

JUDGMENT

Messrs The ATTOCK OIL CO. LTD.

Versus

FEDERATION OF PAKISTAN and other

Writ Petition No.4260 of 2017

ATHAR MINALLAH, J.---Through this judgment I intend to decide the instant petition and the petitions listed in 'Annexure-A' attached hereto.

2. The facts, in brief, are that all these petitions have been filed by juridical persons, inter alia, engaged in the business of exploration and production of petroleum products. The petitioners have executed their respective agreements/contracts with the Federal Government. The petitioner Companies have challenged the wires of section 4B of the Income Tax Ordinance, 2001 (hereinafter referred to as the "Ordinance of 2001"). Section 4B of the Ordinance of 2001 was inserted through Finance Act of 2015 and it was later amended vide Finance Act, 2016.

3. The learned Counsel for the petitioner Companies have argued that; Section 4B is not a levy of tax rather it is in the nature of levy of fee and therefore, its insertion through a Money Bill was without lawful authority and jurisdiction; Reliance has been placed on the case titled: "Worker's Welfare Funds v. East Pakistan Chrome Tannery (Pvt.) Ltd." [PLD 2017 SC 28]; since levy of super tax through insertion of section 4B of the Ordinance of 2001 is in the nature of fee, therefore, it could not have been levied through a Money Bill; the judgment rendered and the law expounded by the apex Court is binding; the tax envisaged under section 4B is exclusively for the purposes of "rehabilitation of temporarily displaced persons" and therefore, it is to be classified as fee and not tax; it is obvious from the title of section 4B that even the legislature while inserting the said provision did not treat it as a tax; the department also does not treat it as a tax; reliance has been placed on an unreported judgment of the Appellate Tribunal Inland Revenue, dated 08.01.2018; section 100 of the Ordinance of 2001 is confined to production of oil and natural gas, and exploration and extraction of other mineral deposits; special provisions have been specifically inserted in the Ordinance of 2001; the mechanism for computing the tax payable by the companies engaged in the business of production of oil and natural gas, and exploration and extraction of mineral deposits has been prescribed under the rules in Part I of the Fifth Schedule; the petitioner Companies derive income from different sources; the petitioner Companies to the extent of income derived from exploration business are under an obligation to discharge their tax liability in accordance with the respective Concession Agreements executed with the Government of Pakistan; The Concession Agreements executed with the Government of Pakistan are protected under Regulations of Mines and Oilfields and Mineral Development (Government Control) Act, 1948 (hereinafter referred to as the "Act of 1948"); special provisions are contained in the Act of 1948 relating to scope of liability of the petitioner Companies in relation to tax levied under the Ordinance of 2001; super tax levied under section 4B of the Ordinance of 2001 is not attracted in case of the petitioner Companies because it was inserted after execution of the respective Concession Agreements with the Government of Pakistan; the Act of 1948 is a special law and it has overriding effect over the general law i.e. the Ordinance of 2001; the income derived from dividends cannot be included for the purposes of super tax levied under section 4B; section 54 of the Ordinance of 2001 is not attracted in the facts and circumstances of these petitions; reliance has been placed on the case titled: "Engro Fertilizers Limited v. Islamic Republic of Pakistan and Federation of Pakistan, Islamabad"[2012 CLD 50].

4. The learned Counsel appearing on behalf of the respondent Department have argued that; the insertion of section 4B and the levy there-under falls within the ambit of the expression "tax"; the legislature intended "super tax" to be levied as tax and therefore, it was inserted in the Ordinance of 2001; the levy of tax under the Ordinance of 2001 falls within the competence of Majlis-e-Shoora i.e. Parliament; the insertion of section 4B and levy there-under is not in violation of the constitutional provisions; the levy is compulsory exaction of money by the public authorities and it raises Common burden for collecting revenue; the levy is not for rendering services or providing privilege to any particular individuals; no case is made out for striking down the levy imposed by the Majlis-e-Shoora and as inserted in the Ordinance of 2001 through a Money Bill.

5. The learned Counsel have been heard and record perused with their able assistance.

6. The petitioner Companies are, inter alia, engaged in the business of exploration and production of petroleum products. They have executed respective Concession Agreements with the Government of Pakistan. They have challenged the vires of section 4B of the Ordinance of 2001.

7. The object and purpose of promulgating the Ordinance of 2001 is described in its preamble as to consolidate and amend the law relating to income tax and to provide for matters ancillary thereto or connected therewith. Subsection (29) of section 2 defines "income" as including any amount chargeable to tax under the Ordinance of 2001, any amount subject to collection or deduction of tax under the provisions specifically mentioned in the said definition. It also includes any amount treated as income under any provision of the Ordinance of 2001 and any loss of income. The expression "tax" is defined in subsection (63) of section 2 as any tax imposed under Chapter II, and includes any penalty, fee or other charge or any sum or amount leviable or payable under the Ordinance of 2001.

8. Section 4B was inserted vide Finance Act, 2015, and later amended through Finance Act, 2016. Through the said provision the legislature has imposed "super tax" for rehabilitation of temporarily displaced persons. The liability is required to be discharged by persons who are specified in Division IIA Part I of the First Schedule of the Ordinance of 2001. Subsection (2) of section 4B describes the income for the purposes of computing and recovery of the levy. Section 100 is in respect of those entities which are engaged in production of oil and natural gas, and exploration and extraction of other mineral deposits. For the purposes of computing tax, rules have been incorporated in Part I of the Fifth Schedule of the Ordinance of 2001.

9. A cumulative reading of the above provisions shows that the expression "tax" has a wide scope in the context of the Ordinance of 2001. The legislature in its wisdom and through insertion of section 4B intended the levy of super tax for rehabilitation of displaced persons. The mere incorporation of said levy in the Ordinance of 2001 leaves no doubt that the legislature had intended to treat it as a tax and not a fee. The judgments rendered by the august Supreme Court in cases titled "Federation of Pakistan through Secretary M/o Petroleum and Natural Resources and another v. Durrani Ceramics and others" [2014 SCMR 1630] and "Worker's Welfare Funds v. East Pakistan Chrome Tannery (Pvt.) Ltd." [PLD 2017 SC 28] are in respect of statutes other than the Ordinance of 2001. The distinguishing feature is the definition of tax given in the Ordinance of 2001 which, inter alia, includes fee. Section 4B and the levy there-under is covered under the definition of "tax" provided under subsection (63) of section 2 of the Ordinance of 2001. The judgments are, therefore, distinguishable and moreover, the mandatory ingredients for treating a levy as a fee are also not fulfilled in the instant case.

10. The argument raised by the learned Counsel that the levy under section 4B of the Ordinance of 2001 ought to be treated as fee rather than tax is not relevant in the light of above discussion. The learned Counsel despite their able assistance could not raise any ground so as to strike down the levy imposed under section 4B of the Ordinance, 2001. The argument that the Act of 1948 is a special law while the Ordinance of 2001 is of general nature is without force. The latter statute explicitly deals with tax on income while that is not the case with the former. The Ordinance of 2001 is a special law in the context of tax on income and therefore, its provisions would have an overriding effect over the Act of 1948. Special provisions have been incorporated in the Ordinance of 2001. The mechanism for computing tax payable under the law by the companies engaged in the business of production and exploration of petroleum products has been provided in the form of rules which have been incorporated in the Fifth Schedule.

11. This Court is satisfied that section 4B of the Ordinance of 2001 and its insertion was within the competence of the lower House of Majlis-e-Shoora i.e. National Assembly through a Money Bill. It is, therefore, declared that section 4B was validly inserted through the Finance Act, 2015 and that it does not suffer from any illegality nor is violative of any constitutional provision. The argument advanced by the learned Counsel relating to computing tax relating to income derived from other sources is concerned, that too has been dealt in the rules. This Court while exercising

jurisdiction under Article 199 of the Constitution cannot undertake an exercise for computing the tax liability of the petitioner Companies. The latter may approach the concerned Commissioner for this purpose. If the latter receives representations from the petitioner Companies, then it is expected that they shall be decided after affording opportunity of hearing.

12. The petitions are, therefore, disposed of in the above terms.

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