

**Judgment Sheet**  
**IN THE LAHORE HIGH COURT LAHORE**  
**MULTAN BENCH, MULTAN**

JUDICIAL DEPARTMENT

**Case No: T. R. No. 01/2011.**

Commissioner Inland  
Revenue

## Versus

M/s Multan Educational  
Trust

## JUDGMENT

Date of hearing:	01.11.2013.
Petitioner by:	<p>Ch. Muhammad Asghar Saroha, Advocate in T.R. Nos.1, 5, 6, 7 and 8 of 2011.</p> <p>M/s Agha Muhammad Akmal Khan and Tariq Manzoor Sial, Advocates in T.R. Nos. 34, 35, 36, 37 and 38 of 2011.</p> <p>Asif Rasool, Additional Commissioner and Dr. Athar Ishaq, Deputy Commissioner, Inland Revenue, Multan.</p>
Respondent- assessee by:	Muhammad Usman Hadi from M.A. Hadi and Company, Accountants & Auditors, Multan.

**Syed Mansoor Ali Shah, J:-** This judgment will dispose of instant reference, as well as, connected references bearing No.5,6,7, 8, 34, 35, 36, 37 and 38 of 2011 as the same question of law is involved in all these cases.

2. The question of law raised in this reference is as follows and arises out of tax years 2004 to 2008:-

“Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that the Society does not fall in the regime of a “Company” as defined under section 80(2)(b) and not liable to minimum tax u/s 113 of the Income Tax Ordinance, 2001?”

3. Learned counsel for the petitioner submits that admittedly respondent assessee is a society duly registered on 30.05.1985 under Societies Registration Act, 1860 (“Act”). As a consequence, the respondent assessee falls within the definition of a Company as per Section 80 (2) (b) (v) of the Income Tax Ordinance, 2001

(“Ordinance”) and is liable to pay minimum tax in terms of Section 113 of the Ordinance.

4. Representative of the respondent assessee submits that the respondent being a society registered under the Act does not fall within the definition of a “Company” because the language of Section 80 (2) (b) (v)<sup>1</sup> of the Ordinance requires that the Society should be “established or constituted by or under any law for the time being in force” and a Society registered under the Act cannot be said to be established or constituted by or under the Act. He with permission, placed reliance on an elaborate judgment of the learned Income Tax Appellate Tribunal (*I.T.A. No.1705/KB of 1996-97*) reported as **1998 PTD 2017** in support of his contention. He additionally submits that minimum tax under Section 113 of the Ordinance was introduced in the year 2009 and hence, does not apply to the tax years prior to Tax Year 2009.

5. In response to the latter submission, learned counsel for the petitioner alongwith Additional Commissioner, Inland Revenue, Multan submitted that minimum tax has been in force throughout, however, it was only omitted in the year 2008 (just one year) and, therefore, to the extent of Tax Year 2008 minimum tax is not chargeable.

6. We have heard arguments of the parties and gone through the record. Section 80 (2) (b) (v) of the Ordinance as it stood in the relevant years is as follows:-

*“80 (2 )(b) (v). A trust, a cooperative society or a finance society or any other society established or constituted by or under any law for the time being in force.”(emphasis supplied)*

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<sup>1</sup> Prior to Finance Act, 2013

7. The above sub-section provides that a society established or constituted by or under any law for the time being in force shall mean a “company” for the purposes of Income Tax Ordinance. It is an admitted position between the parties that respondent assessee is registered under the Act and Certificate of Registration dated 30.05.1985 has been placed on the record by the representative of the respondent assessee as Mark “A”. Section 1 of the Act provides as under:-

*“1. Societies formed by memorandum of association and registration: Any seven or more persons associated for any literary, scientific or charitable purpose, or for any such purpose as is described in Section 20 of this Act, may, by subscribing their names to a memorandum of association and filing the same with the Registrar of Joint Stock Companies, form themselves into a society under this Act.” (emphasis supplied)*

The above shows that a Society is “formed” when members subscribe their names to a memorandum of association and file the same with the Registrar of Joint Stock Companies. In other words once the above documents are registered with the Registrar of Joint Stock Companies a Society is formed. “Formed” means to constitute or to come into existence.<sup>2</sup> It also means to set up, establish, found or bring into being.<sup>3</sup> Therefore, Society is established and constituted at the time of registration under Section 1 of the Act.

8. Section (80 (2) (b) (v) of the Ordinance provides that a company is a society established or constituted by or under any law for the time being in force. What does “established or constituted by or under the Act” mean? “By and Act” would mean by a provision directly enacted in the statute in question and which is gatherable from its express language or by necessary implication therefrom. The words under the Act “would, in that context, signify what is not directly to be found in the statute itself but is conferred or imposed by virtue of powers enabling this to be done; in other words, by laws

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<sup>2</sup> Chamber’s 21<sup>st</sup> Century Dictionary.

<sup>3</sup> Concise Oxford Thesaurus.

made by a subordinate law-making authority which is empowered to do so by the parent Act.<sup>4</sup>

9. In our context “by the Act” means that the entity is the creation of the statute itself, in other words, the primary legislation itself establishes the entity, the source being the legislature itself. Whereas “under the Act” means that an entity is formed by complying with the procedure set out under the Act and not directly by the Act. For example, Federal Board of Revenue (FBR) is a body established and constituted by the Act of the Parliament i.e., The Federal Board of Revenue Act, 2007 whereas Pakistan Revenue Automation (Pvt.) Ltd. (PRAL) is a private company incorporated by the FBR under the provisions of the Companies Ordinance, 1984 and hence is considered to be a body formed, established or constituted under the Act.

10. In the present case, the respondent Society has been duly formed under the Act by complying with the provisions of the Act and by getting registered with the Registrar of Joint Stock Companies under Section 1 of the Act. For the above reasons, we cannot come to terms with the reasons adopted in the judgment cited by the learned counsel for the respondent. The judgment assumes that a Society under Societies Registration Act, 1860 is already established through an independent instrument (deed, etc.) and subsequently is merely registered under the Act. Hence, the act of registration plays no role in its formation. As a result, any such Society is neither established nor constituted by or under the Act. The basic flaw in the judgment is that it fails to consider the import of Section 1 of the Act (reproduced above). The above provision unambiguously provides that if seven or more persons subscribe their names to a Memorandum of Association and file the same with the Registrar of Joint Stock Companies, a Society is formed under the Act. Therefore, a Society under the Act is actually “formed” under the umbrella of the Act by complying with the procedure provided under Section 1 of the Act and does not have any legal existence prior to it.

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<sup>4</sup> *Dr. Indramani Pyarelal Gupta and others v. W.R. Natu and others* (AIR 1963 SC 274).

11. For the above reasons, we hold that respondent Society is established and constituted under the Act and squarely falls within the definition of “Company” under Section 80 (2) (b) (v) of the Ordinance.

12. Even though not cited by the learned counsel for the parties, we find it important to refer to the judgment of the august Supreme Court of Pakistan reported as Commissioner of Income Tax/Wealth Tax Companies Zone-II, Lahore v. M/s Lahore Cantt. Cooperative Housing Society, Lahore and 7 others (PTCL 2010 89) wherein Cooperative Housing Society registered under the Cooperative Societies Act, 1925 was held not to be “company” under Income Tax Ordinance, 1979. The said case is distinguishable inasmuch as section 5 of the Cooperative Societies Act, 1925 (“Act”) provides that “a society which has as its object the promotion of the economic interest of its members in accordance with co-operative principles or a society established with the object of facilitating the operations of such a society, may be registered under this Act with or without limited liability.” Here the act of registration under the statute, does not establish or constitute a Society as the same stands established prior to registration under any instrument of law. The august Supreme Court of Pakistan held that such a society is not “formed” by or under the Act. The facts of the present case and the legislative framework of Societies Registration Act, 1860 is different, hence, the cited judgment is distinguishable.

13. For the above reasons, the legal position that emerges is that a Society registered under Societies Registration Act, 1860 is a body corporate established and constituted under the Act and, therefore, falls within the definition of a “Company” under Section 80 (2) (b) (v) of the Ordinance.

14. As far as, the minimum tax is concerned. Section 113 of the Ordinance is unambiguous and is applicable on companies, hence, respondent assessee is liable to minimum tax subject to qualification that minimum tax is not chargeable in Tax Year 2008.

15. For the above reasons, question of law raised above is answered in the **negative**.

16. Office shall send a copy of this order under the seal of the Court to the learned Appellate Tribunal Inland Revenue as per Section 133 (5) of the Income Tax Ordinance, 2001.

**(Mamoon Rashid Sheikh)**  
Judge

**(Syed Mansoor Ali Shah)**  
Judge

*M. Tahir\**

**APPROVED FOR REPORTING.**