IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

Present
Mr. Justice Umar Ata Bandial
Mr. Justice Munib Akhtar
Mr. Justice Yahya Afridi

Civil Appeals No.308 to 326, 572 of 2008 and C.Ps.No. 1681 to 1683 of 2012
(On appeal from the orders dated 19.4.2007 & 5.6.2008 & 18.9.2017 passed by the High Court of Sindh, Karachi in ITRs No.228/88, 453, 472 & 534/90, 04 & 46/96, 241 & 398/97, ITAs No.248 to 253/99, ITCs No.280, 281 & 282/2003, 496 & 487 of 2004, C.P.655 of 2008, ITR No.181-182 of 2017)

C.A.No.308 to 326 of 2008	:	Oxford University Press vs. Commissioner of Income Tax, Companies Zone-1, Karachi.
C.A.No.572 of 2008	:	Oxford University Press vs. Federation of Pakistan and others
C.Ps.No.1681 to 1683/2012	:	Oxford University Press vs. Federation of Pakistan and others
C.P.No.4927 of 2017	:	Oxford University Press vs. The Commissioner Inland Revenue, Zone, II, Large Taxpayers Unit, Karachi

For the Appellant/ Petitioner	:	Mr. Muhammad Makhdoom Ali Khan Sr. ASC (in all cases)
For the Respondent (s)	:	Syed Mohsin Imam, ASC a/w Dr. Tariq Masood, Member Legal (FBR) (in all cases)
For the Federation	:	Mr. Aamir Rehman, Addl. Attorney General for Pakistan
Date of hearing	:	17.10.2018

ORDER

Munib Akhtar, J.- These appeals and leave petitions arise under the Income Tax Ordinance, 1979 ("1979 Ordinance") and relate to different assessment years of the same assessee, the Oxford University Press in relation to income arising out of its Pakistan operations. The assessee claimed exemption from tax under clause (86) of Part I of the Second Schedule ("Clause 86"), which provided as follows:

> "Any income of any university or other educational institution established solely for educational purposes and not for purposes of profit."

It may be noted that the Income Tax Ordinance, 2001 had provided for an exemption, in clause (92) of Part I of its Second Schedule, in terms identical with Clause 86. This clause was however omitted in 2013.

2. Before the Appellate Tribunal (no doubt on account of the appeals being heard by differently constituted benches) the assessee's claim failed in respect of some of the assessment years, but succeeded in respect of others. Both the assessee and the Department filed tax references in the High Court. They were taken up and disposed off together by means of the impugned judgment, which is reported as *Oxford University Press v Commissioner of Income Tax* 2007 PTD 1533. The High Court held that there was no entitlement to the benefit of Clause 86. The assessee petitioned this Court, and leave to appeal was granted by order dated 06.03.2008. Some leave petitions, filed subsequently, remained at that stage but since the questions involved were the same were fixed along with the appeals. We may note that the matters proceeded before us on the basis that the facts and circumstances in respect of each assessment year involved were the same save in one respect, which will be presently adverted to.

3. Learned counsel for the appellant (as the assessee will now be referred to) submitted that it had been operating in Pakistan since the early 1950's. The appellant was recognized as one of the leading publishers of high quality books of all sorts, including in particular school books and academic works. It was submitted that the appellant was accepted as a branch or department of Oxford University, one of the premier academic and educational institutions of the world. The question of whether or not the appellant was entitled to the benefit of Clause 86 was to be determined on that basis. Learned counsel submitted that on a bare reading of the clause, and on its proper application, the appellant's case clearly came within the scope thereof. There was no denial that the University was established solely for educational purposes and was not for profit. Thus, "any income" earned by it or, as here relevant, by its branch or department, was exempt from tax. Learned counsel submitted that the principles relating to the interpretation of exemption clauses were well established. The onus undoubtedly lay on the appellant to show that it came within the scope of Clause 86. Equally, if two reasonable interpretations were possible then the one against the appellant would be adopted. But, it was submitted, it was also well established that if a taxpayer fairly came within the scope of the exemption, then the same could not be denied on the basis of some supposed intention of the law-maker. It was submitted that this was the error made by the

learned Division Bench in the High Court. Although Clause 86 imposed no such requirement itself, the learned Division Bench had interpreted and applied it as though the words "in Pakistan" appeared therein after the word "established". It was only on such basis that it had been held that since the University itself did not carry on any educational activities in Pakistan, the income earned by its publishing department could not enjoy the benefit of Clause 86. Learned counsel submitted further that the mere fact that the appellant earned a profit was not material. In this context it was submitted that it was only in relation to a few income years that the profits earned (or some part thereof) had been remitted abroad to the University. Otherwise, the profits had remained in Pakistan. However, the mere earning of profits was not what made the clause inapplicable. Rather, it was the activities that the taxpayer was engaged upon that were crucial. It was submitted that the publishing activities of a university were an integral aspect and part of its educational purposes, and therefore the income earned in the facts and circumstances of the case was very much within the scope of Clause 86.

4. Referring to the fact that Oxford University Press had operations in many jurisdictions learned counsel submitted that the question at hand had arisen elsewhere as well. In particular, reference was made to South Africa and India, and the relevant cases from both jurisdictions were referred to. In South Africa, the appellant had been granted the benefit of exemption, but in India the Supreme Court had come to a contrary conclusion. Referring to the latter's judgment, *Oxford University Press v. Commissioner of Income Tax* (2001) 247 ITR 658 (reproduced in Pakistan at 2001 PTD 2484), learned counsel submitted that the exemption was denied by majority decision. The learned Division Bench had placed reliance on the majority view. It was submitted that the majority decision was incorrect and the view taken by the learned Judge in minority was correct. The learned Division Bench had erred in accepting the majority view. It was prayed that the appeals be allowed.

5. Learned counsel for the Department, ably assisted by the Member Legal FBR, defended the impugned judgment and submitted that the correct conclusion had been arrived at. It was submitted that it was an admitted position that Oxford University carried on no educational activities in Pakistan. That aspect was decisive, and the High Court had correctly so concluded. The appellant was engaged in commercial activities and the profit so made was clearly beyond the scope of the exemption. It was submitted that the approach taken by the learned

Division Bench to Clause 86 was correct. Any other approach would have opened the doors to all manner of commercial or business activities wholly unrelated to educational purposes or in which such purposes were only of minor importance or played only a tangential role. Any exemption from tax placed a burden on the people of Pakistan and if allowed in circumstances such as the present would mean simply that a benefit was being conferred on the people of the United Kingdom at the expense of this country. The purpose of the exemption was to support educational activities in Pakistan and not elsewhere. The facts and circumstances at hand were such that the grant of the exemption would operate manifestly to the disadvantage of this country. This was also the conclusion arrived by the majority in the Supreme Court of India, and the learned Division Bench had been correct in accepting and adopting the view so taken. It was prayed that the appeals be dismissed.

6. After having heard learned counsel as above, and considered the matter and the record and the case law cited we concluded, with respect, that the impugned judgment could not be sustained and therefore allowed the appeals by means of a short order announced in Court. The factual aspect of the appellant's case was stated by the learned Division Bench in the following terms (pg. 1537):

> "6. In a nutshell the case of the assesssee is that it is a branch of Oxford University founded in U.K. having its several branches in other countries of the world, including Pakistan. In Pakistan the said branch of Oxford University designated as Oxford University Press (hereinafter referred to as OUP) is engaged in the business of printing, publication and selling of books in general. Further case of the assessee is that it is also engaged in other educational activities such as free teachers training workshops etc. and all incomes/profits so generated by it are being utilized exclusively for educational purposes."

7. The reasoning of the learned High Court, which led it to conclude that the appellant was not entitled to the benefit of Clause 86, is encapsulated in the following passage (pp. 1545-6; emphasis):

> "16. Indeed, the Oxford University … is a renowned university and educational institution of the world, which is engaged in imparting education in U.K., besides other parts of the world, but this fact alone, looking to the nature of business of the assessee/OUP in Pakistan, vis-a-vis their claim for exemption in terms of clause (86) of the IInd Schedule, will not, ipso facto, qualify it for such exemption, *unless, it is adjudged that it is a university/department of university or educational institution established solely for educational purpose in Pakistan and not for the purposes of profit. In other words, a university or educational institution, established*

> *abroad, will not be acceptable as university or educational institution under the Pakistani law if the nature of its business/working in Pakistan is not solely for educational purposes*. Thus, to bring the case of the assessee within the purview of a branch of Oxford University or other educational institution entitled to exemption under clause (86) (ibid) or otherwise, would *depend upon its nature of working in Pakistan, i.e. whether in any manner it is imparting education in Pakistan*. It is an admitted position that the assessee/OUP, though a branch of Oxford University U.K. is not primarily engaged in any activity of imparting education in Pakistan, but engaged in the business of printing, publication and sale of books and other related material, which, as such, has no nexus to the functioning of university or educational institution within the ambit of above clause of the Income Tax Ordinance 1979, particularly in Pakistan. It is also an admitted position that during various assessment years, the assessee/OUP was found making remittances to its principal/university in U.K. Obviously, by providing provision of exemption from payment of income tax in terms of clause 86, the intention of the law makers must be to provide such benefit to its assessee with the object of enhancing educational activities in Pakistan and to attract them in such type of ventures, which may promote literacy, and not that the earnings from such sources, which are even otherwise, in the instant case not primarily categorizable as solely derived from imparting education, shall be sent abroad for the benefit of those who are not subject to Pakistani law. *In our view, the assessee/OUP is not imparting any education in Pakistan, but engaged in the business of printing, publication and sale of books and earning profits therefrom as a branch of foreign university, which may be one of the objectives of the Oxford University U.K., as per its charter, but for examining the case of the assessee under the Pakistani law, educational activities of Oxford University in other countries cannot be made basis for accepting it as assessee qualified in Pakistan for exemption under clause (86) (ibid)*."

8. The learned Division Bench considered in some detail the aforementioned judgment of the Supreme Court of India, and went on to observe as follows (pg. 1549; emphasis supplied):

> "23. To sum up our conclusion, after careful perusal of the whole material placed on record in these connected cases by both the parties, and examining the case-law cited by them, we are in full agreement with the view and the conclusion recorded by the Indian Supreme Court in the case of Oxford University Press (supra) and accordingly hold that the assessee/OUP, a branch of Oxford University U.K. established in Pakistan in the year 1952, is not entitled for the exemption under clause 86 of IInd Schedule *for the reasons that in Pakistan, it is not engaged solely in imparting education, which is one of the primary requirement for availing the benefit of clause (86) (ibid)*, and further it has failed to prove that the income earned by it through its business of printing, publication and sale of books or otherwise, is solely used for educational purposes in Pakistan."

9. The principles relating to the proper interpretation and application of exemption clauses in fiscal legislation are well established and require only a brief recapitulation. As correctly submitted by learned counsel for the appellant, as

presently relevant these are as follows. Firstly, the onus lies on the taxpayer to show that his case comes within the exemption. Secondly, if two reasonable interpretations are possible the one against the taxpayer will be adopted. But, thirdly, if the taxpayer's case comes fairly within the scope of the exemption then he cannot be denied the benefit of the same on the basis of any supposed intention to the contrary of the legislature or authority granting it. It is in light of these principles that Clause 86 must be interpreted and applied.

10. As is clear from the passages cited from the impugned judgment, the learned High Court laid a great deal of emphasis on the university concerned carrying on educational activities in Pakistan. The learned Division Bench regarded this point as crucial and, indeed, it was fundamental to its understanding of what was the scope and effect of Clause 86. Now, a bare perusal of the clause shows that the words "in Pakistan" are not to be found therein. These have, in effect, been inserted into the clause by the learned Division Bench. In doing so, the learned High Court was quite obviously greatly influenced by the majority view in the aforementioned judgment of the Supreme Court of India (which is, for convenience, herein after referred to as the "*OUP India* case"). That matter was heard by a three member Bench, with Mohapatra and Sabharwal JJ., constituting the majority and Bharucha J., being in the minority. Each of the learned Judges gave his own judgment. The learned Division Bench referred with approval to both the majority judgments (see at pp. 1547-8, paras 18-20), quoting at length a passage from the judgment of Mohapatra, J. and observing that the majority view was "a complete answer to the controversy involved in these cases". It is therefore necessary to look at the *OUP India* case in some detail.

11. The exemption there was claimed in terms of s. 10(22) of the Income Tax Act, 1961, which provided as follows: "any income of a university or other educational institution, existing solely for educational purposes and not for purposes of profit". Thus, the exemption in India was virtually identical to Clause 86. More particularly, it also did not contain any requirement of the university existing in India. Sabharwal J. noted three points that required determination, of which the third was as follows (pg. 2500 of PTD): "Whether imparting of education in India is a sine qua non for claiming exemption under section 10(22), by a university or other educational institution?" This was also the point that the learned Division Bench regarded as central to a determination of the references

before it. In answering this question in the affirmative, Sabharwal J. held as follows (pg. 2502; emphasis supplied):

> "This is the key question involved in the case. Its answer would depend upon the interpretation of section 10(22) of the Act. *Would it be permissible to read into clause (22) of section 10 words which, as such, are not incorporated therein with a view to come to the conclusion that imparting of education or providing other educational facilities in India is implied in the provision, is the question?* Can it be said from the language of section 10(22), that the Legislature intended that even if neither education is imparted nor any other educational facility is provided by a university or other institution in India it would still be entitled to exemption of tax?...
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> *The absence of the words "in India" in section 10(22) only leads to a conclusion that "a university or other educational institution" need not be constituted, set up or established in India to claim the benefit of exemption. It is not possible to infer anything more than this.* While dealing with point No.2, I have already said that section 10(22) of the Act applies not only to Indian universities but to other universities as well. Therefore, the constitution, setting up or establishment of a university in India to claim benefit of exemption under section 10(22) is not necessary *but that does not lead to the conclusion that imparting of education or providing any educational facilities in India is also not necessary for such a university to claim the benefit of exemption*."

12. Bharucha J., on the other hand, took a different view of s. 10(22). The learned Judge held as follows (pp. 2488-9; emphasis supplied):

> "By reason of section 10(22) any income of a University or other educational institution, existing solely for educational purposes and not for purposes of profit, is not includible in its total income…. For the purposes of obtaining the exemption under clause (22), the University must be "existing solely for educational purposes and not for the purposes of profit". What this means is that the sole purpose of a University must be to impart education and not at all to make profit. *The word "existing" in the context means "being". It has no locational sense. The clause does not say "existing in India" and the words "in India" cannot be read into it. The clause does not require that the University must impart education in India before it can qualify for exemption thereunder*. The High Court was in error in interpreting the clause differently.
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> The High Court failed to appreciate that the assessee was a part of the University of Oxford, as the Tribunal had found and the question before it indicated, and that the income that was under consideration for assessment was, therefore, the income of the University of Oxford. The "person" that was being taxed was not and could not be a branch of the University of Oxford; it could only be the University of Oxford. That the University of Oxford is a hallowed institution of learning that exists, or is, solely for educational purposes is not, and cannot reasonably be, in dispute. That the income is derived by the printing, publishing and selling of books has no relevance because it is still the income of an University that exists for educational purposes.

> It is trite law and now needs no authority that a taxing statute must be read as it stands: no words may be added, no words subtracted. Further, learned counsel for the assessee was right in pointing out that where Parliament had intended the exemption under section 10 to be limited in any way to the territory of India it had been assiduous in so stating:…."

13. Just as was submitted for the respondent Department before us, the Indian Tax Department had also argued that unless the exemption were confined to a university imparting education or having educational facilities in India the result would be that a benefit would be conferred on foreigners at the expense of the Indian taxpayer. This submission found favor with the majority: see the judgments of Mohapatra J. at pg. 2498 (the passage expressly cited by the learned Division Bench at para 19), and Sabharwal J. at pp. 2510-11. It was however given short shrift by Bharucha J., who observed as follows (pp. 2491-92):

> "Now, learned counsel's submission is that Parliament could never have intended to forego tax revenue for the purpose of educating people outside India; this was manifestly unreasonable and absurd and, therefore, clause (22) should be so read as applying to Universities established in India, or at least providing educational facilities in India. I find no unjustness, unreasonableness, irrationality or absurdity in the provisions of clause (22). It does not strike me as being beyond the bounds of possibility that Parliament should be willing to forego a very small percentage of tax revenue for the purposes of education, even though it might mean the education of people outside India, if that education was being provided by a University or other educational institution whose sole purpose was to provide education and not at all to make a profit. I do not think Parliament could not possibly have meant what clause (22) so plainly says. I see, therefore, no reason to read clause (22) in a fashion that is not literal."

14. Having considered the matter we were of the view that, with respect, the learned High Court (and therefore, by extension, the majority in the *OUP India* case) had taken the wrong approach to the exemption clause and erred materially in introducing an element or requirement that found no mention or expression therein. In doing so, the reasoning of the learned Division Bench fell foul of the third principle of interpreting exemption clauses noted in para 9 above. The appellant was denied the benefit of the exemption on the basis of a supposed intention as regards the operation or effect of Clause 86, namely that the university must be carrying on educational activities in Pakistan. There was no warrant for finding any such intention in the exemption. Clause 86 said what it did on the face of it; no more, but certainly, no less. The learned Division Bench in effect confined the operation of the clause to a subset of its own creation. The same error was made, with respect, by the majority in the *OUP India* case. In our view, the approach

taken by Bharucha J., was correct and is to be preferred (though that should not be taken as meaning that we agree with everything said by the learned Judge). On one point in particular we are in complete agreement with Bharucha, J. The learned Judge held that the word "existing" as used in the Indian clause had no locational significance. We likewise conclude that the word "established" had no such import in Clause 86.

15. In our view, when Clause 86 is examined, it is found to have comprised of three components: (a) any income; (b) of any university or other educational institution; (c) established solely for educational purposes and not for purposes of profit. The first component meant precisely what it said: "any income". That meant income from whatsoever source derived. Any distinction between income derived from "educational" activities on the one hand and other sources, including what in other contexts could be regarded as commercial, on the other would be artificial, contrived and contrary to the express and natural language of the exemption. Indeed, any such distinction may have worked to the detriment of the university or educational institution concerned. For example, it is quite common for a university to derive rental income from properties owned by it, or to have an endowment fund which is suitably invested to earn profits. Why should a university that otherwise came within the scope of Clause 86 not have enjoyed its benefit for such income? The second component requires little attention: it was accepted (as was the situation in the *OUP India* case) that the appellant was a branch/department of Oxford University, and hence within the meaning of "university". This brings us to the third component. In our view this component had to be read and applied as a whole. For analytical purposes however, it could be regarded as having two parts. The first was that the university or educational institution be established "solely for educational purposes". Now, a university, by definition, is established for educational purposes: see, e.g., the relevant entry in the *Shorter Oxford English Dictionary* (6^{th} ed. (2007), Vol. II, pg. 3445). Surely, an educational institution is also established for educational purposes. Therefore, prima facie, to require a university or other educational institution to be established for educational purposes would be circular, and virtually tautological. Quite obviously, the crucial word was "solely". That had to be the focus of attention. However, its true import could only be understood when the second part of the third component was considered: "not for purposes of profit". Now, "purposes of profit" could not be equated with the making of profits. This, with respect, was another error made by the learned Division Bench. The reason is that profits (in the sense of receipts being in excess

of expenses) had to be made for there to have been any income that could have been brought to tax, and (hence) for Clause 86 to be at all relevant or applicable. Absent any profits, no question would arise whether there was, or was not, an exemption from income tax. What then was sought to be negated by the second part of the third component? In our view, the position became clear when the component was read as a whole. The use of the word "solely", and the negation of profit as a purpose, meant simply this: that there could be no distribution or disbursement of any profits made. If the purpose of the university or educational institution was to "earn" a profit for its owners or stakeholders (howsoever described) in the sense of there being an intention or expectation that there would be such a disbursement, then Clause 86 did not apply. Such an institution was not established "solely" for educational purposes. On the other hand, the institution could make profits, but as long as those profits remained with the institution itself and were not disbursed or distributed in the manner just explained profit was not its purpose, which would remain "solely" educational. This, in our view, was the correct interpretation and proper application of Clause 86. Quite obviously, there was no distribution or disbursement of profits made by the appellant in this sense. Even if during some of the income years the profits (or part thereof) were remitted abroad to Oxford University, there was no distribution or disbursement thereof. The purpose therefore throughout remained solely educational and not profit. Thus, the appellant was entitled to the benefit of Clause 86 for all of the assessment years concerned.

16. For the foregoing reasons we concluded, with respect, that the judgment of the learned High Court could not be sustained. The matters were disposed of by means of a short order to the following effect, there being no orders as to costs:

> For reasons to be recorded later, Civil Appeals No.308 to 326 & 572 of 2008 are allowed; Civil Petitions No.1681 to 1683 of 2012, Civil Petitions No.4927 and 4928 of 2017 are converted into appeals and allowed. The impugned judgment is set aside.

Judge

Judge

Judge

Islamabad
October 17, 2018

APPROVED FOR REPORTING