

*Form No: HCJD/C-121.*  
**JUDGEMENT SHEET**

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

Tax Reference No. 07 of 2007

M/s Federal Bank for Co-Operatives

**Vs**

Commissioner of Income Tax, Companies Zone

**DATE OF DECISION:** 26.01.2021

**APPLICANT BY:** Hafiz Muhammad Idrees and  
Syed Farid Ahmed Bukhari,  
Advocates.

**RESPONDENT BY:** Syed Ishfaq Hussain Naqvi,  
Advocate.

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**BABAR SATTAR,J.-** Through this consolidated judgment, we will decide the instant Tax Reference and Tax Reference No. 08/2007 titled: 'M/s Federal Bank for Co-operatives vs. Commissioner of Income Tax, Companies Zone'.

2. In these Tax References the question of law before us is as follows:

*"Whether under the law and circumstances of the case the learned ITAT was justified in holding that section 80D is a special provision and will prevail over section 38 of Federal Bank for Co-operative Act 1977?"*

3. Let us reproduce para 2 and 3 of the order of the learned Appellate Tribunal that summarize the controversy and the findings of the learned Commissioner (Appeals) and relevant para 5 that contained the reasoning of the Appellate Tribunal

*"2. Brief facts of the case are that the assessee, an individual derives income from various sources such as interest, service charges and other receipts etc. Since the income of the assessee was exempt from payment of income tax during the period relevant to assessment year 1998-99 and 1999-2000 under section 38 of the Federal Bank for Co-operative Act 1977 which is hereby reproduced here as under:*

*"Notwithstanding anything contained in the Income Tax Ordinance, 1979 (XXXI of 1979), the Gift Tax Act of 1963 (XIV of 1963), the Wealth Tax Act, 1963 (XV of 1963) or any other law in force relating to Income Tax, Super Tax, Wealth Tax, Gift Tax or Business Profit Tax, The Bank shall not be liable to pay any such tax on its income, profits, gains, wealth or gifts."*

*Therefore, levy of minimum tax u/s 80-D was discussed by the assessing officer with learned AR who contested the levy of tax under section 80-D taking the same plea as in the previous year.*

*"The Federal Bank for Cooperatives Act, 1977 having jurisdiction over special set of peoples and circumstances for specific class is a Special law. On the other hand, the Income Tax Ordinance, 1979 does not have jurisdiction over special set of peoples and circumstances for specific class is a general law."*

*3. In the First Appeal learned CIT(A) has observed as under:*

*"The legislative has given overriding effect to the provision of section 80-D even the bank is otherwise exempt under the provision of Income*

*Tax Ordinance, or any other law for the time being in force. No specific exemption to assessee bank has been granted from the levy of section 80-D under any provision of Second Schedule to the Income Tax Ordinance 1979, hence the version of assessee bank for the exemption from the levy of minimum tax leviable on turnover u/s 80-D of the Income Tax Ordinance, 1979 is not acceptable..."*

*5. The learned AR states that assessee a statutory body was exempt from payment of income tax u/s 38 of Federal Bank of Co-Operative. Special Law overrides the general law. It is pertinent to mention here that this special law was subsequently withdrawn for the assessment year 2000-01 and onward. Needless to mention here that section 80-D of the Income Tax Ordinance, 1979 is subsequent than section 38 of Federal Bank for Cooperatives Act 1977, where two provisions are irreconcilable, the provision last in order of position may prevail, since it is the latest expression of the legislative will. If a new enactment that has been added is to some extent, in conflict with the previous existing, the new enactment must by implication, be deemed to have annulled or altered the earlier enactment. Parallel statutes operating in different fields or even if the subject is the same one may be more extensive in scope than the other. Occasion for implied repeal would only arise if the two statutes cannot at all coexist, and when existence of one will make redundant the other. Where two statutes operate in the same field independently, through they may contain different provisions in this behalf, if by giving effect to the provisions, one of the provisions of the other are rendered or are likely to be rendered nugatory, the two statutes clash. They are inconsistent with each other, and the provisions of the latter statute (or the statute which the legislature intended to be dominant), on its true construction, was intended to cover the whole grounds, it would, to the extent of the ground covered or intended to be covered, supersede and displace the other statute. This argument of the learned AR that section 80-D is a general law being part of Income Tax Ordinance,*

*1979 is not true. Section 80-D is not a general law. It is special law which gave concept of presumptive tax regime, despite embodied in Income Tax Ordinance. Yet it cannot be considered as general law. It is a special law which has given overriding effect to all of the existing law. So this maxim generalia specialibus non derogant has no applicability in this case. Section 80-D is also special law which has overriding effect qua section 38 of Federal Bank for Cooperatives Act, 1977. So the appeals filed by the assessee are without any merit hereby stand dismissed."*

4. Learned counsel for the applicant submitted that the Federal Bank for Cooperatives and Regulation of Cooperative Banking Act, 1977 ("**Cooperatives Act**") is a special law pursuant to which the applicant bank was created and section 38 of the Act is a specialized provision excluding applicability of any charge or liability under the Income Tax Ordinance, 1979 ("**Ordinance of 1979**"), Gift Tax Act, 1963 and Wealth Tax Act, 1963 to the extent of Federal Bank for Cooperatives ("**Bank**") established under the said Act. The leaned counsel further submitted that the Cooperatives Act is a special law in the context of tax affairs of the applicant and the Ordinance of 1979 is a general law and that any conflict between special law and a general law, the special law must prevail notwithstanding which law is later in time. That the Income Tax Ordinance of 2001 ("**Ordinance of 2001**") contains section 54 which now provides that for exemption to be granted from provisions the Ordinance of 2001, such exemption must emanate from the Ordinance of 2001 itself. He stated that no provision in the Ordinance of 1979 was *pari materia* to section 54, which reflects that there existed no

legislative intent that provisions of the Ordinance of 1979 would have overriding effect over exemptions from income tax provided under other special laws such as the Cooperatives Act. The learned counsel relied on Muhammad Mohsin Ghuman and others vs. Government of Punjab through Home Secretary and others (2013 SCMR 85) wherein it was held that:

*10. The question of applicability of general and special Laws was also considered by the Privy Council in Montreal Corporation v. Montreal Industrial Land Company (AIR 1932 PC 252) wherein it was laid down as follows:*

*"When the legislature had given its attention to a separate made provision for it, the presumption is that a subsequent general enactment is not intended to interfere with the special provision unless it manifests that intention very clearly. Each enactment must be construed in that respect according to its own subject-matter and its own terms."*

The learned counsel further relied on Commissioner of Income Tax, Companies Zone, Islamabad vs. Messrs. Geofizyka Krakow Pakistan Ltd. (2015 PTD 1169), wherein the following was held;

*10. In case titled 'Arif Hussain Shah v. Operation Director' reported as (PLD 1979 Lahore 603) it was observed as follows:*

*"The word 'non obstante' means 'notwithstanding'. It means 'despite' or 'in spite of '. A 'non obstante' clause is used in a provision to indicate that the provision should prevail despite anything to the contrary in any provision. While interpreting 'non obstante' clause, it should first be ascertained what the enacting part of the section provides on a fair construction of words used according to their natural and ordinary meaning as a 'non obstante' clause is to be understood as operating to set aside as no longer valid anything contained in relevant existing law which is inconsistent in the new enactment. The enacting part of the Statute must, where it is clear, be taken to control*

*the non obstante clause where both cannot be read harmoniously for, even apart from such clause a later law abrogates an earlier law clearly inconsistent with it."*

*11. The discussion of above-mentioned case law makes it clear that the purpose of non obstante clause is that the Legislature intends that a particular provision which starts with 'notwithstanding' should prevail over any other inconsistent provision."*

5. The learned counsel for the respondent department submitted that the Ordinance of 1979 was the special law for purposes of taxation and not the Cooperative Act and consequently section 80D of the Ordinance of 1979 must prevail over section 38 of the Cooperatives Act. He further submitted that in order to determine which law is special and which is general, the pith and substance of the said statutes would need to be seen and given that it is the Ordinance of 1979 that regulates the subject matter i.e. income tax liability of the assessee, the Ordinance of 1979 would be the special law to be given overriding effect. He relied on Sui Northern Gas Pipeline Limited through General Manager v. Director (Legal) President Secretariat (Public) and 2 others (PLD 2018 SC 51) wherein relevant precedents on the question of interpretation of special law was discussed in the following terms:

*18. In view above discussion on two special laws, it can safely be concluded that when two special laws deal with similar situation, then question of jurisdiction has to be seen in the light of its nature, object, scope and remedial portion provided therein in ordinary meaning which is called as literal approach of reading a statute to understand its true legislative intent. It is also settled proposition of law that special statute prevails over general statute and similarly, general provisions and*

*special provisions in same statute would have different effect, when the plain and simple meaning of a provision of law is clearly understandable without any ambiguity then nothing is to be presumed or imported from outside. Reliance is placed upon 2014 SCMR 671 (The State v. Syed Ali Baqar Naqvi and others). Even otherwise, the Courts have to decide any question in accordance with law and every citizen has right to be dealt in accordance with law under Article 10-A of the Constitution of Islamic Republic of Pakistan 1973. It is also settled proposition of law that in construing and interpreting a special law, the Court has to look at the reasons and background, which influenced the mind of the legislature in enacting the special law and the history of events, which had occurred preceding the enactment of the special law. Similarly, in construing and interpreting Statute, the fundamental principle is to discover the true intent of the legislature enacting a particular law to meet a particular situation and to confront a specific emerging threat or situation. Reliance is placed upon 2017 5CMR 1572 (Waris Ali and 5 others v. The State).*

*19. It is also settled proposition of law that when there is conflict between two special laws containing overriding clauses, generally statute later in time would prevail over the statute prior in time. Reliance is placed upon 2017 SCMR 1218 (Syed Mushahid Shah v. Federal Investment Agency and others).*

*20. Similarly, another rule of interpretation of statutes is that if two special enactments contain provisions, which give overriding effect to the provisions contained therein, then the Court is required to consider purpose and the policy underlying the two Acts and the clear intendment conveyed by the language of the relevant provisions. Reliance is placed upon AIR 2012 SC 11 (Employees Provident Fund Commissioner v. O. L. of Esskay Pharmaceuticals Limited) and 1956 SCR 603 (Shri Ramah Narain v. The Simla Banking and Industrial Co., Ltd.). The apex Court while considering all the case laws has rendered following principles in judgment reported as*

2017 SCMR 1218 (Syed Mushahid Shah v. Federal Investment Agency and others).

*(i) If the provisions of a later Act are so inconsistent with those of an earlier Act that both cannot stand together, the earlier stands impliedly repealed by the later. This principle is based on the maxim *leges posteriores priores contrarias abrogant*. In other words, it means that the latest expression of the will of the Legislature must prevail. This, of course, is subject to the condition contained in the next principle. That is: if the prior enactment is special and the subsequent enactment is general, the earlier special Legislation will not be, indirectly, repealed, altered or derogated from merely by force of the general words of the later statute, without any indication of a particular strong intention to do so.*

*(ii) A general later law does not abrogate, by mere implication, an earlier particular or special law which deals with a special object or a special class of objects. This principle is based on the maxim *generalia specialibus non derogant*. But when a general Act is incorporated into a special one, the provisions of the latter would prevail over any of the former with which they are inconsistent. If one statute enacts something in general terms, and afterwards another statute is passed on the same subject, which, although expressed in affirmative language, introduces special conditions and restrictions, the subsequent statute will usually be considered as repealing by implication the former, for "affirmative statutes introductive of a new law do imply a negative". However, if a subsequent statute merely creates an exception from the operation of a previous statute, the previous statute is not necessarily repealed.*

*(iii) When the later of two general enactments is couched in negative terms or in such affirmative terms which unequivocally involve negative which proves fatal to the earlier enactment, the earlier one is impliedly repealed.*



*(iv) When the two statutes are expressed in negative terms, they may be affirmative inter se and may not be contradictory to each other; though the effect of both may be that they are negative as regards a third statute 'at which both of them may have made some inroads'. When seen in this light, an apparent conflict of two statutes is found as without any reality. Because they (sic) objects may be different and both may be parallel; and each may be restricted to its own particular subject or locality.*

*(v) If the co-existence of the two inconsistent statutes would be destructive of the object for which the later was passed, the earlier would be deemed to have been repealed.*

*(vi) In so far as the Penal Acts are concerned, if a later statute again describes an offence created by a former one, and provides a different punishment, creates a new jurisdiction and remedy and varies the procedure-modifying the manner or changing the forum of trial or appeal, the earlier statute is impliedly repealed by the later unless, of course, both of them can exist in parallel application to different localities, subjects or objects.*

*(vii) When the words are clear and capable to proper operation, the revocation or alteration of a statute by construction is not permissible. The Legislature is normally not presumed to have intended to keep two contradictory enactments on the statute-book with the intention of repealing the one with the other, without expressing an intention to do so. Such an intention cannot be imputed to the Legislature without some strong reasons and unless it is inevitable. Before adopting the last-mentioned course, it is necessary for the Courts to exhaust all possible and reasonable constructions which offer an escape from repeal by implication.*

*(viii) All other consideration being equal, if the inconsistency, in spite of applying all general principles of interpretation of statutes, cannot be resolved, a statute more beneficial in remedy or method of taking*

*action will override the statute which is not so beneficial."*

6. In Syed Mushahid Shah and others vs. FIA and others (2017 SCMR 1218) the august Supreme Court considered whether the Banking Courts constituted under the Financial Institutions (Recovery of Finances) Ordinance, 2001 have exclusive jurisdiction to try offences to the exclusion of Special Courts established under the Offences in Respect of Banks (Special Courts) Ordinance, 1984 and ordinary criminal courts under the Code of Criminal Procedure, 1898 and the Pakistan Penal Code, 1860 and held that:

*"When there were two special laws both of which contained overriding clauses, and there was a conflict between them, generally the statute later in time would prevail over the statute prior in time. Said presumption, however, was not automatic, instead a host of other factors including the object, purpose and policy of both statutes and the legislature's intention, as expressed by the language employed therein, needed to be considered in order to determine which of the two special laws was to prevail".*

7. The Indian Supreme Court has also reflected on the principles that guide interpretation of statutes in case of statutory conflict, including, *inter alia*, interpretation of seemingly conflicting provisions between a general and a special law as well as seemingly conflicting provisions between two special laws.

(i) In Maruti Udyog Ltd v Ram Lal [(2005) 2 SCC 638] Supreme Court of India observed that *"It is law settled that when both statutes containing non*

*obstante clauses are special statutes, an endeavor should be made to give effect to both of them. In case of conflict, the later shall prevail”.*

(ii) In Maharashtra Tubes Ltd. Vs. State Industrial and Investment Corporation of Maharashtra Ltd and another [1993(2) SCC 144] the question was that of inconsistency between two special laws, the Finance Corporation Act, 1951 and the Sick Industries (Special Provisions) Act, 1985, wherein both contained non-obstante clauses. It was held that, *“The 1985 Act being a subsequent enactment, the non-obstante clause therein would ordinarily prevail over the non-obstante clause in Section 46-B of the 1951 Act unless it is found that the 1985 Act is a general statute and the 1951 statute is a special one...”*

(iii) In Solidaire India Ltd vs Fairgrowth Financial Services Ltd. and others [(2001) 3 SCC 71], it was held by the Supreme Court of India that:

*"9. It is clear that both these Acts are special Acts. This Court has laid down in no uncertain terms that in such an event it is the later Act which must prevail...*

*10. We may notice that the Special Court had in another case dealt with a similar contention. In Bhoruka Steel Ltd. v. Fairgrowth Financial Services Ltd. it had been contended that recovery proceedings under the Special Court Act should be stayed in view of the provisions of the 1985 Act. Rejecting this contention, the Special Court had come to the conclusion that the Special Court Act being a later enactment would prevail. The head-note which brings out succinctly the ratio of the said decision is as follows:*

*"Where there are two special statutes which contain non-obstante clauses the later statute*

*must prevail. This is because at the time of enactment of the later statute, the Legislature was aware of the earlier legislation and its non-obstante clause. If the Legislature still confers the later enactment with a non-obstante clause it means that the Legislature wanted that enactment to prevail. If the Legislature does not want the later enactment to prevail then it could and would provide in the later enactment that the provisions of the earlier enactment continue to apply.*

(iv) In ShriRam Narain vs. Simla Banking and Industrial Co. Ltd. (AIR 1956 SC 614) the Supreme Court of India considered the Banking Companies Act, 1949 and the Displaced Persons (Debt Adjustment) Act, 1951, both of which had provisions giving overriding effect to their own provisions over any other law. The Court observed:

*"(7) ...Each enactment being a special Act, the ordinary principle that a special law overrides a general law does not afford any clear solution in this case...It is, therefore, desirable to determine the overriding effect of one or the other of the relevant provisions in these two Acts, in a given case, on much broader considerations of the purpose and policy underlying the two Acts and the clear intendment conveyed by the language of the relevant provisions therein".*

(v) In Ashoka Marketing Ltd. and Another v. Punjab National Bank and Others (AIR 1991 SC 855) it was held that:

*"55. The Rent Control Act makes a departure from the general law regulating the relationship of landlord and tenant contained in the Transfer of Property Act inasmuch as it makes provision for determination of standard rent, it specifies the grounds on which a landlord can seek the eviction of a tenant, it prescribes the forum for adjudication of disputes between landlords and tenants and the procedure which has to be followed in such proceedings. The Rent Control Act can, therefore, be said to be a special statute regulating the relationship of landlord and tenant*

*in the Union territory of Delhi. The Public Premises Act makes provision for a speedy machinery to secure eviction of unauthorised occupants from public premises. As opposed to the general law which provides for filing of a regular suit for recovery of possession of property in a competent court and for trial of such a suit in accordance with the procedure laid down in the Code of Civil Procedure, the Public Premises Act confers the power to pass an order of eviction of an unauthorised occupant in a public premises on a designated officer and prescribes the procedure to be followed by the said officer before passing such an order. Therefore, the Public Premises Act is also a special statute relating to eviction of unauthorised occupants from public premises. In other words, both the enactments, namely, the Rent Control Act and the Public Premises Act, are special statutes in relation to the matters dealt with therein. Since, the Public Premises Act is a special statute and not a general enactment the exception contained in the principle that a subsequent general law cannot derogate from an earlier special law cannot be invoked and in accordance with the principle that the later laws abrogate earlier contrary laws, the Public Premises Act must prevail over the Rent Control Act”.*

*"61. The principle which emerges from these decisions is that in the case of inconsistency between the provisions of two enactments, both of which can be regarded as Special in nature, the conflict has to be resolved by reference to the purpose and policy underlying the two enactments and the clear intendment conveyed by the language of the relevant provisions therein”.*

(vi) In Allahabad Bank v Canara Bank and another [(2000) 4 SCC 406] the Supreme Court of India held that:

"38. At the same time, some High Courts have rightly held that the Companies Act is a general Act and does not prevail under the RDB Act...

39. There can be a situation in law where the same statute is treated as a special statute vis-a-vis one legislation and again as a general statute vis-a-vis yet another legislation. Such situations do arise as held in LIC of India v. D.J.Bahadur. It was there observed:

"... for certain cases, an Act may be general and for certain other purposes, it may be special and the court cannot blur a distinction when dealing with the finer points of law". (emphasis supplied)

For example, a Rent Control Act may be a special statute as compared to the Code of Civil Procedure. But vis-a-vis an Act permitting eviction from public premises or some special class of buildings, the Rent Control Act may be a general statute. In fact in *DamjiValji Shah v. LIC of India* (already referred to), this Court has observed that vis-a-vis the LIC Act, 1956, the Companies Act, 1956 can be treated as a general statute. This is clear from para 19 of that judgment. It was observed:

"Further, the provisions of the special Act, i.e., the LIC Act, will override the provisions of the general Act, viz., the Companies Act which is an Act relating to companies in general".

Thus, some High Courts rightly treated the Companies Act as a general statute, and the RDB Act as a special statute overriding the general statute.

40. Alternatively, the Companies Act, 1956 and the RDB Act can both be treated as special laws, and the principle that when there are two special laws, the latter will normally prevail over the former if there is a provision in the latter special Act giving it overriding effect, can also be applied. Such a provision is there in the RDB Act, namely, Section 34..."

8. In view of the case law cited above, the following principles of interpretation can be deciphered while construing the meaning of seemingly conflicting provisions between special laws:

- i. While applying seemingly conflicting provisions of two statutes a court must seek to interpret them in a manner that affords harmonious construction

and prevents the emergence of a conflict between their provisions. It is to be assumed that in the event the legislature wished to override an existing law it would do so explicitly and thus the doctrine of implied repeal is not to be readily or mechanically invoked.

ii. Special law prevails over general law. And in a conflict between two special laws the one later in time will ordinarily prevail for being an embodiment of the latest expression of the legislature intent. But, as aforesaid, this principle is not to be mechanically applied as being aware of an earlier special law, the legislature could override the same through explicit language in a subsequent special law if it is so wished.

iii. In the event that there is contradiction between the provisions of two statutes it is to be presumed that the statute within the provision of which the legislature has included a non-obstante clause is to be given overriding effect over provisions of the other statute that it is in conflict with, in order to give effect to expressed legislative intent. (In the event that both statutes contain non-obstante clauses, the special law will prevail over general law, and the law later in time will ordinarily prevail in case of conflict between two special laws). However, a non-obstante clause is also not to be given overriding effect in a mechanical fashion as the underlying object of the interpretive project undertaken by the court is to discover the meaning of words used by the legislature: a non-obstante clause is usually employed to suggest that the provision referred to in the non-obstante clause is to prevail over other provisions of the statute, but repugnancy between non-obstante clause and other clauses is not to be presumed and overriding effect

is to be accorded only in case of irreconcilable conflict.

iv. In the event that harmonious construction cannot be accorded to the provisions of two special statutes without giving tortured meaning to the words used in the text, the object, purpose and policy of the statutes is to be borne in mind in order to discover the legislative intent regarding which statute is to be given overriding effect and to be treated as the special law with overriding effect over another special law. It is possible that a law is to be treated as a special law vis-a-vis one enactment and general law vis-a-vis another enactment.

9. Before we apply these principles to interpret provisions of the Cooperatives Act and the Ordinance of 1979, it will be useful to cite sections 6 and 8 of the General Clauses Act, 1897:

**6. Effect of repeal** – *Where this Act, or any (Central Act) or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not revive anything not in force or existing at the time at which the repeal takes effect, or affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder, or affect any right, privilege, obligation or liability acquired, accrued or incurrent under any enactment so repealed, or affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed, or affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid.*

**8. Construction of references to repealed enactments** – *(1) Where this Act, or any (Central Act) or regulation made after the commencement of this Act,*



*repeals and re-enacts, with or without notification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.*

10. The effect of section 8 of the General Clauses Act, 1897, was considered recently by the august Supreme Court in Zarai Taraqiati Bank Limited v. Said Rehman (2013 SCMR 642) wherein it cited with approval the judgment of the Supreme Court of India in Rajya v. Gopikabai (AIR 1979 SC 79) which held as follows:

*"Broadly speaking, legislation by referential incorporation falls in two categories: first where a statute by specific reference incorporates the provisions of another statute as of the time of adoption. Second, where a statute incorporates by general references the law concerning a particular subject as a genus. In the case of the former, the subsequent amendment made in the referred statute cannot automatically be read into the adoption statute. In the case of latter category, it may be presumed that the legislative intent was to include all the subsequent amendments also made from time to time in the general law on the subject adopted by general reference. This principle of construction of a reference statute has been aptly summed up by Sutherland thus:*

*"A statute which refers to law of a subject generally adopts the law on the subject as of the time the law is invoked. This will include all the amendments and modifications of the law subsequent to the time the reference statute was enacted."*

In Zarai Taraqiati Bank the principle of construction stated by Sutherland and cited by the Supreme Court of India Rajya v. Gopikabai has been employed in relation to inclusion of the

provisions of another statute by reference and when subsequent changes in the provisions of the statute incorporated by reference would also automatically be read into the statute incorporating such provisions. There seems no logical reason why the same interpretive principle would not be applicable in relation to exclusion of the provisions of another statute by reference as in case of the Cooperatives Act in juxtaposition with the Ordinance of 1979. In the event that a statute excludes the provisions of another statute explicitly, it would be arguable that even subsequent changes in the excluded statute would remain excluded and the doctrine of implied repeal would not be mechanically invoked to override the exclusion clause in the statute excluding the applicability of another statute, unless intent can be deciphered from the language used by the legislature in the amended provisions of the excluded statute to express a contrary intention.

11. Let us now reproduce section 80D of the Ordinance of 1979.

***[80D. Minimum tax on income of certain [persons].***

*(1) Notwithstanding anything contained in this Ordinance or any other law for the time being in force, where no tax is payable [or paid] by a company or a registered firm [an individual, an association of persons, an unregistered firm or a Hindu undivided family which, not being a company, does not qualify for assessment under the self assessment scheme under sub-section (1) of section 59] resident in Pakistan or the tax payable or paid is less than on-half per cent of the amount representing its turnover from all sources, the aggregate of the declared turnover shall be deemed to be the income of the said company or*

*a registered firm [an individual, an association of persons, an unregistered firm or a Hindu undivided family which, not being a company, does not qualify for assessment under the self assessment scheme under sub-section (1) of section 59] and tax thereon shall be charged in the manner specified in sub-section (2).*

*[Explanation.- For the removal of doubt, it is declared that the expression "where no tax is payable or paid" and "or the tax payable or paid" apply to all cases where tax is not payable or paid for any reason whatsoever including any loss of income, profits or gains or set off of loss of earlier years, exemption from tax, credits or rebates in tax, and allowances and deductions (including depreciation) admissible under any provision of this Ordinance or any other law for the time being in force.]*

*(2) The company or a registered firm [, an individual, an association of persons, an unregistered firm or a Hindu undivided family which, not being a company, does not qualify for assessment under the self assessment scheme under sub-section (1) of section 59] referred to in sub-section (1) shall pay as income tax-*

*(a) an amount, where no tax is payable or paid equal to one-half per cent of the said turnover; and*

*(b) an amount, where the tax payable or paid is less than one-half per cent of the said turnover, equal to the difference between the tax payable [or paid] and the amount calculated in accordance with clause (a).*

*Explanation: For the removal of doubt it is declared that "turnover" means the gross receipts, exclusive of trade discount shown on invoices or bills, derived from the sale of goods or from rendering, giving or supplying services or benefits or from execution of contracts.*

*[(3) Nothing in this section shall apply to an individual, an association of persons, an unregistered firm or a Hindu*

*undivided family in respect of any assessment year commencing on, or after, the first day of July, 2001.]*

12. Before we proceed to consider the Cooperatives Act, let us also consider section 54 of the Ordinance of 2001. While the tax year under consideration is prior to the promulgation of the Ordinance of 2001 and therefore its provisions are not attracted, the intent of the legislature with effect from the entry into force of the Ordinance of 2001, as reflected in the text of section 54 is meaningful:

**54. Exemptions and tax provisions in other laws.—**

*No provision in any other law providing for —*

*(a) an exemption from any tax imposed under this Ordinance;*

*(b) a reduction in the rate of tax imposed under this Ordinance;*

*(c) a reduction in tax liability of any person under this Ordinance; or*

*(d) an exemption from the operation of any provision of this Ordinance, shall have legal effect unless also provided for in this Ordinance;*

*Provided that any exemption from income tax or a reduction in the rate of tax or a reduction in tax liability of any person or an exemption from the operation of any provision of this Ordinance provided in any other law and in force on the commencement of this Ordinance shall continue to be available unless withdrawn.*

The proviso to section 54 was omitted by Finance Act, 2008.

13. The provisions of the Cooperatives Act most relevant for our purposes are being reproduced below:

**Section 3.**

**Act to override other laws.**—(1) *Except as provided in sub-section (2), this Act shall have effect notwithstanding anything contained in the Banks (Nationalization) Act,*

*1974 (XIX of 1974), or any other law, excepting the State Bank of Pakistan Act, 1956 (XXXIII of 1956), and the Banking Companies Ordinance, 1962 (LVII of 1962), as amended by this Act, for time being in force or any instrument having effect by virtue of any law or any agreement, contract, award or memorandum or articles of association or other instrument.*

*(2) Nothing in-*

*(a) section 36 of the State Bank of Pakistan Act, 1956 (XXXIII of 1956), shall apply to the chairman or a Director, other than the Managing Director;*

*(b) clause (iv) of sub-section (I) of section 14 of the Banking Companies Ordinance, 1962 (LVII of 1962), shall apply to shares of the Bank held by the State Bank;*

*(c) section 27, section 28, clause (b) of sub-section (6) of section 40, clause (c) of subsection (I) of section 42, parts II and IV, or section 89 of the Banking Companies Ordinance, 1962 (LVII of 1962) shall apply to the Bank;*

*(d) clause (c) of sub-section (I), or sub-section (2), (3), (4) and (5) of section 11, sub-section (3) of section 14, sections 15, 15-A, 15-B, 15-C or 20, sub-section (3) or (6) of section 25, sub-section (4) or (5) of section 40, or section 41-A, 41-B, 41-C, or 83 of the Banking Companies Ordinance, 1962 (LVII of 1962), shall apply to the Chairman or a Director other than the Managing Director.*

#### **Section 4.**

***Power to exempt, and suspend operation of Act, in certain cases.***-The Federal Government may, by notification in the official Gazette, and subject to such conditions as may be specified in the notification, exempt the Bank from, or suspend the application to the Bank of, all or any of the provisions of this Act, either generally or for such period as may be so specified.

**Section 38.*****Exemption of the Bank from certain taxes.-***

*Notwithstanding anything contained in the Income Tax Ordinance, 1979 (XXXI of 1979), the Gift-tax Act, 1963 (XIV of I 963), the Wealth Tax Act, 1963 (XV of 1963), or any other law in force relating to income tax, super tax, wealth-tax, gift tax or business profits tax, the Bank shall not be liable to pay any such tax on its income, profits, gains, wealth or gifts.*

**Section 39.**

***Exemption from stamp duty, etc.-****The Bank shall not be liable to the payment of any stamp duty, court fee or registration fee payable under any law for the time being in force relating to stamp duty, court fees or registration of documents.*

14. Let us now proceed to consider the text, object, purpose and policy of the Cooperatives Act. Through the Cooperatives Act, the legislature created the Bank, the shares of which were subscribed by the Federal Government, the State Bank and the governments of the four provinces. Section 3 provides for an unequivocal overriding clause and includes within it the exceptions. Section 4 delegates to the Federal Government the power to suspend application of any provisions of the Cooperatives Act to the Bank. Section 38 creates an explicit carve-out from the Bank from the application of various taxation statutes, including the Ordinance of 1979. Section 39 provides exemption from stamp duty and court fees etc. Section 41 creates a carve-out for the law relating to winding up of companies and banks. Section 44 prohibits the police from investigating offences under the Act except on the request of a bank official authorized in such behalf. Section 45 prohibits all courts other

than the High Court from taking cognizance of any offences under the Act. Sections 48 and 49 go on to amend the Banking Companies Ordinance, 1962 and the Banks (Nationalization) Act, 1974. The language used in the Cooperatives Act suggests that Parliament, while acting in exercise of powers conferred upon it by provincial assemblies under Article 144 of the Constitution, enacted a standalone law for regulation of all affairs of the Bank for owned jointly by the Federal Government, the State Bank and the Provincial Governments, and deliberately excluded the application of all other laws, including special laws on the subject of taxation or winding up etc. In the event that the Parliament subsequently wishes to subject the income of the Bank jointly owned by the federal and provincial governments to federal income tax it would do so using explicit language to amend or override section 38 of the Cooperatives Act.

15. It is evident from provisions of the Ordinance of 1979 in juxtaposition with section 54 of the Ordinance of 2001, that while the Ordinance of 1979 was special law the legislature did not mean for it to occupy and address the subject-matter of taxation wholly and to the exclusion of all other laws as it did in case of the Ordinance of 2001 by including section 54 within it. As the legislature cannot bind itself, it is still possible for the legislature to create a carve-out for an entity from the provisions of the Ordinance of 2001 in another special law. But given the explicit language of section 54 of the Ordinance of 2001, such exclusion will need

to be introduced through explicit language and in view of the afore-stated principles of interpretation, courts would be slow to employ the doctrine of implied repeal in face of explicit language in a special law. However, it is not the application of provisions of the Ordinance of 2001 that is before us but that of the Ordinance of 1979 that does not contain a provision that is *pari materia* to section 54 of the Ordinance of 2001.

16. The question before us is whether section 80D of the Ordinance of 1979 overrides the provisions of the Cooperatives Act. To hold so, we would either need to hold that the Ordinance of 1979 is a special law that excludes the Cooperatives Act, which is a general law, or employ the doctrine of implied repeal to hold that by virtue of promulgation of section 80D, it must be implied that the legislature wished to override section 38 of the Cooperatives Act. The two problems with such conclusion are as follows: (i) the Cooperatives Act is a special law, as discussed above, and in view of the text, object, purpose and policy employed in the said act, it seems that the legislature wished for it to be a stand-alone enactment to the exclusion of all other enactments when it came to regulating the affairs of the Bank, including, *inter alia*, its tax affairs; and (ii) in the event that the legislature intended for section 80D to repeal through implication contrary provisions in any or all other special enactments, there was nothing preventing it from using language such as that used in section 54 of the Ordinance of 2001 to make its intent clear.



17. In view of the above, we are of the opinion that section 80D of the Ordinance of 1979 cannot be treated as a special law ousting the carveout created by section 38 of the Cooperatives Act for tax purposes. In our present context the Cooperatives Act is the special law the provisions of which are to be given overriding effect in the relevant tax year in case of any conflict between section 80D of the Ordinance of 1979 and section 38 of the Cooperatives Act and the learned Appellate Tribunal erred when it held otherwise. We therefore answer the question raised before us in the affirmative.

(CHIEF JUSTICE)

(BABAR SATTAR)  
JUDGE

Announced in open Court on 05.04.2021.

(CHIEF JUSTICE)

JUDGE