

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

W.P. No.2891 of 2015  
Pakistan Tobacco Company Limited

**Versus**

Administrator General Zakat, Ministry of Religious Affairs, etc

**Date of Hearing:** 28.02.2017  
**Petitioner by:** Mr. Nadeem Ahmad Sheikh, Advocate,  
**Respondents by:** Raja Khalid Mehmood Khan, learned  
Deputy Attorney-General.

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**MIANGUL HASSAN AURANGZEB J:-** Through this common judgment, I propose to decide W.P. No.2891/2015 titled “Pakistan Tobacco Company Limited Employees Provident Fund Vs. Administrator, General Zakat, Ministry of Religious Affairs, Zakat and Ushr Division, etc.” and W.P. No.2892/2015 titled “Pakistan Tobacco Company Limited Management Provident Fund Vs. Administrator, General Zakat, Ministry of Religious Affairs, Zakat and Ushr Division, etc.”. These petitions involve common questions of law and fact.

2. The issue to be resolved in these petitions is whether the Pakistan Tobacco Company Limited Employees Provident Fund and Pakistan Tobacco Company Limited Management Provident Fund (hereinafter collectively referred to as “the Provident Funds”), being ‘recognized Provident Funds’ within the meaning of Section 2(xx) of the Zakat and Ushr Ordinance, 1980 (“the 1980 Ordinance”), and, therefore, excluded from the definition of *Sahib-e-Nisab*, are liable to pay Zakat on the profit earned on their investments in the schemes of National Saving Centres.

3. Learned counsel for the petitioners submitted that under Section 3 of the 1980 Ordinance, Zakat in respect of assets mentioned in the First Schedule to the said Ordinance are to be charged and collected on compulsory basis from every person who is or has been a *Sahib-e-Nisab*; that the petitioners’ funds have been exempted from the deduction of Zakat on the basis of recognition granted by the Income Tax Authorities in accordance with the applicable provisions of the Income Tax laws; that the

Pakistan Tobacco Company Employees Provident Fund was duly recognized on 09.05.1949 under the provisions of the Income Tax Act, 1922; that the Pakistan Tobacco Company Management Fund was similarly recognized on 30.09.1980 under the provisions of the Income Tax Ordinance, 1979; that Zakat is not to be deducted in respect of the assets of the person excluded from the definition of *Sahib-e-Nisab*; that *Sahib-e-Nisab* means a person who owns or possesses assets not less than *Nisab*, but does not include *inter-alia*, a 'recognized Provident Fund'; that once a Provident Fund is recognized, it is excluded from the definition of *Sahib-e-Nisab*; that as the Provident Funds/petitioners have been duly recognized by the competent authorities under the Income Tax laws, they cannot be termed as *Sahib-e-Nisab*; that the factum regarding the recognition of the said Provident Funds/petitioners by the Income Tax authorities can be ascertained and verified by the Federal Government (Ministry of Religious Affairs/respondent No.1); that the petitioners' moneys, assets and investments, in whatever form are not subject to the deduction of Zakat; and that even though the petitioners' funds were invested in various schemes of the National Saving Centres, they remain the petitioners' funds and, therefore, are not liable to deduction of Zakat; that the respondents are liable to refund the Zakat deducted from the profit that accrued on the petitioners' investments in the schemes of the National Saving Centres. Learned counsel for the petitioners prayed for the writ petitions to be allowed and the respondents to be permanently restrained from deducting Zakat from the profit earned on the petitioners' investments in the schemes of the National Saving Centres.

4. The learned Deputy Attorney-General made submissions in reiteration of respondent No.1's stance in its written comments. The position taken by respondent No.1 was that the Directorate of National Savings was directed that Zakat Exemption Certificates may be obtained from respondent No.1 by institutions whose funds were exempted from the compulsory deduction of Zakat under the provisions of the 1980 Ordinance;

that the Provident Funds/petitioners had not provided attested copies of certificates from the tax authorities so as to claim exemption from compulsory deduction of Zakat; that Clause-7 of the petitioners' Trust Deed provided that an account shall be opened with a scheduled bank in Karachi into which moneys contributed by the Pakistan Tobacco Company Ltd. and the Members would be deposited; that since investments were made by the Provident Funds/petitioners in the schemes of the National Savings Centres, an amount of Rs.4.551 Million was deducted as Zakat from the profit amounting to Rs.95.755 Million earned on the said investments; that even with the deduction of Zakat, the Provident Funds have reaped greater profits on their investments in the schemes of the National Savings Centres as compared to the amount they would have earned had their funds been deposited in a bank account; that the deduction of Zakat was lawful, because the nature of the asset had been changed by the Provident Funds/petitioners; that the investment on which return in the shape of profit was being received by the Provident Funds/petitioners was liable for compulsory deduction of Zakat due to the creation of a separate asset on which Zakat was liable to be paid in terms of Entries Nos. 2, 3 and 4 of the First Schedule of the 1980 Ordinance.

5. Furthermore, it was pleaded that Zakat had not been deducted from the contributions made to the Provident Funds/petitioners by their trustees or the company, but since the nature of the asset had been changed and invested in profitable schemes of the National Savings Centres on which return in the shape of profit had been received by the Provident Funds/petitioners, the profit was liable to compulsory deduction of Zakat; and that under Section 3(1) of the 1980 Ordinance, Zakat in respect of assets mentioned in the First Schedule of the said Ordinance was to be charged and collected on compulsory basis from every person who was a *Sahib-e-Nisab*. It was clearly pleaded that Zakat is charged/deducted from every person who on the Valuation Date, and for the whole of the preceding year has been a *Sahib-e-Nisab* as per Section 3(1) of the 1980

Ordinance. The learned Deputy Attorney-General prayed for the writ petitions to be dismissed.

6. I have heard the contentions of the learned counsel for the petitioners and the learned Deputy Attorney-General, and have perused the record with their able assistance.

7. The record shows that vide Trust Deed dated 19.03.1949, a Provident Fund was established by *inter-alia*, the Pakistan Tobacco Company Limited ("P.T.C."). On 09.05.1949, an order was issued by the office of the Commissioner of Income Tax, Karachi, under Section 58-B of the Income Tax Act, 1922, giving recognition to the Provident Fund as instituted by P.T.C. This recognition was given effect from 01.03.1949. Similarly, on 30.09.1980, the office of the Commissioner of Income Tax, East Zone, Karachi, issued an order under Rule 1, Sixth Schedule (Part-I) of Section 2(37) of the Income Tax Ordinance, 1979, whereby recognition was accorded to the Pakistan Tobacco Company Limited Management Provident Fund, which was also instituted by P.T.C. vide Trust Deed dated 27.04.1980. This recognition was to take effect from 31.08.1980.

8. The petitioner in W.P. No.2891/2015 (Pakistan Tobacco Company Limited Employees Provident Fund) invested Rs.179.8 Million in 2009 and Rs.2,238,000/- in 2010 out of its funds in Special Savings Certificates issued by the National Savings Centre (respondent No.2). Similarly, the petitioner in W.P. No.2892/2015 (and Pakistan Tobacco Company Limited Management Provident Fund) in the same manner invested Rs.149.8 Million in 2009 and Rs.1,894,000/- in 2011. Respondent No.1 vide letter dated 02.02.2005, directed respondent No.2 to obtain an exemption certificate from the depositors in order to exempt such depositors from the deduction of Zakat on investments made in the National Savings Schemes. Therefore, P.T.C. vide letter dated 26.12.2011, applied to respondent No.1 for the issuance of a Zakat Exemption Certificate under Section 2(xxiii)(f) of the 1980 Ordinance, for the Provident Funds/petitioners. Vide letter dated 18.01.2012, respondent No.1 requested P.T.C. to provide attested copies of (1) valid

certificates from the tax authorities regarding the recognition of the Provident Funds, (2) investment portfolio in the National Savings Schemes, and (3) year-wise detail of accounts/investments along with branch code, address etc., and year-wise details of Zakat deposited in the Central Zakat Fund. P.T.C., vide letter dated 15.02.2012, provided the required information and investment details to respondent No.1. On 09.03.2012, respondent No.1 required P.T.C. to provide year-wise details of the Zakat deposited in the Central Zakat Fund. Vide letter dated 15.03.2012, P.T.C. informed respondent No.1 that no Zakat had been deducted from any of the investments made by the Provident Funds/petitioners, since they were exempt from the compulsory deduction of Zakat under Section 2(xxiii)(f) of the 1980 Ordinance. Vide letter dated 02.04.2012, P.T.C. was required by respondent No.1 to provide certified documents from the Income Tax authorities so that the case could be process further.

9. Vide letter dated 13.06.2013, the petitioner in W.P. No.2891/2015 asked respondent No.2 to refund an amount of Rs.4,495,000/- which had been deducted as Zakat allegedly in violation of the provisions of the 1980 Ordinance. The said amount had been deducted from the amount invested by the said Provident Fund in Special Savings Certificates in 2009 for a period of three years. It was explained that the said Provident Fund was exempted from compulsory deduction of Zakat. Having not received any plausible response from respondent No.1 or the National Savings Centre (respondent No.2), the petitioner instituted the above mentioned writ petitions. In the said writ petitions, the following relief has been prayed for:-

*"In the light of the submissions made above, it is most respectfully prayed that:*

- 1. That the deduction of Zakat by Respondent No.2 be declared illegal and void.*
- 2. That Respondent No.2 is reprimanded and the wrongfully deducted amount be reimbursed.*
- 3. That Respondent No.1 be reprimanded and directed to issue Tax Exemption Certificate, so to settle the matter once and for all.*

4. *That a declaration may kindly be issued to the effect that the Respondents are not entitled to deduct compulsory Zakat from the funds of the Trust. Any other relief which this Honourable Court deems fit may also be awarded to the petitioner."*

10. Section 3(1) of the Zakat and Ushr Ordinance, 1980 reads as follows:-

*"3. Charge and collection of Zakat. --- (1) Subject to the other provisions of this Ordinance, Zakat in respect of assets mentioned in the First Schedule shall be charged and collected, on compulsory basis, for each Zakat year, at the rates and in the manner specified therein, and as may be prescribed, from every person who is on the Valuation Date, and for the whole of the preceding Zakat year been, Sahib-e-Nisab, and who owns or possesses such assets on the Valuation Date."*  
(Emphasis added)

11. Section 3 *ibid* is in the nature of a charging section for Zakat on compulsory basis from every person who is a *Sahib-e-Nisab*. "*Nisab*" has been defined in Section 2(xva) of the 1980 Ordinance as follows:-

*"nisab', in relation to assets liable to Zakat, except agricultural produce and animals fed free in pastures, means 612.32 grams of silver, or cash or gold, or goods for trade, or any assets liable to Zakat under Shariah, the aggregate value of which is equal to the value of 612.32 grams of silver, as notified by the Administrator-General for each Zakat year or, in the case of a person whose assets liable to Zakat consist only of gold, 87.48 grams of gold."*

12. Now, the assets owned by the Provident Funds/petitioners would come under the definition of "*Nisab*" but for the definition of *Sahib-e-Nisab* in Section 2(xxiii) of the 1980 Ordinance, which provides that *Sahib-e-Nisab* means a person who owns or possesses asset not less than *Nisab*, but does not include a 'recognized Provident Fund'. A 'recognized Provident Fund' has been defined in Section 2(xx) of the 1980 Ordinance as a Provident Fund recognized as such by the competent authority under the Income Tax Ordinance, 1979. Section 3(3) of the 1980 Ordinance *inter-alia* provides that where a person from whom Zakat had been deducted at source proves that he falls under any of the exclusions given in sub-clauses (a) to (n) of clause (xxiii) of Section 2 of the said Ordinance, the amount so deducted shall be refunded to him in a prescribed manner.

13. In exercise of the powers conferred by Section 26 of the 1980 Ordinance, the Central Zakat Council has made the Zakat (Collection and Refund) Rules, 1981, for the compulsory deduction of Zakat at source and its refund. Rule 21 of the said rules is reproduced herein below:-

*“21. Zakat not to be deducted in respect of the assets of a person excluded from the definition of Sahib-e-Nisab. --- Zakat shall not be deducted in respect of the assets of a person claiming exclusion from the definition of Sahib-e-Nisab under any of the sub-clauses (a) to (n) of clause (xxiii) of section 2 of the Ordinance, the claim for such exclusion to be established through appropriate documentary evidence.”*

14. From the position taken by respondent No.1 in its written comments, and the contentions of the Deputy Attorney-General, it can be discerned that moneys deposited by the Provident Funds/petitioners in its bank accounts had not been subjected to compulsory deduction of Zakat. It has been clearly pleaded that if Zakat had been deducted from the bank accounts of the Provident Funds/petitioners, then the petitioners' claim for exemption would have been authentic and lawful. Respondent No.1 asserts that since the petitioners had created a separate asset (in the form of an investment in the National Savings), they were held liable to deduction of Zakat.

15. Now, the vital question that needs to be answered is whether all or any assets of a 'recognized Provident Fund', which had been excluded from the definition of a *Sahib-e-Nisab*, would be exempt from the deduction of Zakat. The provisions of the 1980 Ordinance do not limit or restrict or identify the assets of a person, who is excluded from the definition of a *Sahib-e-Nisab*, which can be subjected to compulsory deduction of Zakat. Section 2(xxiii)(f) of the 1980 Ordinance, in effect provides that a 'recognized Provident Fund' is not included in the definition of a *Sahib-e-Nisab*. Since a 'recognized Provident Fund' is excluded from the definition of *Sahib-e-Nisab*, its assets (including the ones mentioned in the First Schedule to the 1980 Ordinance) cannot be subjected to compulsory deduction of Zakat.

16. Section 3 of the 1980 Ordinance, starts with a non-obstante clause. Therefore, the other provisions of the 1980 Ordinance,

including Section 2(xx) and (xxiii)(f) thereof, which exclude a 'recognized Provident Fund' from the definition of *Sahib-e-Nisab*, will override Section 3 of the said Ordinance. Furthermore, Rule 21 of the Zakat (Collection and Refund) Rules, 1981, makes it clear that Zakat shall not be deducted in respect of the assets of a person claiming an exclusion from the definition of *Sahib-e-Nisab* under any of the sub-clauses (a) to (n) of clause (xxiii) of Section 2 of the 1980 Ordinance. However, the claim for such an exclusion is to be established through an appropriate documentary evidence.

17. Indeed investment made by a *Sahib-e-Nisab* in the schemes of the National Savings Centres is included within the meaning of "assets" in terms of the First Schedule of the 1980 Ordinance and, therefore, can be subjected to a compulsory levy of Zakat through deduction at source, but not if such assets belong to a person who is excluded from the meaning of *Sahib-e-Nisab*. Therefore, investment made in the schemes of the National Savings Centres made by a 'recognized Provident Fund', which is excluded from the meaning of a *Sahib-e-Nisab*, cannot be subjected to the compulsory levy of Zakat.

18. Respondent No.1 has contracted itself by asserting that Zakat had not been deducted from the contributions made to the Provident Funds by the Members or Trustees and P.T.C., but since the nature of the asset had been changed by the petitioners, by making an investment in a profitable schemes of the National Savings Centres, the profit on such an investment was subjected to compulsory deduction of Zakat. As mentioned above, since only the assets of a *Sahib-e-Nisab* can be subjected to the compulsory levy of Zakat, and since the Provident Funds/petitioners are excluded from the meaning of a *Sahib-e-Nisab* on account of being 'recognized Provident Funds', the petitioners' assets whether in their bank accounts or invested in the schemes of National Savings Centres cannot be subjected to compulsory levy of Zakat.

19. By Section 2(xxiii)(a) of the 1980 Ordinance, the Federal Government, a Provincial Government or a local authority have



also been excluded from the definition of *Sahib-e-Nisab*. In the case of Market Committee, Chichawatni District Sahiwal Vs. Federation of Pakistan (1991 CLC 118), the petitioner/Market Committee had, through a writ petition, challenged a letter issued by Directorate of National Savings pertaining to compulsory deduction of Zakat from the Market Committee. The position taken by the petitioner in the said case was that a market committee constituted under the Punjab Agricultural Produce Markets Ordinance, 1978, was a local authority within the meaning of the law, and that the functions being performed by the market committee were essentially those of the Government which were to be performed by the local authorities under the Punjab Local Government Ordinance, 1975, but by a special statute have been assigned to market committees. On this basis, the petitioner claimed exemption from the payment of Zakat by virtue of the provisions of section 2 (xxiii) of the 1980 Ordinance. In this case, it was *inter alia* held by the Hon'ble Lahore High Court that Zakat was payable, under the law, by a person who is *Sahib-e-Nisab* as defined under section 2 clause (xxiii) of the 1980 Ordinance. Furthermore, it was held that market committees, being local authorities, did not fall within the purview of *Sahib-e-Nisab* under section 2 (xxiii) (a) of the Zakat and Ushr Ordinance, 1980, and may be liable to pay other taxes covered by the appropriate Acts or Ordinances, but are not liable to pay Zakat. The writ petition filed by the market committee was allowed and it was declared that market committees were local authorities within the meaning of section 2 clause (xxiii) (a) of the 1980 Ordinance, and were not liable to pay Zakat.

20. Respondent No.1 in its written comments has not disputed the authenticity of the recognition given by the Income Tax authorities to the Provident Funds/petitioners. The mere fact that respondent No.1 has asserted that no Zakat was deducted from the moneys deposited by the Provident Funds/petitioners in their bank accounts, show that recognition to the said Provident Funds was accorded. Respondent No.1 may, should it so desire,

confirm the fact as regards the petitioners' recognition as a Provident Fund, with the Revenue Division of the Federal Government. It is the change in the petitioners' asset (investment in the schemes of National Saving Centres) which prompted the deduction of Zakat. This deduction does not appear to be lawful because, as mentioned above, once a Provident Fund is recognized and, therefore, excluded from the definition of *Sahib-e-Nisab*, its assets cannot be subjected to compulsory deduction of Zakat, whether or not such assets find mention in the First Schedule of the 1980 Ordinance.

21. In view of the aforementioned, the writ petitions are allowed and it is declared that on account of the petitioners being 'recognized Provident Funds', they do not come within the definition of *Sahib-e-Nisab*, and, therefore, their assets, whether mentioned in the First Schedule of the 1980 Ordinance or not, are not liable to compulsory deduction of Zakat. Furthermore, respondent No.1 is directed to process the petitioners' case for the refund of the Zakat already deducted strictly in accordance with the law. There shall be no order as to costs.

(MIANGUL HASSAN AURANGZEB)  
JUDGE

ANNOUNCED IN AN OPEN COURT ON \_\_\_\_\_/2017

(JUDGE)

Sultan\*

APPROVED FOR REPORTING

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