

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

6417

PRESENT:

**MR. JUSTICE UMAR ATA BANDIAL
MR. JUSTICE MAQBOOL BAQAR
MR. JUSTICE MUNIB AKHTAR**

(A.F.R.)

CIVIL APPEAL NO. 1515 OF 2013

(On appeal from the judgment/order dated
25.10.2013 of the High Court of Sindh,
Karachi passed in Const.P. D-2342/2013).

Federal Board of Revenue, Islamabad Appellant(s)

Versus

Federation of Pakistan and others Respondent(s)

For the appellant(s)	Mr. Babar Bilal, ASC Mr. Naeem Hassan, Secy. Legal
For the respondents 1-2	Ex-parte
For the respondent 3	Mr. Tariq Aziz, AOR/ASC
Respondent 4	Nemo
Date of hearing	06.05.2019

ORDER

UMAR ATA BANDIAL, J.— The impugned judgment of the learned High Court has annulled the Table of tax rates introduced by the Finance Act, 2012 in the Income Tax Ordinance under Clause (1A) of Division-1 of Part-1 of the First Schedule to the Income Tax Ordinance, 2001 on the ground that the 6th slab of taxable income for Rs.2.5/- million and above should be charged to a rate of tax amounting to Rs.420,000+20% of the amount exceeding Rs.2.5/- million.

W3

The rationale for the declaration of law given against the afore-noted statutory provision is that it lacks certainty, is based on incorrect arithmetical calculation and lacks rationale basis and reasonableness.

2. Learned counsel for the appellant has submitted that the said grounds do not constitute a valid basis for annulling a statute promulgated by Parliament. He has referred to **Government of Pakistan versus Muhammad Ashraf** (PLD 1993 SC 176 at page 186) to submit that a tax which is confiscatory is considered to be violative of the fundamental rights and on that ground in the afore-noted precedent case the matter was remanded to the High Court for fresh determination on the facts of the case. None of the grounds taken by the learned High Court in the impugned judgment demonstrate a case of confiscatory taxation. He has submitted to us a Table of the tax slabs enforced by the Finance Act, 2012 for the tax year 2013 which is reproduced below:

TAX SLABS FOR SALARIED INDIVIDUALS FINANCE ACT, 2012

SLAB	1	2	3	4	5	6
Taxable Income	Does not Exceeds 400,000	Exceeds 400,000 but does not exceed 750,000	Exceeds 750,000 but does not exceed 1500,000	Exceeds 1500,000 but does not exceed 2,000,000	Exceeds 2,000,000 but does not exceed 2,500,000	Exceeds 2,500,000
Rate of Tax	0%	5% of the amount exceeded 400,000	17500+10% of the amount exceeded 750,000	95000+15% of the amount exceeded 1500,000	175000+17.5% of the amount exceeded 2,000,000	420,000+20% of the amount exceeded 2,500,000
Effective Rate of Tax	0%	2.33%	6.16%	8.5%	10.5%	16.8%

h3

3. It is evident from the effective rate of tax for different slabs of income that there is a gradual rise of 2% to 4% in the slabs starting at Rs.400,000/- and going up to Rs.2.5 million taxable income. In the final slab which exceeds taxable income of Rs.2.5 million, the increase in the effective tax rate is 6.3% (above the previous effective tax rate of Rs.10.5% in the slabs between Rs.2/- million and Rs.2.5/- million). He submits that the effective tax rate is by no means confiscatory and this aspect of the case has not been discussed by the impugned judgment whilst issuing the declaration against the Finance Act, 2012.

4. The learned counsel for the respondent No.3 representing the employer has nothing to say in the matter. The affected party, the respondent No.4 is represented but his learned counsel has not attended today's proceedings without there being any request for adjournment being placed before the Court. The said respondent is proceeded against *ex-parte*.

5. To declare a statute promulgated by Parliament under the Constitution to be void is a very serious matter. That declaration may be given on the ground of incompetence of Parliament to enact the law or for a violation of fundamental rights by the enacted law. In the present case, the impugned judgment lacks discussion or finding on either of the said grounds. A declaration given solely on the ground of incorrect arithmetical calculation, lack of rational basis or



reasonableness of the statute is devoid of legal foundation. Such grounds, if at all, are criteria for testing the validity of executive action and not legislative measures. Consequently, we do not agree with the finding given by the learned High Court in the impugned judgment. Be that as it may, learned counsel for the appellant has also informed us that in the tax year 2014, the Table of tax rates was again revised and the grievance of the respondent No.4 pertaining to tax year 2013 was redressed.

6. In the light of the foregoing, the impugned judgment is set aside and this appeal is allowed.

Islamabad
06.05.2019
Naseer/

11/7/19

6/3

NOT APPROVED FOR REPORTING

11-7-19