IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:
Mr. Justice Gulzar Ahmed
Mr. Justice Umar Ata Bandial
Mr. Justice Maqbool Baqar

CIVIL APPEAL NO. 39 OF 2015

(On appeal from the judgment/order dated 28.05.2004 passed by High Court of Sindh at Karachi in Const.P.D-794 of 1999)

The Administrator General Zakat,
Central Zakat Administration,
Islamabad & others … … … Appellants

Versus

Pakistan Insurance Corporation
thr. its Secretary, Karachi & others … … … Respondents.

For the appellants	:	Mr. Abdur Rasheed Awan, DAG. Ch. Akhtar Ali, AOR.
For respondent No.1	:	Syed Asghar Hussain Sabzwari, ASC.
Date of hearing	:	15.02.2016

JUDGMENT

UMAR ATA BANDIAL, J. – The judgment under appeal dated 28.05.2004 passed by a learned Division Bench of the High Court of Sindh, Karachi allows the Constitutional Petition filed by the respondent Pakistan Insurance Corporation **("respondent Corporation")** and exempts it from the charge and collection of Zakat under the Zakat & Ushr Ordinance, 1980 **("the Ordinance")**. It is held by the learned High Court that the respondent Corporation does not fall within the definition of *'Sahib-e-Nisab'* given in Section 2(xxiii) of the Ordinance. Accordingly, the charging provision for Zakat i.e. Section 3(1) of the Ordinance, which applies the levy to a *'Sahib-e-*

Nisab' as on a specified valuation date is not attracted to the investment in NIT units made by the respondent Corporation.

2. The learned Deputy Attorney General appearing on behalf of the appellant has argued that admittedly the respondent Corporation is created by statute but is not wholly owned by the Federal Government. Therefore, the sole controversy in the case is whether the exclusion of a "statutory corporation" that is wholly owned, directly or indirectly, by the Federal Government saves the respondent Corporation from the scope of *'Sahib-e-Nisab'*. He has read from Section 2(xxiii) of the Ordinance to urge that the respondent Corporation is not exempt from the category of chargeable persons. For the sake of convenience clauses (a) & (b) of Section 2(xxiii) *ibid* are reproduced herein below:

> "**(xxiii)** *'sahib-e-nisab'* means a person who owns or possess assets not less than nasab, <u>but does not include</u>---
>
> **(a)** The Federal Government, a Provincial Government or a local authority;
>
> **(b)** a <u>statutory corporation</u>, a company or other enterprise, <u>owned wholly</u>, directly or indirectly, by the Federal Government, a Provincial Government, a local authority or a corporation owned by the Federal Government or a Provincial Government, either singly or jointly with one or more of the other three; …" ***(emphasis supplied).***

3. It is common ground that 51% of the issued equity of the respondent Corporation is owned by the Federal Government. The learned Deputy Attorney General contends that as the respondent Corporation is not owned wholly by the Federal Government, therefore, it does not qualify the exemption from *'Sahib-e-Nisab'* given in clause (b) of the Section 2(xxiii) of the Ordinance.

4. On the other hand, learned counsel for the respondent-Corporation has invited our attention to the provisions of Section 1(1) & (2) of the Ordinance. These declare as follows:

> "**(1)** This Ordinance may be called the Zakat and Ushr Ordinance, 1980.
>
> **(2)** It extends to the whole of Pakistan, but as regards recovery of Zakat and Ushr, <u>applies only to Muslim citizens of Pakistan and a company, or other association of persons</u>, or

> body of individuals, whether incorporated or not, majority of the shares of which is owned, or the beneficial ownership of which is held, by such citizens." ***(emphasis supplied)***

5. It is clear from sub-section (2) of Section 1 of the Ordinance that a company or other association of persons or body of individuals, that has the majority of its shares owned by or its beneficial ownership held by Muslim citizens of Pakistan, is liable to the charge and collection of Zakat under the provision of the Ordinance. Under Section 2(xxiii)(a) of the Ordinance, the Federal Government is excluded from the status of *'Sahib-e-Nisab'*. As already noted above, Section 3(1) of the Ordinance makes Zakat chargeable upon a *'Sahib-e-Nisab'* who is a person owning or possessing assets not less than value equaling *nisab* [Section 2(xxiii) of the Ordinance]. However, the said definition specifies only one qualification of a *'Sahib-e-*Nisab' whereas Section 1(2) of the Ordinance enumerates certain other attributes of a person that complete the definition of *'Sahib-e-Nisab'*. These are that the person must be a Muslim citizen of Pakistan or in the case of an artificial juristic person when it has its majority equity owned by Muslim citizens of Pakistan.

6. In the present case, the majority equity ownership of the respondent Corporation lies with the Federal Government and not with Muslim citizen of Pakistan. Now the Federal Government is excluded from the status of *'Sahib-e-Nisab'* under Section 2(xxiii)(a) of the Ordinance. Thus, the majority ownership of the respondent Corporation neither rests with Muslim citizens of Pakistan nor with a person qualifying as *'Sahib-e-Nisab'*. Hence the respondent Corporation fails the test laid down in Section 1(2) of the Ordinance. The learned High Court has relied on the judgment in **Bank of Punjab vs. Administrator General, Central Zakat** (PLD 1994 Lahore 207) that holds the Bank of Punjab to be exempt from the recovery of Zakat for reasons similar to those outlined above.

7. This appeal, accordingly, pursues a pedantic reading of the exemption of a statutory corporation wholly owned by the Federal Government from '*Sahib-e-Nisab*' under Section 2(xxiii)(b) of the Ordinance. On the other hand, we find that by a joint reading of Section 1(2) with exemption of the Federal Government under clause (a) of section 2(xxiii) of the Ordinance, the respondent Corporation stands exempted from the charge and collection of Zakat as held by the impugned judgment.

For the foregoing reasons, this appeal being devoid of merit is dismissed with no order as to costs.

J.

J.

J.

Islamabad,
15.02.2016.
*Irshad Hussain/**

APPROVED FOR REPORTING.