

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Munib Akhtar
Mr. Justice Shahid Waheed
Mr. Justice Irfan Saadat Khan

Civil Petition No.3200-L/2019

Against the Order dated 12.9.2019
passed by the Lahore High Court,
Lahore in P.T.R. No.142 of 2009

Commissioner Inland Revenue

...Petitioner(s)

VERSUS

M/s Riaz Bottlers (Pvt.) Ltd. [Now Lotte Akhtar Beverages (Pvt.) Ltd]

...Respondent(s)

For the Petitioner(s): Mian Yusuf Umar, ASC
(via Video link, Lhr.)

For the Respondent(s): Mr. Ali Sibtain Fazli, Sr. ASC
(via Video link, Lhr.)

Date of Hearing: 19.02.2024

JUDGMENT

Irfan Saadat Khan, J.- Brief facts of the *lis* before us are that M/s Riaz Bottlers, (now Lotte Akhtar Beverages), ("**Respondent**") happens to be a private limited company, which derives its income from bottling carbonated soft drinks and non-carbonated drinks. The Respondent's original assessment for the assessment year 2001-2002 was completed under s. 62 of the Income Tax Ordinance, 1979 (which now stands repealed but will be referred to as the "**Ordinance**" herein). This assessment was set aside by the Income Tax Appellate Tribunal, vide Order, dated 01.12.2007, on various issues for de novo consideration.

2. Subsequently, the taxation officer, vide Order, dated 28.06.2008, re-assessed the said issues and made an addition of PKR 7,336,220/- on account of Workers Profit Participation Fund ("**WPPF**") and interest thereon was added under s. 25 (c) of the Ordinance, besides other additions. Aggrieved of the re-assessment the Respondent taxpayer preferred an Appeal before Commissioner IT (Appeals), who vide Order, dated 31.07.2008, confirmed the addition made under s. 25 (c) of the Ordinance. This confirmation of the addition led the Respondent

taxpayer to file an Appeal before the Appellate Tribunal IR, who vide Order dated 11.11.2008, deleted the addition made under s. 25 (c) of the Ordinance, with the observation that companies falling under s. 2 (c) of the Companies Profits (Workers Participation) Act, 1968 were allowed to use such funds for their business operations and the income from such funds including capital gain was exempt from levy of tax, due to being granted through a special law.

3. The Commissioner Inland Revenue ("**Petitioner**") filed a Reference Application before the Lahore High Court, against the Appellate Tribunal IR's Order, dated 11.11.2008, which was dismissed, vide judgment dated 12.09.2019 ("**Impugned Judgment**"), in the following terms:

"7. First question agitated before us is with regard to applicability of special and general law. The argument of learned counsel for the applicant is that the department was quite justified to levy tax under Section 25(c) of the repealed Ordinance whereas stance of learned counsel for the Respondent is that deduction made on account of Workers Profit Participation Fund (WPPF) does not fall within the ambit of section 25(c), referred above, because the companies are allowed to use WPPF for its business. but the income arising out of the same was declared to be exempt under the Companies Profits (Workers' Participation) Act, 1968- (the "Act"). According to the Preamble to the Act, it was enacted to *provide for participation of workers in the profits of companies* whereas the Preamble to the repealed Ordinance states that *it is expedient to consolidate and amend the law relating to income tax and to provide for matters ancillary thereto or connected therewith*. Section 2 of the Act deals with investment of funds whereas Section 9 clearly provides an exemption on income of the fund including capital gain which the Respondent was granted through special law. Since the Respondent was granted exemption through special law i.e. the Act therefore, learned Appellate Tribunal has rightly observed that deduction made on account of WPPF does not fall within the ambit of Section 25(c) of the repealed Ordinance. Reliance in this regard. is placed on "Syed MUSHAHID SHAH and others Versus FEDERAL INVESTMENT AGENCY and others" (2017 SCMR 1218).

8. So far as question No.2 is concerned, Commissioner of Income Tax in its order dated 31.07.2008 observed as under:

"The provisions of WPPF made up to the year 1998-99 and interest charged thereon remained payable till 2001-2002 and these were liable to be added under Section 25(c) of the Income. Tax Ordinance, 2002. Moreover, the Petitioner has admitted that the WPPF liability had been paid in June, 2002."

9. The learned Appellate Tribunal in the impugned order observed that income arising out of funds was declared exempt from the incidence of income tax therefore, assessing officer was not justified to make addition under Section 25(c) of the repealed Ordinance. It was further observed that companies falling under the scheme of the Act were allowed to use fund for their business operations, however, they were obliged to pay profit @2.5 % above the bank rate to compensate the use of these funds in the business operations.

10. We are of the considered opinion that the learned Appellate Tribunal has rightly decided the issues, which otherwise are based on the finding of facts, after detailed discussion, deliberation and interpretation of provisions of law and as such does not carry any mistake apparent on the record, therefore, does not require any interference by this Court in its referral jurisdiction under Section 133 (1) of the Income Tax Ordinance, 2001.

11. In view of above discussion, questions of law are answered in affirmative against the applicant department. Resultantly, instant reference application is dismissed."

4. Mr. Mian Yusuf Umar, learned ASC appeared, via video link, on behalf of the Petitioner and contended that the High Court had misinterpreted the provisions of s. 2 (c) of the Companies Profits (Workers Participation) Act, 1968, by upholding the Order of the Appellate Tribunal, wherein it was stated that the aforementioned Act is special law and therefore would prevail over s. 25 (c) of the Ordinance. He further contended that an amount not transferred to the WPPF of the government within 3 years attracts the provisions of s. 25 (c) of the Ordinance and is liable to be added in the income of the taxpayer; and the High Court has in essence made provisions of s. 25 (c) redundant. Learned Counsel prayed for the Petition to be allowed and the Impugned Judgment to be set aside.

5. Mr. Ali Sibtain Fazli, learned Sr. ASC, appeared, also via video link, on behalf of the Respondent and contended that the observations in the Impugned Judgment were the correct reading of the law and therefore did not require any intervention by this Court. Learned Counsel pressed for the Petition to be dismissed and the Impugned Judgment to be upheld.

6. We have heard both the learned counsel and have perused the record with their able assistance.

7. Since the matter primarily revolves around s. 25 (c) of the Ordinance, we find it pertinent to reproduce it below:

"s. 25. Amounts subsequently recovered in respect of deductions, etc.- Notwithstanding anything contained in this Ordinance, where an allowance or deduction has been made under section 23 for any year in respect of any loss, bad debt, ¹[interest credited to suspense account,] expenditure or trading liability incurred by the assessee, and subsequently:

(c) such trading liability or a portion thereof is found not to have been paid within three years of the expiration of the income year in which it was allowed, such liability or portion thereof, as the case may be, shall be deemed to be income from business or profession of the year in which such finding is made or any other year (not being a year commencing after the expiration of five years from the end of the said three years) as the [Deputy Commissioner] may think fit;"

(UNDERLINING IS OURS)

8. The term trading liability has been used exactly four times in the entirety of the Ordinance and that too only in s. 25. The word trade quite literally means buying and selling of goods and services. The legal definition² is more or less the same. When confronted with the question whether the transferred amount to the WPPF by the Respondent taxpayer fell within the definition of trading liability or was a statutory³, learned counsel for the Petitioner could not controvert that the transferred amount could not be termed as arising out of a trade/trading rather the same is a statutory liability. To elaborate, the transferred amount to the WPPF was granted an exemption because a statute, in the present case, Companies Profits (Workers' Participation) Act, 1968, allowed for it. Hence, the amount in question was nothing but a statutory liability.

¹ Words etc. ins. by F. O. 2000.

² Trading: The business of buying and selling, esp. of commodities and securities. (Black's Law Dictionary, 11th Edition, pg. 1801).

³ Statutory: Of, relating to, or involving legislation; legislatively created; conformable to a statute. (Black's Law Dictionary, 11th Edition, pg. 1708).

9. Moreover, it is pertinent to state, with regards to the statute, which is a special law, this Court has opined in Gulistan Textile Mills Ltd.⁴ that "...according to the principle of harmonious interpretation the special law would take precedence over the general law (generalia specialibus non derogant)." Even if for the sake of an argument, we were to give the Ordinance more weight over the special law, it would not help the Petitioner's case because the transferred amount to the WPPF was not a trading liability and thus did not attract the provisions of s. 25 (c) of the Ordinance.

10. In light of the above, this Petition stands dismissed and leave to appeal refused. The parties are left to bear their own cost.

Judge

Judge

Judge

ISLAMABAD

19.02.2024

Arshed/AJK. L.C

Approved for Reporting

⁴ Gulistan Textile Mills Ltd. v. Soneri Bank (2018 CLD 203)