

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

JUSTICE YAHYA AFRIDI, CJ
JUSTICE MUHAMMAD SHAFI SIDDIQUI
JUSTICE MIANGUL HASSAN AURANGZEB

CIVIL APPEAL NO.743 OF 2014 AND CIVIL PETITION NO.10-L OF 2017, CIVIL MISCELLANEOUS APPLICATION NO.13838 OF 2021 IN CIVIL PETITION NO.10-L OF 2017, CIVIL APPEALS NO.1954 OF 2019 AND 404 OF 2020, CIVIL PETITIONS NO.3688-L OF 2019, 3689-L OF 2019, 746-L OF 2021 AND 3503 OF 2022

1. M/s. Kassim Textile Mills (Pvt.) C.A. No.743 of 2014
Limited *vs.* Commissioner Inland
Revenue, Karachi

(Against judgment dated 07.05.2013 of the High Court of Sindh, Karachi passed in I.T.R.A. No.132 of 2011).

2. Commissioner Inland Revenue, C.P.L.A. No.10-L of
Lahore *vs.* M/s. Educational 2017
Excellence Limited, Lahore

(Against order dated 18.10.2016 of the Lahore High Court, Lahore passed in I.T.R. No.255 of 2016).

3. Commissioner Inland Revenue, C.M.A. No.13838 of
Lahore *vs.* M/s. Educational 2021 in C.P.L.A.
Excellence Ltd. Lahore No.10-L/2017

(Application for impleadment)

4. Dubai Islamic Bank Pakistan C.A. No.1954 of 2019
Limited, Karachi *vs.* Pakistan
through its Secretary Revenue and
Ex Officio Chairman, Federal
Board of Revenue, Islamabad, etc.

(Against order dated 16.08.2019 of the High Court of Sindh, Karachi passed in C.P. No.D-5264 of 2019).

5. Engro Polymer and Chemicals C.A. No.404 of 2020
Limited, Karachi *vs.* Pakistan
through its Secretary Revenue and
Ex-officio Chairman, Federal
Board of Revenue, Islamabad, etc.

(Against order dated 06.02.2020 of the High Court of Sindh, Karachi passed in C.P. No.D-769 of 2020).

6. Federal Board of Revenue through C.P.L.A.No.3688-L of
Member (Legal), Islamabad, etc. 2019.
vs. M/s. Food Consults (Pvt.)
Limited, Lahore, etc.

(Against order dated 09.10.2019 of the Lahore High Court, Lahore passed in W.P. No.136592 of 2018).

7. Federal Board of Revenue through Member (Legal), Islamabad, etc. C.P.L.A. No.3689-L of 2019
vs. M/s. Panther Tyres Limited, etc.

(Against order dated 09.10.2019 of the Lahore High Court, Lahore passed in W.P. No.170401 of 2018).

8. Commissioner Inland Revenue, Lahore *vs.* M/s. Big Feed (Private) Limited, Lahore C.P.L.A. No.746-L of 2021

(Against order dated 11.02.2021 of the Lahore High Court, Lahore passed in I.T.R. No.8992 of 2021).

9. Commissioner Inland Revenue Legal Zone, Islamabad, etc. *vs.* M/s. Pakistan Tobacco Company Limited, Islamabad, etc. C.P.L.A. No.3503 of 2022

(Against judgment dated 26.05.2022 of the Islamabad High Court, Islamabad passed in I.T.R. No.45 of 2014).

For the Appellant(s)/
Petitioner(s):

Mr. Muhammad Makhdoom Ali Khan, Sr. ASC assisted by Mr. Saad Mumtaz Hashmi, ASC, Mr. Tariq Aziz, AOR, Syed Rifaqat Hussain Shah, AOR and Sh. Mehmood Ahmad, AOR in C.A.s No.743 of 2014, 1954 of 2019 & 404 of 2020.

Mr. Muhammad Yahya, ASC (via video link (Lahore)) in C.P.L.A.s No.10-L of 2017 & 3689-L of 2019.

Mr. Ibrar Ahmed, ASC (via video link (Lahore)) in C.P.L.A.s No.3688-L of 2019 & 746-L of 2021.

Dr. Farhat Zafar, ASC in C.P.L.A. No.3503 of 2022.

Dr. Ikram ul Haq, ASC (via video link (Lahore)) in C.M.A. No.13838 of 2021.

For the Respondents:

Mr. Munawar Ali Memon, ASC and Mrs. Abida Parveen Channar, AOR (via video link (Karachi)) in C.A. No.743 of 2014.

Dr. Farhat Zafar, ASC in C.A. No.1954 of 2019.

Mr. Riaz Hussain Azam, ASC in C.A. No.404 of 2020.

Nemo in C.P.L.A.s No.10-L of 2017, 3688-L of 2019, 3689-L of 2019, 746-L of 2021 & 3503 of 2022.

Dr. Ishtiaq Ahmed Khan, Director General (Law), FBR, Islamabad.
Ms. Kiran Masood, Additional Commissioner, FBR, Lahore (via video link (Lahore)).

Date of Hearing: 20.02.2025

JUDGMENT

MIANGUL HASSAN AURANGZEB, J.- Through this judgment, we propose to decide civil appeals No.743 of 2014, 1954 of 2019 & 404 of 2020, civil petitions for leave to appeals No.10-L of 2017, 3688-L of 2019, 3689-L of 2019, 746-L of 2021 & 3503 of 2022 and civil miscellaneous application No.13838 of 2021 in civil petition for leave to appeal No.10-L of 2017, since they entail common questions of law.

2. The appellant in civil appeal No.743 of 2014 calls into question the judgment dated 07.05.2013 passed by the High Court of Sindh, whereby income tax reference No.132 of 2011 filed by M/s. Kassim Textile Mills (Pvt.) Ltd. against the order dated 05.01.2011 passed by the Appellate Tribunal Inland Revenue ("**ATIR**"), was allowed and the following question of law was answered in favour of the Department and against the taxpayer:-

"Whether in the facts and circumstances of the case, the learned Tribunal has allowed the tax incentives under section 113(2)(c) of the Income Tax Ordinance, 2001 in express violence to the mandatory prerequisites?"

3. Vide the said order dated 05.01.2011, the ATIR had upheld the order dated 30.04.2010 passed by the Commissioner Inland Revenue (Appeals) ("**CIR(A)**") by holding that the CIR(A) had correctly allowed adjustment of credit of minimum tax paid by the petitioner in excess of its tax liability for the tax years 2007 and 2008. This adjustment had been allowed with respect to the tax year 2009.

4. For the purposes of the instant case, the relevant portions of Section 113 of the Income Tax Ordinance, 2001 (**“the 2001 Ordinance”**), as it stood when the appellant filed its returns for the tax year 2009, read thus:-

“113. Minimum tax on the income of certain persons.---(1) This section shall apply to a resident company ... where, for any reason whatsoever allowed under this Ordinance, including any other law for the time being in force-

(a) loss for the year;...

no tax is payable or paid by the person for a tax year or the tax payable or paid by the person for a tax year is less than one-half per cent of the amount representing the person's turnover from all sources for that year:

Provided that this subsection shall not apply in the case of a company, which has declared gross loss before set off of depreciation and other inadmissible expenses under the Ordinance. If the loss is arrived at by setting off the aforesaid or changing accounting pattern, the Commissioner may ignore such claim and proceed to compute that tax as per historical accounting pattern and provision of this Ordinance and all other provisions of the Ordinance shall apply according. ...

(2) Where this section applies: ...

(c) where tax paid under subsection (1) exceeds the actual tax payable under Part I, Division II of the First Schedule, the excess amount of tax paid shall be carried forward for adjustment against tax liability under the aforesaid Part of the subsequent tax year:

Provided that the amount under this clause shall be carried forward and adjusted against tax liability for three tax years immediately succeeding the tax year for which the amount was paid. ...”

5. Section 113 of the 2001 Ordinance postulates the payment of minimum tax in two situations, i.e. where (i) no tax is payable or paid by a person, or (ii) the tax payable or paid is less than one-half percent of the amount representing the person's turnover from all sources for that year. Section 113(2)(c) was inserted in the 2001 Ordinance through Finance Act, 2004.

6. The minimum tax regime in Pakistan is designed to ensure that businesses pay a baseline amount of tax even if they incur losses or report negligible profits. This regime is governed by Section 113 of the 2001 Ordinance, which applies to companies and certain individuals based on turnover. The underlying purpose is to ensure revenue collection despite losses and to be a deterrent to profit manipulation aimed at avoiding taxes. It ensures that

businesses contribute a minimum amount of tax based on their turnover, regardless of profitability. This helps the government maintain revenue and prevents tax avoidance through loss declarations. The concept under this regime is an exception to Section 4 of the 2001 Ordinance under which no tax can be charged where no income is earned.

7. The appellant had declared losses during the tax years 2007 and 2008 but had paid minimum tax for the said years in compliance with Section 113(1) of the 2001 Ordinance. For the tax year 2009, the appellant had shown taxable income and had claimed carry forward tax credit under Section 113(2)(c) on account of the minimum tax paid during the tax years 2007 and 2008. An amended assessment order dated 16.03.2010 was passed by Additional Commissioner Inland Revenue (“**ACIR**”) under Section 122(5A) finding the deemed assessment order under Section 120 to be erroneous and prejudicial to the interest of revenue. The ACIR had *inter alia* disallowed the appellant’s claim of carry forward tax credit under Section 113(2)(c) for the minimum tax paid during the tax years 2007 and 2008 despite assessed losses. The view taken by the ACIR was that Section 113(2)(c) allows adjustment of credit of minimum tax paid in excess of tax payable by a company under Part I, Division II in the First Schedule to the 2001 Ordinance against the normal tax liability of the immediate succeeding three¹ tax years; that the legislature had only allowed the adjustment of credit of minimum tax payable which was in excess of the actual tax payable by the company; and that since due to the appellant’s

¹ Through Finance Act, 2004, the period was originally provided as five years. Through Finance Act, 2008, Section 113 was omitted in its entirety. Through Finance Act, 2009, Section 113 was re-inserted with a period given as three years. Through Finance Act, 2011, the said period was changed to five years. Through Finance Act, 2022, the period was again made as three years.

assessed losses in the tax years 2007 and 2008, no actual tax was payable under Part I, Division II in the First Schedule to the 2001 Ordinance, the question of any “*excess amount of tax paid*” over and above the appellant’s actual liability in the tax years 2007 and 2008 does not arise.

8. On the appellant’s appeal, the CIR(A), in his order dated 30.04.2010, took the view that Section 113(2)(c) was inserted in the 2001 Ordinance through the Finance Act, 2004 to facilitate the loss sustaining companies in their liquidity problems, and to allow the facility of carry forward of minimum tax over the next five years for adjustment against normal tax liability. He also held that in order to be given the benefit of adjustment of credit of minimum tax under Section 113(2)(c), there is no requirement for there to be some nominal tax liability for the relevant year(s). He clarified that even in cases where tax payable under Part I, Division II in the First Schedule to the 2001 Ordinance is zero, benefit under Section 113(2)(c) can be granted. Accordingly, it was held that the excess amount of minimum tax which was over and above the zero tax payable under Part I, Division II in the First Schedule to the 2001 Ordinance due to the appellant’s assessed losses for the years 2007 and 2008 was available for adjustment against the appellant’s tax liability under Part I, Division II in the First Schedule to the 2001 Ordinance for the succeeding years.

9. Against the CIR(A)’s said order, the Commissioner Inland Revenue preferred an appeal before the ATIR, which was dismissed vide order dated 05.01.2011. The ATIR held that the expression “*actual tax payable*” in Section 113(2)(c) meant that the tax payable under Part I, Division II in the First Schedule to the 2001 Ordinance could be zero or otherwise, and that the excess amount

of minimum tax which was paid over and above the zero tax payable due to the assessed losses for the years 2007 and 2008 was available for adjustment against the appellant's tax liability for the succeeding tax year.

10. The two concurrent orders passed by the CIR(A) and ATIR were assailed by the Commissioner Inland Revenue before the High Court of Sindh in ITR No.132/2011. As mentioned above, the question of law framed in the said reference was decided against the appellant. The view taken by the High Court on the basis of the case law referred in paragraph 9 of the judgment was *inter alia* that there was no room for any equity or intendment in fiscal / taxing statutes. Following the judgment in ITR No.132 of 2011, the High Court of Sindh dismissed C.Ps No.D-5264 of 2019 and 769 of 2020, which were on the same subject matter as ITR No.132 of 2011.

11. The Lahore High Court, while deciding ITRs No.255 of 2016, 8992 of 2021 and writ petitions No.170401 of 2018 and 136592 of 2018, took a view contrary from the one taken by the High Court of Sindh and held *inter alia* that since Section 113(2)(c) was a provision beneficial in nature to the taxpayer and meant to reduce the burden of taxation, it warranted liberal interpretation and therefore the High Court did not interfere with the declaration made by the ATIR that the said provision was also applicable in cases where no tax was payable due to losses suffered by the taxpayer. CPLAs No.3688-L of 2019, 3689-L of 2019 and 746-L of 2021 arise from judgments passed by the Lahore High Court.

12. The Islamabad High Court, while deciding ITR No.45 of 2014, also took a view contrary to the High Court of Sindh and termed Section 112(c) as "*remedial legislation applicable retrospectively.*"

CPLA No.3503/2022 has been preferred by the Commissioner Inland Revenue against the judgment of the Islamabad High Court.

13. Learned counsel for the appellant is correct in his submission that the benefit of any ambiguity or conflict in different provisions of a fiscal statute shall go to the subject. This Court in the case of M/s. Pakistan Television Corporation Vs. Commissioner Inland Revenue (2017 SCMR 1136), had held that *"it is trite law that fiscal statutes, particularly the provision creating a tax liability, must be interpreted strictly and any doubt arising therefrom must be resolved in favour of the taxpayer."* Additionally, in the case of B.P. Biscuit Factory Ltd. Vs. Wealth Tax Officer (1996 SCMR 1470), it has been explained that it is when the language of a statute is ambiguous and several interpretations of the same provision are possible, the doubt should be resolved in favour of the citizen. However, there is no scope for equity or judiciousness if the letter of the fiscal law is clear and unambiguous. We have read and re-read Section 113(2)(c) and neither find any ambiguity or obscurity or doubt in its language, nor is it in conflict with any other provision of the 2001 Ordinance. The language of Section 113(2)(c) and its proviso as it stood in the year 2009 is such which does not admit interpretation in more than one way. The principles of statutory interpretation are well settled. Where the words of the statute are clear and unambiguous, the provision should be given its plain and normal meaning, without adding or rejecting any words. Departure from the literal rule, by making structural changes or substituting words in a clear statutory provision, under the guise of interpretation will pose a great risk as the changes may not be what the Legislature intended or desired. The Court cannot recast or reframe the legislation for the very reason it has no power to legislate. The Court

cannot add words to a statute or read words into it which are not there unless the principles of interpretation of statute require otherwise. The legislature means what it says and says what it means. It is the obligation of the Courts of law to further the clear intendment of the legislature and not to frustrate it by ignoring the same. Legislative wisdom cannot be replaced by the Judge's views.

14. Section 113(2)(c) of the 2001 Ordinance being a part of a fiscal statute has to be given a strict construction. In the case of Star Textile Mills Ltd. Vs. Government of Sindh (2002 SCMR 356), this Court held that there was no scope for implication while interpreting a tax law. This Court went on further to reiterate the general rule that tax and equity are strangers to each other. This Court, in the case of Province of the Punjab Vs. Muhammad Aslam (2004 SCMR 1649), while interpreting the provisions of West-Pakistan Immovable Property Act, 1958 held that the provisions of the said statute, being a taxing statute, are to be construed strictly; that there is no intendment or presumption about a tax; and that the Court has to go by the language clearly implied by the legislature in the fiscal statute. Recently, in the case of Allied Bank Limited Vs. Commissioner of Income Tax (2023 SCMR 1166), this Court has held as follows:-

"It is well settled that the literal approach is to be adopted while interpreting fiscal or taxing statutes, and the court cannot read into or impute something when the provision of a taxing statute are clear. While interpreting a taxing statute, the Court must look to the words of the statute and interpret it in light of what is clearly expressed therein, it cannot imply something which is not expressed or import provisions in the statute so as to support any assumed deficiency"

15. Section 113(2)(c) as it stood in 2009, speaks of the "actual tax payable". This implies that a quantum of tax should actually be payable in the relevant fiscal year for the benefit of carry forward for adjustment against a tax liability can be availed under the said

provision. Therefore, we find ourselves in agreement with this view expressed by the High Court of Sindh.

16. It was not until 2021 when by virtue of the Finance Act, 2021, the first proviso to Section 113(2)(c) was substituted as follows:-

*“provided that if tax is paid under sub-section(1) due to the fact that **no tax is payable or paid for the year**, the entire amount of tax paid under sub-section(1) shall be carried forward for adjustment in the manner stated aforesaid:”*

(Emphasis added)

17. After the aforesaid substitution of the first proviso to Section 113(2)(c), the taxpayer, having paid minimum tax for a particular year even though no tax was payable by him for such year, would be well within his rights to assert that even if zero tax was payable by him for a particular year with respect to which he had paid minimum tax under Section 113(1), he would be entitled for the quantum of minimum tax paid to be carried forward for adjustment against tax liability of the subsequent tax year. What the Islamabad High Court has done is to label the substituted proviso as a “remedial provision” and given it retrospective effect by making it applicable right from the time when Section 113(2)(c) was inserted in the 2001 Ordinance through the Finance Act, 2004. By doing so, the Islamabad High Court has held the taxpayer entitled to carry forward the minimum tax paid for the tax years 2003 and 2004 (i.e. even before the insertion of Section 113(2)(c) in the 2001 Ordinance) for adjustment against the tax liability in the five-year² window after 2003 and 2004.

18. Indeed, the aforesaid substituted proviso was a relief to the tax payers who had paid minimum tax with respect to a year for

² Through Finance Act, 2004, the period was originally provided as five years.

Through Finance Act, 2008, Section 113 was omitted in its entirety.

Through Finance Act, 2009, Section 113 was re-inserted with a period given as three years.

Through Finance Act, 2011, the said period was changed to five years.

Through Finance Act, 2022, the period was again made as three years.

which it was not liable to pay any tax on account of having incurred losses as such tax payers would take the benefit of such minimum tax being carried forward for adjustment in accordance with Section 113(2)(c). This relief can, in our view, be availed by tax payers having no tax payable only after the substitution of the first proviso to Section 113(2)(c) through the Finance Act, 2021 and not earlier. It is well settled that no statute shall be construed so as to have retrospective operation, unless its language so directs.³ Every statute is deemed to be prospective, unless by express provision or necessary intendment, it is given retrospective effect.⁴

19. In the case of Molasses Trading & Export (Pvt.) Limited Vs. Federation of Pakistan (1993 SCMR 1905), it has been held *inter alia* that a legislature, which is competent to make the law, has full plenary powers within its sphere of operation to legislate retrospectively. Had it been the intention of the legislature to give benefit under Section 113(2)(c) to tax payers who had no tax payable, the expression "*exceeds the actual tax payable*" in Section 113(2)(c) would have been succeeded by the expression "*or where no tax is payable*". Alternatively, the first proviso to Section 113(2)(c) substituted through the Finance Act, 2021 would have been inserted along with Section 113(2)(c) through the Finance Act, 2004. In the case of Zila Council Sialkot Vs. Abdul Ghani (PLD 2004 SC 425), this Court has held that a fiscal statute would ordinarily operate prospectively unless by express enactment or necessary intendment retrospective operation is given to it. In the case of M/s. Hirjani & Co. (Pakistan) Ltd. Vs. Commissioner Sales Tax (1971 SCMR 128), this Court held that while interpreting taxing statutes

³ Star Textile Ltd. Vs. Government of Sindh (2002 SCMR 356)

⁴ The Chief Land Commissioner Vs. Ghulam Hyder Shah (1988 SCMR 715)

courts must look to the word of a statute and interpret it in the light of what is clearly expressed; that it cannot imply anything which is not expressed; and that it cannot import provisions in the statute so as to support an assumed deficiency. In the case of Star Textile Ltd. Vs. Government of Sindh (2002 SCMR 356), it was held *inter alia* that no statute shall be construed so as to have retrospective operation unless its language so permits. It was also held that there was no scope for implication while interpreting tax law and that the general rule is that tax and equity are strangers.

20. The concept of minimum tax also existed in the scheme envisaged by the provisions of the Income Tax Ordinance, 1979 (**"the 1979 Ordinance"**). Section 80D, which was inserted in the 1979 Ordinance through the Finance Act, 1991, required the classes of persons referred to in the said section to pay minimum tax in cases where either no tax was payable by them or the tax paid by them was less than one-half percent (0.5 %) of the amount representing their turnover from all sources. Section 80D(2)(a) required such persons to pay minimum tax "*where no tax is payable or paid*", equal to one-half percent of the turnover. Section 80D had no provision for the amount paid as minimum tax to be carried forward for adjustment against tax liability in subsequent tax years. Such benefit was however conferred on persons paying minimum tax by Section 113(2)(c) of the 2001 Ordinance. However, this benefit was only confined for the category of persons paying minimum tax who had paid minimum tax which exceeded the actual tax payable under Part I, Division II of the First Schedule to the said Ordinance. The excess amount of the tax paid was to be carried forward for adjustment against tax liability in subsequent tax years. This benefit was not extended to persons who had paid

minimum tax but were not liable to pay any tax under Part I, Division II of the First Schedule to the 2001 Ordinance.

21. Much emphasis was laid by the learned counsel for the petitioner on circular No.17/2004 dated 17.07.2004 issued by the Federal Board of Revenue ("**FBR**") soon after the insertion of Section 113(2)(c) through the Finance, 2004, and reads thus:-

"Every company is required to pay minimum tax on turnover @ 0.5% even if it incurs loss or tax on income assessed is less than 0.5% of declared turnover. However, profit-yielding companies paying tax more than turnover tax do not get credit for their contribution towards national exchequer during the years of loss or lower income. New companies, especially with more turnover and low margin of profit, face liquidity problem. Section 113 has, therefore, been amended to allow the facility of carry forward of minimum tax on turnover for next five years. Any amount not adjusted against normal tax liability in the aforesaid period would, however, automatically lapse."

22. The verbiage of the said circular is as unambiguous and clear as that of Section 113(2)(c). Its first sentence is a clarification as to the persons who are required to pay minimum tax. It reiterates the mandate of Section 113(1) that loss incurring companies and companies whose tax on income is assessed less than 0.5% of its declared turnover are to pay minimum tax. The said circular goes on to state that profit yielding companies paying [minimum] tax [which is] more than turnover tax do not get credit for their contribution to the national exchequer [in the form of minimum tax] during the years of loss or lower income. This simply is a statement as to the state of affairs prevailing before the insertion of Section 113(2)(c) through the Finance Act, 2004. There is no denying the fact that prior to the said insertion, the benefit of credit in the form of carry forward for adjustment against tax liability in subsequent tax years was not available to persons paying minimum tax under Section 113(1). The circular does not state that the benefit of such carry forward would also be available to companies paying

minimum tax but having no tax payable due to losses. The circular also does not state that the law had been amended to allow the facility of carry forward of minimum tax on turnover for next five years to those companies paying minimum tax but having no tax payable due to losses. Even otherwise, circulars issued by the FBR do not and cannot override the explicit language of the statute.

23. In view of the above, civil appeals No.743/2014, 1954/2019 & 404/2020 arising from the judgments of the High Court of Sindh are dismissed. As regards civil petitions for leave to appeal No.10-L/2017, 3688-L/2019, 3689-L/2019, 746-L/2021, arising from the judgments of the Lahore High Court & 3503/2022 arising from the judgment of the Islamabad High Court, leave to appeal is granted and the said petitions are converted into appeals and allowed in the above terms.

24. Since civil petition for leave to appeal No.10-L of 2017 has been allowed, the application for impleadment (i.e. CMA No.13838 of 2021) has been rendered infructuous, which is accordingly dismissed as such.

Announced in open Court on 02.05.2025 at Islamabad

Approved for reporting
Ahtesham Majid