IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:
MR. JUSTICE UMAR ATA BANDIAL
MR. JUSTICE SAJJAD ALI SHAH
MR. JUSTICE MUNIB AKHTAR

CIVIL APPEALS NO.1521 TO 1526 OF 2018
(On appeal against judgment dated 04.11.2013 passed by the Lahore High Court, Multan Bench, Multan in Tax References No.55, 58, 61, 62, 64 of 2011 and 48 of 2009.)

Fawad Ahmad Mukhtar	:	(in CA 1521/2018)
Fazal Ahmad Sheikh	:	(in CA 1522/2018)
Faisal Ahmad Mukhtar	:	(in CA 1523/2018)
Mrs. Ambreen Fawad	:	(in CA 1524/2018)
Fatima Sugar Mills Ltd.	:	(in CA 1525/2018)
The Commissioner Inland Revenue, Legal Division, Regional Tax Office, Multan	:	(in CA 1526/2018)
	...	Appellants

vs

The Commissioner Inland Revenue (Zone-II), Regional Tax Office, Multan	:	(in CAs 1521 to 1525/2018)
M/s Pak Arab Fertilizers Ltd., Khanewal Road, Multan	:	(in CA 1526/2018)
	...	Respondents

For the Appellants	:	Syed Ali Zafar, ASC (in CAs 1521 to 1525/2018) (Video-Link, Lahore) Ch. M. Zafar Iqbal, ASC Mr. Safaraz Ahmed Cheema, ASC (in CA 1526/2018) (Video-Link, Lahore)
For the Respondents	:	Mr. Safraz Ahmed Cheema, ASC Ch. M. Zafar Iqbal, ASC (in CA 1521-1525/2018) (Video-Link, Lahore) Mr. Mansoor Usman Awan, ASC (in CA 1526/2018)
Date of Hearing	:	26.01.2021

JUDGMENT

Munib Akhtar, J.: These matters arise under the Income Tax Ordinance, 2001 ("Ordinance"). They are cross appeals by both the

taxpayers and the department against a judgment of the learned High Court dated 04.11.2013. The impugned judgment is reported as *Commissioner Inland Revenue Multan v Ambreen Fawad* 2014 PTD 320, PLD 2014 Lahore 72, 2014 CLD 272.

2. The dispute relates to the tax year 2008. Briefly stated, the facts are that the taxpayers/appellants are shareholders of Pak Arab Fertilizer Ltd. ("Pak Arab"). That company (which is the respondent in the department's appeal) owned shares in another company, Fatima Fertilizer Ltd. ("Fatima"). Pak Arab transferred some (or all) of its shareholding in Fatima to the taxpayer-appellants and accounted for the same in its books as payment of dividend in specie. The taxpayer-appellants accept that that is how they received those shares. Now, s. 150 of the Ordinance requires every person (or, at the relevant time, resident company) paying a dividend to deduct tax from the gross amount paid at the rate specified in the First Schedule. Pak Arab did not make any deductions on the basis that the dividend in question, being in specie, did not involve any "payment" within the meaning of s. 150. The department disagreed, and initiated proceedings under s. 161 against Pak Arab. The department lost in appeal before the Appellate Tribunal (on an appeal filed by the company) vide order dated 31.07.2009, and the tax reference filed by it in the learned High Court was dismissed by means of the impugned judgment. The department petitioned this Court, where leave to appeal was granted vide order dated 07.11.2018. The resultant appeal is CA 1526/2018.

3. It appears that after having filed its tax reference in the High Court the department initiated proceedings against the taxpayer-appellants, seeking to amend their relevant assessment orders on the ground that the transactions ought to have been offered to tax as dividend income, but that this was not done. The taxpayer-appellants resisted the show cause notices on the ground (as now relevant) that they were entitled to the benefit of clause (103B) of Part I of the Second Schedule to the Ordinance ("Clause 103B"). This clause (the applicability or otherwise of which is central to the present dispute) was inserted by means of the Finance Act, 2010. The taxpayer-appellants contended, which was denied by the department, that Clause 103B had retrospective effect (at least in

the facts and circumstances of the present case). This plea succeeded before the Appellate Tribunal, which by common orders dated 04.06.2011 allowed their appeals. The department took tax references to the High Court where, by means of the impugned judgment, it was held that Clause 103B did not have retrospective effect. The tax references were therefore allowed. The taxpayer-appellants petitioned this Court and were granted leave by means of the aforementioned order dated 07.11.2018. The resultant appeals are CA Nos. 1521-5/2018.

4. Before us, the case was opened by learned counsel for the taxpayer-appellants. After recounting the facts as aforesaid, learned counsel took us to the relevant provisions of the Ordinance. Reference was made to the definition of “income” as set out in s. 2(29) and to ss. 9, 10, 11 and 39, which set out, respectively, what is “taxable income”, “total income”, “heads of income” and “income from other sources”. Learned counsel also referred to ss. 150, 158 and 162. These relate to deduction at source when a dividend is being paid, the time at which the deduction is to be made and the recovery of tax from the person from whom tax ought to have been deducted, but was not. Learned counsel put his case on two grounds. Firstly, it was contended that in 2008 there was no mechanism to charge or recover tax on a dividend paid in specie. Therefore, no tax was payable on the dividend so paid to the taxpayer-appellants. In the alternative, it was submitted that if at all there was a mechanism available there was an ambiguity or lack of clarity about it. That ambiguity was removed by the insertion of Clause 103B. Learned counsel submitted that since the clause was curative, remedial and declaratory in nature and constituted beneficial legislation it had, and ought to be given, retrospective effect. It was emphasized that at the time the clause was inserted, the departmental proceedings against the taxpayer-appellants were still pending. Therefore, it was not a case of an attempt to open a past and closed transaction. Learned counsel submitted that the learned Tribunal had reached the correct conclusion and its decision ought to be restored.

5. Expanding on his submissions, learned counsel submitted that the definition of “income” in s. 2(29) referred throughout to an

"amount" being chargeable to tax. That meant, and could only mean, a sum of money. Once that was kept in mind, the consequence that naturally followed was that ss. 9, 10, 11, which referred to "income" in its various aspects (as noted above) also related to amounts. Since the dividend in the present case had been paid in specie that did not constitute an "amount" and thus was not liable to tax at all. Learned counsel further submitted that the only method of collecting tax on dividends was that provided by s. 150 (read with s. 158) which again referred to the deduction being made on the "gross amount". It was pointed out that in 2015 a new section, 236S, was added to the Ordinance which specifically dealt with how tax on a dividend in specie was to be collected. It was submitted that the inclusion of that provision (which had no application to the present case) itself showed that at the relevant time, there was no charging or collecting mechanism in relation to a dividend in specie.

6. As regards the alternative argument, learned counsel submitted that if at all there was a means of charging or collecting tax on a dividend in specie, there was an ambiguity or lack of clarity in respect of the same. That lacuna was filled in by Clause 103B. Relying on various decisions of this Court, learned counsel submitted that the clause was remedial, declaratory and clarificatory in nature. It was also beneficial to taxpayers. It therefore had retrospective effect and applied to the facts and circumstances of the present case. On any view of the matter therefore, the taxpayer-appellants could not be taxed on the dividend in specie. The learned High Court had, it was submitted, erred materially and its judgment ought to be reversed.

7. Learned counsel for Pak Arab adopted the submissions made as above, and submitted that the learned High Court had rightly concluded that s. 150 had no application to a dividend in specie. Since nothing was being "paid" there was nothing to deduct. Hence, no liability arose against the company for not "deducting" any amount from the taxpayer-appellants. Learned counsel also referred to s. 236S, already noted above.

8. Learned counsel for the department (and we intend no disrespect by taking up their submissions together) supported the

decision of the learned High Court insofar as it held that Clause 103B did not have retrospective effect, but controverted its findings as regards the applicability of s. 150. It was submitted that simply because a provision was beneficial did not mean that it automatically had, or ought to have, retrospective effect. Such was the case with Clause 103B. It did not apply to the facts and circumstances of the present case. It was also submitted that s. 4 made clear that dividend income was treated as a separate block and brought to charge under s. 5. That was the key provision for present purposes and there was nothing therein to indicate that it did not apply to a dividend in specie. Section 150 was only a machinery provision. It was submitted that a dividend in specie was also "paid" within the meaning of the Ordinance, the value of which was readily ascertainable. In the present case it was simply the amount by which the dividend otherwise payable to the taxpayer-appellants stood reduced in the books of Pak Arab. Hence, an appropriate deduction ought to have been made in respect thereto by Pak Arab at the relevant time. It was prayed that the department's appeal be allowed and those of the taxpayer-appellants be dismissed.

9. We have heard learned counsel as above, considered the record and gone through the case law. The first point taken by learned counsel for the taxpayer-appellants, that dividend in specie is, or any rate was in the facts and circumstances of the case, not income cannot be accepted. Firstly, the point cannot be taken here. The reason is that these matters have reached this Court via tax references. The questions of law that were before the High Court (whether dealt with it or not) are the questions that can be taken in further appeal. The question now taken was not before the High Court. Admittedly, the tax references were all filed by the department, and it could hardly be the latter's case that a dividend in specie is not income. Be that as it may, the reference jurisdiction of the High Court is a peculiar category of litigation that moves within its own well-defined locus and has a well established jurisprudence. Furthermore, and secondly, the point taken in any case is, with respect, without merit. It is well established that the term "income" has the widest possible connotation even within the four corners of the Ordinance and

income tax law; its constitutional meaning (i.e., in terms of entry No. 47 of the Federal Legislative List) is broader still. The definition in s. 2(29) is inclusive and not exclusive. The concept of income (in the context of its statutory meaning) is well known. As was said by the Privy Council in *Maharaj Kumar Gopal Saran Narain Singh v Commissioner of Income Tax* [1935] 3 ITR 237, [1935] UKPC 29, "anything which can properly be described as income, is taxable under the Act unless expressly exempted". And as it has been put in the leading treatise on the subject, *Kanga and Palkhiwala's The Law and Practice of Income Tax* (10th ed., 2014, pg. 193): "The categories of income are never closed. It would be impossible to define income precisely without excluding some species of it." The undue focus by learned counsel on the term "amount" and thereby, in effect, limiting the meaning of income to only money terms runs against the grain of a hundred years of jurisprudence. It cannot be countenanced. That the dividend in specie received by the taxpayer-appellants was income is clear even on a bare perusal of the facts and circumstances of the case. Now, the appellants had to be entitled to a dividend in the first place for the shares of Fatima to be transferred to them. If that dividend had been paid in money terms they could obviously not have been able to claim that it was not income within the meaning of the Ordinance. What they have received instead is money's worth. And, as submitted by learned counsel for the department, there is an exact monetary value to what they received: the amount by which the dividend payable to them went down in the books of Pak Arab. Money or money's worth, it matters not: what was received was income within the meaning and contemplation of the Ordinance. It should be kept in mind that the definition of "dividend" in s. 2(19) is also inclusive and not exclusive. A dividend in specie clearly falls within the scope (if nothing else) of clause (a) of the expanded meaning. What we have therefore is a term with an expanded meaning ("dividend") nested within another term which has a (much) wider meaning ("income"). The first submission by learned counsel must, with respect, be rejected.

10. This brings us to the two points that were in fact in issue before the learned High Court: whether Clause 103B had retrospective effect, and was Pak Arab obligated to deduct tax in

terms of s. 150? The first point to note is that a taxpayer who claims that Clause 103B applied to the facts and circumstances of his case necessarily accepts that the dividend in question is income taxable under the Ordinance. As is well known, an exemption (which, of course, is what Clause 103B was) inserts itself between the leviability and the payability of a tax, shielding what (or who) is brought to tax under the former from the consequences that follow in terms of the latter. So, the dividend in specie received by the taxpayer-appellants was income. Now, in our view, it was correctly submitted by learned counsel for the department that subsections (4) and (5) of s. 4 provide that dividends constitute a separate block of income that is brought to tax in terms of s. 5 and, as s. 8 further provides, the tax so imposed constitutes a "final tax" that has the consequences elaborated in the five clauses of that section. However, it is also be noted that at the same time s. 39, which deals with the head "income from other sources", provides, inter alia, that dividend income is to be taxed under this head (see sub-s. (1)(a)). Now, the predecessor legislation, the Income Tax Ordinance, 1979, had a provision similar to s. 39 in relation to dividends: see s. 30 thereof. The earlier legislation did not have anything equivalent to ss. 4, 5 and 8. The effect of specifying expressly that dividends are to be included under the head "income from other sources" has been explained in *Kanga and Palkhiwala*. We may note that the (Indian) Income Tax Act, 1961 has a provision (s. 56(2)(i)) similar to that contained in s. 39. It was stated as follows (*op. cit.*, pg. 1300):

> "Before the insertion of s.12(1A) in the 1922 Act, which corresponded to this clause [i.e., s. 56(2)(i)], dividend income was taxable as income from other sources in the case of an investor in shares, but was taxable as profits of business where the shares were held as stock-in-trade. The effect of this clause is that all dividends are taxable under this section as income from other sources even if they are derived from shares held for the purpose of business, e.g. as stock-in-trade."

11. We need therefore to consider the position of "dividend" in s. 39, in light of what is set out in ss. 4, 5 and 8. Section 5 provides as follows (emphasis supplied):

> "**5. Tax on dividends.**—(1) Subject to this Ordinance, a tax shall be imposed, at the rate specified in Division III of Part I

> of the First Schedule, on every person who receives a dividend from a company *or treated as dividend under clause (19) of section 2*.
>
> (2) The tax imposed under sub-section (1) on a person who receives a dividend shall be computed by applying the relevant rate of tax to the gross amount of the dividend.
>
> (3) This section shall not apply to a dividend that is exempt from tax under this Ordinance."

The words emphasized were added by the Finance Act, 2009. It will be noted that s. 5 applies subject to the other provisions of the Ordinance. In our view, the proper manner of reading s. 5 and s. 39 together is to regard the latter as a residual provision. In other words, dividends are to be taxed as a separate block of income under s. 5 (which is, as correctly submitted by learned counsel for the department, the charging provision in this regard) but if for any reason any particular type, class or category of dividend, or the dividend involved in the facts and circumstances of a particular case, are found not to fall within the scope thereof, such dividend would then be brought to tax as "income from other sources" under s. 39. Either way (and this must be clearly understood) a dividend is taxable unless exempt or otherwise taken out of the tax net by the application of any provision of the Ordinance.

12. When the matter is viewed from this perspective it could be argued that the addition made in 2009 makes clear that prior thereto a dividend that came within its terms was not brought to tax under s. 5, but rather under s. 39. In other words, the addition, as it were, "shifted" dividend income that was treated as such under s. 2(19) from s. 39 to s. 5. On this view it could be said that the dividend in specie received by the taxpayer-appellants (which related to the tax year 2008) was to be brought to tax under s. 39. Now, it is well established as a fundamental principle of income tax law that each tax year is a separate unit of account and taxation and the law has to be applied as it stood in respect of that tax year alone. The question therefore becomes whether on that basis (i.e., by putting the addition made in 2009 to one side) the dividend in specie was taxable under s. 5? In our view, the answer ought to be in the affirmative. Keeping in mind the interplay between ss. 5 and 39 noted above, in our view the correct

approach is to regard (unless there is express provision or necessary intendment to the contrary) anything that is a “dividend” within the meaning of the Ordinance as liable to tax under s. 5. It would then be for the person (whether taxpayer or the department) who contends to the contrary to show that it ought to be brought to tax under s. 39. In the present case, neither the taxpayer-appellants nor the department contend that the dividend in specie ought to be taxed under s. 39. We therefore proceed on the basis that it was taxable under s. 5 which, in our view, is in any case the correct position.

13. It is now time to set out Clause 103B which, as noted, was added by the Finance Act, 2010 (but stood omitted in 2013):

> “**(103B)** Any dividend in specie derived in the form of shares in a company, as defined in the Companies Ordinance, 1984 (XLVII of 1984):
>
> Provided that when such shares are disposed off by the recipient, the amount representing the dividend in specie shall be taxed in accordance with provisions of section 5 of this Ordinance and the amount, representing the difference between the consideration received and the amount hereinabove, shall be treated in accordance with provisions of section 37 or section 37A, as the case may be.”

The first point to note regarding the clause is that, somewhat unusually, it was not a complete exemption but, as the proviso made clear, only a deferred one. The exemption operated only up till such time as the shares were not disposed off, when the tax liability on the dividend had to be paid in terms of s. 5, though on a reduced amount, i.e., in terms of ss. 37 or 37A (as the case may be) on the gains made on the disposal. Of course for our purposes the question is whether the clause had retrospective effect to the facts and circumstances of the present case.

14. Now, the clause was an exemption and, by definition, an exemption has a beneficial effect. But, as correctly pointed out by learned counsel for the department, simply because a statutory provision has a beneficial effect does not mean that it automatically has, or can have, retrospective effect. If this were so, then that would be true for all exemptions, i.e., any exemption added to or inserted in any of the Parts of the Second Schedule could be claimed to have retrospective effect more or less

automatically. This can hardly be the correct position in law. Especially in the context of income tax law, it would tend to run counter to the fundamental principle already noted, that each tax year is a separate unit of account and taxation. Of course, the principle is not sacrosanct. It can be overridden by the legislative will. But that must be done either expressly or shown to be the necessary intendment of the provision sought to be applied retrospectively. There is nothing in either Clause 103B or the Finance Act, 2010 that expressly gave it retrospective effect. Therefore the taxpayer-appellants have to show that the clause was necessarily intended to have retrospective effect.

15. Learned counsel submitted that that was necessarily so because the clause was curative, clarificatory and remedial in nature. It removed an ambiguity that otherwise existed. What needed to be remedied, clarified and cured was as to how tax was to be paid on the dividend in specie. Absent Clause 103B (so it was submitted) there was no such provision or mechanism, as s. 150 did not apply. Therefore, the clause reached back and applied to the facts and circumstances of the present case.

16. With respect, we are unable to agree. The taxpayer-appellants have misunderstood the nature of the exemption conferred by Clause 103B. Ordinarily, the exemptions conferred by Part I of the Second Schedule are “absolute”, i.e., the income (or classes of income) or persons (or classes of persons) to which or whom the exemption is granted enjoy the benefit thereof for the tax year concerned (subject to any conditions as may be specified): see s. 53(1)(a). In Clause 103B the exemption is “absolute” only if the shares in question are never disposed off; otherwise, the tax liability is only deferred till the disposal. That liability is reduced in terms as stated in the proviso. A reduction in tax liability is, strictly speaking, supposed to be the subject of Part III of the Second Schedule (see s. 53(1)(c)). Clause 103B was therefore best regarded as an amalgam of Parts I and III, the first operating immediately and the latter with a time lag. It did not clarify or cure any “ambiguity” or remedy any “defect” in the charging and payment of the tax. Rather, it was simply and only what it purported to be on the face of it: an exemption. If anything, the very existence of Clause 103B pointed in the direction opposite to

that suggested by learned counsel. The reason is that an exemption, as noted above, comes in between leviability and payability. Therefore, the presumption, if any, would have been that absent Clause 103B, tax would have been payable immediately and the tax liability would have been as computed under, and for purposes of, s. 5.

17. The confusion and misunderstanding may perhaps have arisen in the minds of the taxpayer-appellants because of s. 150. This section provided as follows at the relevant time:

> "**150. Dividends.**—Every resident company paying a dividend shall deduct tax from the gross amount of the dividend paid at the rate specified in Division III of Part I of the First Schedule."

While s. 150 is further considered below, one difference between the language used therein and s. 5 ought to be kept in mind. Section 5 speaks of the dividend being "received" by a person from a company, while s. 150 speaks of the dividend being "paid" by the latter. The former is a general expression, bringing to tax all that is received by way of dividend. The latter is limited to the requirements of s. 150, i.e., requiring a deduction to be made on the dividend paid. The confusion may have been compounded by the fact that at the relevant time there was a complete identity between the rate of tax imposed under s. 5 and the amount that was to be deducted under s. 150, as both referred to Division III of Part I of the First Schedule (the position may have altered since 2014). It was perhaps for this reason that learned counsel for the taxpayer-appellants submitted that as s. 150 was the only manner in which tax on a dividend could be paid or recovered and since (as claimed) that section did not apply to a dividend in specie no tax could be levied (or at any rate paid) on the same. From there the argument led to the application of Clause 103B where, it was claimed, the ambiguity had been remedied in terms of the proviso.

18. This whole approach is, with respect, incorrect and entirely misconceived. Any equivalence between s. 5 and s. 150 is illusory. One relates to the charge of the tax and the other to a mechanism of payment or recovery. But, and this is to be clearly understood, the one is distinct from the other. In the well known words of Lord Dunedin in *Whitney v Commissioners of Inland Revenue* (1926) 10

TC 88, [1926] AC 37 that have stood the test of time (emphasis supplied):

> "My Lords, I shall now permit myself a general observation. *Once that it is fixed that there is liability, it is antecedently highly improbable that the statute should not go on to make that liability effective. A statute is designed to be workable, and the interpretation thereof by a Court should be to secure that object, unless crucial omission or clear direction makes that end unattainable. Now, there are three stages in the imposition of a tax*: there is the declaration of liability, that is the part of the statute which determines what persons in respect of what property are liable. Next, there is the assessment. Liability does not depend on assessment. That, *ex hypothesi*, has already been fixed. But assessment particularises the exact sum which a person liable has to pay. Lastly, come the methods of recovery, if the person taxed does not voluntarily pay."

Section 5 relates to the first stage, s. 150 to the last. To conflate the two is a conceptual confusion that ought to be avoided. The generality of the imposition of the charge under the former cannot succumb or fail simply because (as claimed) the special enforcement mechanism provided cannot be applied to a dividend in specie. For, that is not the only mechanism available for the recovery or enforcement of the levy. The general methods of recovery (as contained, inter alia, in Part IV of Chapter X) are always available. Even s. 161, which was invoked against Pak Arab, expressly recognizes in its subsection (1B) (added in 2002) that the tax required to have been deducted may have been paid in the meanwhile by the person from whom it ought to have been deducted, and goes on to provide that if so, "no recovery shall be made from the person who had failed to ... deduct the tax but the said person shall be liable to pay default surcharge...." Obviously, the person who has so paid the tax may have done so either voluntarily or after being subjected to the recovery mechanisms of the Ordinance. If at all the recovery mechanism of s. 150 was not applicable to the facts and circumstances of the present case, the matter simply shifted to the general provisions otherwise available.

19. It will be seen from the foregoing that Clause 103B did not remedy any defect or cure any ambiguity or resolve any problem as regards enforcement or payment of tax on a dividend in specie, for the simple reason that the postulated problem or deficiency simply did not exist. The matter of recovery or enforcement was crystal

clear. There was therefore nothing to which the curative, remedial and/or declaratory principles relied upon could attach, so as to give retrospective effect to Clause 103B. The entire premise of the case sought to be made is, with respect, without any conceptual or legal basis.

20. This brings us to s. 150 and the question whether, as held by the learned High Court, it had no application to the dividend in specie. Now, generally in relation to a dividend (of whatever kind, including that in specie) it would be perfectly sensible to speak of it being received by the shareholders and paid by the company. In other words, "receipt" and "payment" would be complementary. However, as already noted, s. 150 uses "payment" in a limited and special sense, associating it with a specific act, i.e., a deduction to be made. Can it apply to a dividend in specie? It is pertinent to note that when the Ordinance was originally promulgated, s. 150 had the following words in it, which appeared after the words "dividend paid": "or collect tax from the shareholder in the case of bonus shares". Bonus shares are of course issued when the dividend is being capitalized, the payment being in kind, i.e., of the company's shares. In relation thereto, the section specifically recognized that it would be incorrect to speak of a "deduction", and it therefore required the company to "collect" the tax. The difference between a deduction on the one hand and a collection on the other is clear and requires no elaboration. For present purposes, a dividend by way of bonus shares can be regarded as equivalent to the dividend in specie paid to the taxpayer-appellants. Although the words just mentioned were omitted in 2002 the import is clear: if "deduction" could not apply to bonus shares it could not apply to the dividend in specie.

21. The same result obtains when one considers what the company had to do with that which was deducted. In the case of a dividend in specie what is deducted would be a part of the thing in specie being paid/received which, in the present case, would be a certain number of shares of Fatima. In effect Pak Arab would be required to hold back the said shares. Now, s. 158 requires that the person making the deduction is to do so (as presently relevant) "at the time the amount is actually paid". And s. 160 requires, inter alia, that the tax deducted is to be paid to the Commissioner

by the person making the deduction "within the time and in the manner as may be prescribed". Such prescription is contained in Rule 43 of the Income Tax Rules, 2002 which provided at the relevant time as follows (in material part):

> "**43. Payment of tax collected or deducted**.-As required under section 160 ... the tax ... deducted under ... Division III of Part V of Chapter X of the Ordinance ... shall be paid to the Commissioner by way of credit to the Federal Government,- ...
>
> (b) where the tax has been ... deducted by a person other than the Federal Government or a Provincial Government, by remittance to the Government Treasury or deposit in an authorized branch of the State Bank of Pakistan or the National Bank of Pakistan, within seven days from the end of each fortnight."

It is clear that the rule is premised on the deduction being made in money terms. Any "deduction" made in kind is outside the purview thereof, and alien to the scheme of payment in terms of ss. 150, 158 and 160. The State has no interest in taxes (and certainly not income tax) being paid in kind. Section 150 did not therefore apply to the dividend in specie, and imposed no obligation on Pak Arab in relation thereto. Keeping all of the foregoing points in mind it is clear that the stance taken by the department, namely that Pak Arab had a case to answer in terms of s. 161, is incorrect and cannot be accepted.

22. In view of the foregoing analysis and discussion, we are of the view that the conclusions arrived at by the learned High Court on the points raised before it were correct. Accordingly, all the appeals fail and are hereby dismissed.

Judge

Judge

Judge

Announced in Court on 09/02/22 at Islamabad

Sd/-
Judge

Approved for reporting