

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

CASE NO. : W.P. NO.3224-2015

Quaid-i-Azam University, Islamabad through its Registrar

Vs.

Capital Development Authority, Islamabad through its Chairman &
 Another

Petitioner by : Mr. Muhammad Munir Peracha, Advocate
 Mr. Nauman Munir Peracha, Advocate
 Sami Ullah Khan, Assistant Registrar (Legal),
 QAU.
 Respondents by : Mrs. Misbah Gulnar Sharif, Advocate
 Date of hearing : 22.12.2020

AAMER FAROOQ J. The petitioner is an educational Institution/University constituted under Qaudi-i-Azam University Act, 1976; it is aggrieved of notice dated 15.06.2015 issued by Capital Development Authority under the signatures of respondent No.2, whereby demand has been raised in the sum of Rs.18.173,855/- as property tax charged to the petitioner. In response, the petitioner replied vide letter dated 16.06.2015, denying the liability on account of the fact that it is a Public Sector University by placing reliance on the decision dated 18.05.2009 of this Court in case titled 'Allama Iqbal Open University through its Registrar, Islamabad Vs. Ministry of Interior, Government of Pakistan, through its Secretary, Islamabad etc' (W.P. No.649-2007).

2. Learned counsel for the petitioner *inter alia* contended that though the levy of property tax of a Public Sector University has been settled by the decision of the Hon'ble Supreme Court of Pakistan in

case titled 'CDA through its Chairman and another Vs. AIOU through its Registrar and another' (Civil Appeal No.309-2012), however, the demand raised, is not tenable inasmuch as rates, at which, the demand is being made, are commercial, whereas the petitioner is not a commercial entity. It was contended that even-otherwise, after the enactment of Islamabad Capital Territory Local Government Act, 2015, CDA has no authority to levy the property tax.

3. Learned counsel for the respondents, *inter alia*, contended that decision of this Court dated 18.05.2009, in case titled 'Allama Iqbal Open University through its Registrar, Islamabad Vs. Ministry of Interior, Government of Pakistan, through its Secretary, Islamabad etc' (W.P. No.649-2007), was set aside by the august Apex Court vide judgment dated 08.02. 2016 in case titled 'CDA through its Chairman and another Vs. AIOU through its Registrar and another' (Civil Appeal No.309-2012). It was contended that even Civil Review (Civil Review Petition No.79 of 2016), filed against the said judgment, was dismissed vide order dated 11.07.2019 by the Hon'ble Supreme Court of Pakistan. Learned counsel further contended that demand made, in the notice impugned in the writ petition, is prior to the enactment of Islamabad Capital Territory Local Government Act, 2015 and CDA, for said period, is competent to demand and collect property tax in light of decision of august Apex Court in cases reported as 'Pakistan Television Corporation Limited Vs. Capital Development Authority and others' (2011 SCMR 1117) as well as 'Mrs. Bilquis Anwar Khan and

39-others Vs. Pakistan through Secretary, Cabinet Division, Government of Pakistan, Islamabad and 3-others' (2001 SCMR 809).

4. Arguments advanced by learned counsel for the parties have been heard and the documents, placed on record, examined with their able assistance.

5. The background, leading to filing of instant petition, has been mentioned hereinabove hence need not be reiterated.

6. The petitioner, in reply to the demand notice issued by the respondents, had placed reliance on the decision of this Court dated 18.05.2009 in case titled 'Allama Iqbal Open University through its Registrar, Islamabad Vs. Ministry of Interior, Government of Pakistan, through its Secretary, Islamabad etc' (W.P. No.649-2007). The said judgment was challenged before the Hon'ble Supreme Court of Pakistan by Capital Development Authority and the august Apex Court in Civil Appeal No.309-2012 in case titled 'CDA through its Chairman and another Vs. AIOU through its Registrar and another', vide judgment dated 08.02.2016, held that Allama Iqbal Open University since is not a 'charitable institution', hence is not entitled to claim exemption from payment of property tax. The august Apex Court in paragraph-6 of the judgment, while relying upon SRO No.24(I)/2001 dated 11.01.2001, held that since University is not a charitable institution, hence has no exemption from payment of tax.

For the sake of brevity, relevant paragraph is reproduced below: -

"6. Before we appreciate the controversy canvassed at the bar it is worthwhile to refer that to the relevant provision of the SRO and Allama Iqbal Open University Islamabad, Act. Para 4 of the SRO is relevant which reads as under: -

“4. The following categories of buildings and lands shall be exempt from payment of tax to the extent shown against each category:-

	Category	Exemption
1.	Residential houses, flats or apartments owned and self occupied by persons, their family members including parents.	50%
2.	One residential house, flat or apartment belonging to a widow if she owns no other built up property anywhere in Pakistan	100% upto plot area 240 sq.yds.
3.	Places set apart for public worship and actually so used and used for no other purpose	100%
4.	Hospitals, dispensaries, clinics, educational or training institutions and libraries located on the plot allotted for specified purposes and run wholly from charitable contributions and donations	100%
5.	Residential house, flat or apartment owned and occupied by a retired Government employee whether in his own name or in the name of or jointly with his wife or dependent minor children. This exemption shall be available if it is his/her or their only property in Pakistan and he/she or they are themselves living in the house or, as the case may be, flat or apartment and no portion thereof has been rented out. This exemption shall also be available in case of death of the retired employee to the surviving spouse and minor children of the deceased employee up to plot area of 600 sq.yards.	60%
6.	Buildings and lands owned by the Federal or a Provincial Government, but excluding public and private corporations.	100%
7.	Buildings and land vesting in the Capital Development Authority. This, however does not include lands leased out to private individuals and corporations, companion and firms or to any group of individuals.	100%

Section 28 of the Act is also relevant which reads as under: -

‘University Fund.- *The University shall have a fund to which shall be credited its income from fees, donations, trusts bequests, endowments, contributions, grants, property and all other sources”.*

The bare perusal of above Notification shows that only the educational institutions/training centres, which are run from charitable contribution and donations, have 100% exemption from payment of property tax. Review petition was filed before the Hon’ble Supreme Court of Pakistan by Allama Iqbal Open University (Civil Review Petition No.79-2016 in Civil Appeal No.309 of 2012 and Civil Petition

No.1350-2016), which also was dismissed vide order dated 11.07.2019 and the law, earlier laid down by the Hon'ble Supreme Court of Pakistan in case reported as 'Pakistan Television Corporation Limited Vs. Capital Development Authority and others' (2011 SCMR 1117), was upheld. In case reported as 'Pakistan Television Corporation Limited Vs. Capital Development Authority and others' (2011 SCMR 1117), the august Apex Court relied upon para 4(6) of SRO No.24(I)/2001 dated 11.01.2001, which provides that buildings and land owned by Federal or Provincial Governments, but excluding public and private corporations, have 100% exemption. In the referred background, it was held that PTV does not fall within the category of 'Federal Government' entitling it to exemption.

7. Petitioner is a statutory body created under Qaudi-i-Azam University Act, 1976; it is not a Federal Government but is a statutory entity hence does not fall within the exemption provided in paragraph 4(6) of SRO mentioned above. Similarly, there is nothing on record nor it was argued by learned counsel for the petitioner that Quaid-i-Azam University is run on charitable basis.

8. Learned counsel for the petitioner had though contended that provisions of Municipal Administration Ordinance, 1960 have not been duly complied with. Under section 15-A of Capital Development Authority Ordinance, 1960, Capital Development Authority has the power to levy property tax and all other powers as Municipal Committee, may exercise and perform municipal functions under the Municipal Administration Ordinance, 1960. Under subsection (2) of

Section 15-A of the Ordinance, the provisions of sections 18, 33 to 73, 77 to 106, 109, 115 to 178 and 122 of the Municipal Administration Ordinance are to apply. The august Apex Court observed that Notification, in question, at the relevant time, was in accordance with law.

10. Learned counsel for the respondents placed on record Notification dated 21.06.1995 published in the official gazette for arguing that all the requirements, as prescribed under the Municipal Administration Act, 1960, have been duly complied with and sanction of the Federal Government was obtained in prescribing rates of taxes. Learned counsel vehemently argued that tax levied is prior to the enactment of Islamabad Capital Territory Local Government Act, 2015.

11. In view of above discussion, it is clear that prior to enactment of Islamabad Capital Territory Local Government Act, 2015, respondent No.1 had the power to levy property tax in Islamabad Capital Territory and in this behalf, could perform functions as Municipal Committee as provided in section 15-A *ibid*; it also had the powers and obligations as provided in various sections stipulated above under Municipal Administration Ordinance, 1960, however, after the enactment of Islamabad Capital Territory Local Government Act, 2015, the levy and demand of property tax, within Islamabad Capital Territory, is the exclusive domain of Municipal Corporation Islamabad.

12. The petitioner, being a statutory body and not being part of Federal Government or run on charitable basis, is not entitled to the exemption as provided under SRO No.24(I)/2001 dated 11.01.2001.

13. For what has been stated above, instant petition is without merit and is accordingly dismissed. However, respondents shall ensure that demand raised is for the period prior to enactment of Islamabad Capital Territory Local Government Act, 2015.

(AAMER FAROOQ)
JUDGE

Announced in Open Court on 19.03.2021

JUDGE

Zawar