

**IN THE SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

**Present:**

Mr. Justice Umar Ata Bandial, HCJ

Mrs. Justice Ayesha A. Malik

Mr. Justice Athar Minallah

**CIVIL APPEAL NOS.23 and 24 OF 2017**

*(Against the judgment dated 02.05.2016 of the Islamabad High Court, Islamabad passed in Intra Court Appeal No.13 of 2014)*

Director General Central Directorate of  
Savings. & others

... (In CA 23/17)

Chairman, Federal Board of Revenue  
Islamabad.

... (In CA 24/17)

**Appellants**

***Versus***

Abid Hussain and others

... Respondents  
(In both cases)

For the appellants:

Mr. Rashdeen Nawaz Qasuri,

Addl.Attorney General (In CA 23/17)

Mr. Ghulam Shoaib Jolly, ASC (In CA 24/17)

For respondent No.1-5: Mr. Muhammad Raza Khan, ASC.

Respondent Nos.6-7: Ex-parte

Date of hearing: 08.12.2022

**ORDER**

**Athar Minallah, J.-** This Court had granted leave vide order, dated 20.1.2017, against the judgment of the High Court dated 02.05.2016.

2. The respondents no. 1 to 7 had invoked the jurisdiction of the High Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 ("**Constitution**") asserting that they were residents of Para Chinnar, Kurram Agency, which, prior to the amendment of the Constitution through the 25th Amendment Act 2018, was part of the then Tribal Areas. Their grievance was regarding the deduction of withholding tax by the National Saving

Centre, Para Chinnar ("**Center**"). It was their case that, since the Income Tax Ordinance, 2001 ("**Ordinance of 2001**") had not been extended to the Tribal Areas, therefore, the deduction of withholding tax relating to the certificates obtained by them from the Center was illegal and constitutionally not valid. The petition was dismissed by a learned Single Judge of the High Court, vide judgment dated 18.06.2013. However, the Intra Court Appeal was allowed by a Division Bench and the deduction of withholding tax was declared as unconstitutional and, consequently, the concerned authorities were ordered to refund the tax deducted and withheld by the Center.

3. We have heard the learned Additional Attorney General for Pakistan and the counsels for the parties.

4. The Central Directorate of National Savings, ("**Directorate**") offers various saving and investment schemes to the public. The Directorate is controlled by the Federal Government and it has established centers throughout the country, including in the then Tribal Areas. The certificates are issued by the saving centers and a fixed rate of return is payable to the account holder upon its maturity. The function of the centers is confined to the issuance of certificates, informing the public regarding the schemes launched by the Directorate, payment of income/profit to the holders of the certificates and to facilitate the account holders. The centers do not invest the funds received from the account holders nor are they engaged in any business or activity which may have the effect of raising or generating income. The funds collected by the centers are invested by the Directorate. The national saving schemes operated and managed by the Directorate fall within the ambit of the expression "government-security" as defined under section 2 of the

Public Debt (Central Government) Act 1944. For the purposes of the Ordinance of 2001, the income is deemed to have arisen or accrued in Pakistan. Clause (a) of sub-section 1 of section 151 of the Ordinance of 2001, inter alia, provides that where a person pays yield on an account, deposit or a certificate under the National Savings Scheme or Post Office Savings Account, then it becomes a mandatory statutory obligation of the payers of the profit to deduct tax at the rate specified in Part III of the First Schedule from the gross amount of the yield or the profit paid to the recipient. It is a statutory duty of the Directorate to comply with the express requirement provided under section 151 (1)(a) of the Ordinance of 2001. The Center, therefore, acts only to facilitate the public in the Tribal Areas to avail the benefits of the various national saving schemes offered by the Directorate. The income of the Directorate does not arise nor accrues in the Tribal Areas. The Division Bench of the High Court, with profound respect, has not properly appreciated the nature of the investment and the working of the Directorate. Moreover, disputed questions of facts were involved and the respondents had to establish before a competent forum that they were not only account holders of the Centre but residents of the Tribal Areas as well. The learned Division Bench of the High Court had assumed that the respondents were residents of Para Chinnar. The respondents were also required to establish that they had, in fact, acquired the certificates from the Center and were eligible for refund. The respondents, without exhausting the adequate and efficacious remedy under the Ordinance of 2001 by way of applying for refund before the competent authority under section 170 of the Ordinance of 2001, had invoked the jurisdiction of the High Court. The reliance of the Division Bench on the judgment<sup>1</sup> was also misplaced. The statutory obligation of the

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<sup>1</sup> *Dr. Najibullah Khan v. Federation of Pakistan and others (2003 PTD 2083)*

Directorate under section 151 of the Ordinance of 2001 could not have been made redundant by the High Court. It is settled law that what cannot be done directly can also not be done indirectly. The learned Single Judge had correctly interpreted the provisions of the relevant laws and the judgment, dated 05.7.2013, did not suffer from any legal infirmity. The impugned judgment, dated 02.05.2016, has been based on the erroneous interpretation of the provisions of the Ordinance of 2001 and appreciation of the nature of the business of the Directorate. Consequently, these appeals are allowed and the impugned judgment, dated 02.05.2016, is accordingly set-aside.

Chief Justice

Judge

Judge

**Islamabad the,**  
8<sup>th</sup> December, 2022  
NOT APPROVED FOR REPORTING.  
(Aamir Sh.)