claim dividend and what are the incomes that include dividend has also been mentioned in section 2(26) of the Income Tax Ordinance, 1984 which runs as follows:

“2(26) “dividend” includes-

(a) any distribution by a company of accumulated profits, whether capitalized or not, if such distribution entails the release by the company to its shareholders of all or any part of its assets or reserves.”

In this sub-section 26, there are several clauses and in every clause the very word “Shareholder” has been mentioned umpteen time. So, admittedly since the petitioner is not any shareholder of Grameen Phone so the profit financial benefit it derived from its investment in Grameen Phone as of

42.65% can in no way be termed as dividend income. But though it is not any complex legal aspect and those who have been navigating in the commercial legal arena can easily comprehend this simple point as to who are entitled to dividend even though on that very clear and simple legal point, the senior counsel from the very inception took a reverse view without taking into account in the light of those two important conditions made in Annexure-‘B’ to the writ petition.

Now let us examine whether any illegality has been committed in initiating proceeding against the petitioner under section 120 of the Income Tax Ordinance, 1984 which has also been impugned in the instant writ petition. For that obvious reason, it will be profitable if we reproduce section 120 of the Ordinance here:

“120. Power of Commissioner or Inspecting Joint Commissioner to revise the erroneous order:-

(1) The Inspecting Joint Commissioner may call for and examine the record of any proceeding under this Ordinance if he considers that any order passed therein by the Deputy Commissioner of Taxes is erroneous in so far as it is prejudicial to the interests of the revenue, and may, after giving the assessee an opportunity of being heard, and after making or causing to be made, such inquiry as he thinks necessary, pass such order thereon as in his view the circumstances of the case would justify, including an order enhancing or modifying the

assessment or cancelling the assessment and directing a fresh assessment to be made.”

In pursuance of section 120(1) of the Ordinance, what we find that it has been mandated to the respondent no. 3 to revise any erroneous order ever committed by its subordinate authority i.e. DCT as stipulated in the said section. And in initiating the said proceeding, we find that the petitioner was duly notified to participate in the hearing which is evident from Annexure-‘D’ series to the writ petition. Even then the core point involved therein the said section is whether the DCT while making assessment for the assessment years 2012-2017 had rightly shown the income it gathered from Grameen Phone as dividend income or income from other sources as provided in sections 20(g) and 33(2) of the Ordinance. That very central point was adjudicated by the respondent no. 3 in his decision dated 26.09.2017 giving cogent reason when it has very perfectly found that the profit got by the petitioner from Grameen Phone as of 42.65% equity sharing is income from other sources not as dividend income and rightly issued demand notice vide Annexure-‘I’ series to the supplementary-affidavit dated 23.11.2017. In the said decision all dated 26.09.2017 (Annexure-‘F’ series to the writ petition) it has further been found that, even against the financial benefit, the petitioner got from Grameen Phone, no tax at source has been deducted from Grameen Telecom, owning company of Greemen Phone nor there has been found any proof that any tax by way of *challan* has ever been submitted for the petitioner in government exchequer. It would be profitable if we reproduce the finding portion of the said order which are as follows:

“গ্রামীণ টেলিকম প্রিচেচ ২০১২-২০১৩ কর্তৃক লভ্যাংশ প্রদান টাঃ ৪৪৩,১৪,৩৯,৯০০/- গ্রামীণ কল্যাণকে প্রদান করিয়াছে। সেহেতু গ্রামীণ টেলিকম কোম্পানী আইন, ১৯৯৪ এর ২৮ ধারায় গ্যারান্টি দ্বারা সীমাবদ্ধ কোম্পানী হিসেবে নিশ্চিত এবং গ্রামীণ কল্যাণ গ্রামীণ টেলিকম এর শেয়ারহোল্ডার নয়, সেহেতু প্রদত্ত এ টাকা লভ্যাংশ আয় হিসেবে প্রিচেচনা করার সুযোগ নাই। এ প্রেক্ষিতে গ্রামীণ টেলিকম কর্তৃক গ্রামীণ কল্যাণ কে প্রদত্ত প্রিপুল পরিমানের এ টাকা গ্রামীণ কল্যাণের 'অন্যান্য সূত্রের আয়' হিসেবে প্রিচেচনা পূর্বক সাধারণ হারে করারোপন করিতে হইবে। গ্রামীণ কল্যাণের প্রাপ্ত এ আয়ের উপর গ্রামীণ টেলিকম কর্তৃক উৎসে কোন কর কর্তন করা হয় নাই এবং গ্রামীণ কল্যাণের নামে সরকারী কোষাগারে জমাদানের কোন প্রমাণ পাওয়া যায় নাই সেহেতু উক্ত অর্থ ক্রেডিট প্রদান না করিয়া করাদেশ এবং কর পরিগণনা সংশোধনের জন্য নির্দেশ প্রদান করা হইল।”

However, similar finding has been given for subsequent four assessment years.

So legally, procedurally and factually, there has been found no illegality in the proceeding initiate under section 120 of the Ordinance so mere absence of learned Advocate on the date of passing impugned decision can never invalidate it since it is based on totally materials on record available before the respondent no. 3. We thus find the impugned order dated 26.09.2017 perfectly justified having any shred of illegality in it.

It is on record that challenging the decision taken by respondent no. 3 in the proceeding initiated under section 120 of the Ordinance (Annexure- 'F' series to the writ petition), the petitioner in the Memorandum of Revision

(Annexure-‘G’ series to the said supplementary-affidavit) took as many as 12 different grounds but how the profit earned by the petitioner against the investment made in Grameen Phone was categorized as ‘dividend income’ has not been explained in reference to any provision of Income Tax Ordinance nor can it has controverted the decision arrived at by the respondent no. 3 even though a full-length hearing was found to have held at the instance of the petitioner and ultimately the said revisions was dismissed on 14.11.2017 by respondent no. 2 providing cogent reason.

Most importantly, the said revisions was not liable to be entertained as the petitioner admittedly had not paid undisputed portion of tax as contemplated in section 121A(4)(b) of the Ordinance. Though the respondent no. 2 has very callously found that “দাখিলকৃত রিটার্নের ভিত্তিতে প্রদেয় আয়কর পরিশোধিত” and for that, the respondent no. 2 should have faced departmental proceeding to unearth whether it was his inadvertent mistake or dereliction of duty.

Even, since the moot question has rightly been addressed in the judgment affirming the decision of respondent no. 3 correction has subsequently been made of its order on 27.11.2017 under section 121A read with 173 of the Ordinance so, we find the same to be legally done that warrants no interference by this court.

Last but not the least, the respondent no. 2 in ground no. 15(iii) to the supplementary-affidavit-in-opposition dated 02.09.2026 and last supplementary-affidavit-in-opposition dated 09.09.2026 by annexing all the relevant documents (Annexure-‘12’-‘14’ series) clearly asserted that in the assessment year 2017-2018, the DCT found the portion of profit it received

from Grameen Telecom as ‘income from other source’ which was unsuccessfully challenged up to the ITR Application being No. 363 of 2019 and that order of DCT has ultimately been upheld vide order of this court in the said ITR dated 09.11.2023 (Annexure-‘13’ to the supplementary-affidavit-in-opposition dated 09.09.2026). For obvious reason, we are inclined to reproduce the said order here as well:

“Grameen Kalyan, as an applicant, approached this Court invoking Section 160 of the Income Tax Ordinance. 1984 in an expectation to have this Court's answers on the questions of law framed by the petitioner against the Order dated 24.06.2019, passed by the Taxes Appellate Tribunal, Division Bench-4. Dhaka passed in I.T.A. No. 6881 & 6737 of 2018-2019 (Assessment Year 2017-2018).

When the case was taken up for hearing, the learned Advocate for the applicant made a prayer before this Court to reject the application as being not pressed.

In the result, the instant Income Tax Reference Application No. 363 of 2019 for the assessment year 2017-2018 is rejected as being not pressed.”

Yet, the petitioner has been harping on against its own assertion and hell-bent on showing arrogance against the order of this court that tantamount to point thumb to the order of this court.

Curiously enough, in spite of deliberate assertion of that core point-in-issue based on documents by the respondent no. 2, the learned senior

counsel for the petitioner did neither make any submission refuting the said assertion let alone filed any affidavit-in-reply against the said two supplementary-affidavits-in-opposition. So, it is classic case of evading taxes by the petitioner by dragging on the settled issue as it could have taken different views once order was passed on 09.11.2023 in ITR Application No. 363 of 2019 but so long it left no stone unturned depriving the respondent to get its rightful revenue from the petitioner- when the petitioner has no case to stand in view of the material on record and settled law as discussed above.

Regard being had to the above discussion, observation, we don't find any shred of merit in the rule which is liable to be discharged.

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

The order of stay granted stands vacated.

The respondents are directed to take necessary steps to realize the unpaid tax from the petitioner in accordance with law as expeditiously as possible.

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

Rezaul Karim, J.

I agree.