

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Jawwad S. Khawaja
Mr. Justice Iqbal Hameedur Rahman
Mr. Justice Mushir Alam

Civil Appeals No.1956 to 1958 of 2006

Against judgments dated 03.04.2004 & 26.03.2004 of High Court of Sindh at Karachi, passed in C.P.Nos.D-1600, D-1601 & D-1727 of 1994.

Commissioner Income Tax

Appellant (in all cases)

VERSUS

M/s Habib Bank Limited

Respondent (in CA#1956&1957/06)

M/s ANZ Grindlays Bank, PLC

Respondent (in CA#1958/06)

For the Appellants:

Mr. Akhtar Ali Mahmud, ASC
Raja Abdul Ghafoor, AOR

For the Respondents:

Mr. Salman Iqbal Pasha, ASC

Date of Hearing:

14.03.2014

ORDER

Jawwad S. Khawaja, J. These three appeals, by leave of the Court, challenge the judgments of the High Court, dated 03.04.2004 & 26.03.2004. Leave to appeal was granted on 17.10.2006, through a detailed leave granting order. The said order being relevant is reproduced as under:-

"These petitions are directed against identical judgments of the Sindh High Court dated 3.4.2004 and 26.3.2006 allowing respondents' writ petitions challenging the vires of notices issued by Income Tax authorities under section 65 of the Income Tax Ordinance 1979 (hereinafter referred as the Ordinance 1979) whereby assessment of the respondent-Companies for the year 1988-89 and 1989-90 in Civil Petitions Nos. 506-K & 507-K of 2004 whereas for the year 1988-89 in Civil Petition No.508-K of 2004 were re-opened on receipt of definite information by the assessing authority.

2. Respondents filed their returns of income tax for the relevant assessment years within the contemplation of section 55(1) of the Ordinance 1979 declaring interest on Government securities on "receipt basis". Declaration so made was accepted. Assessments were framed and

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orders passed treating the same as past and closed chapter. In the month of April, 1994 and June 1994 respectively, assessing authority issued the impugned notices to the assessee to show cause as to why the assessments carried out in the earlier assessment years be not re-opened and revised. They contested the notices but without any success and ultimately invoked the Constitutional jurisdiction of the Sindh High Court.

3. On its part, a Division Bench of the Sindh High Court, upon interpretation of the provisions of sections 17, 32, 62 & 65 of the Ordinance 1979 came to the conclusion that in the present set of petitions judgment of Income Tax Appellate Tribunal, Lahore Bench, in Commissioner of Income Tax v. Geo Tech (69 Tax 192 TR) would be applicable only after establishment of the fact that the respondents follow the mercantile method of accounting. While taking this view, High Court relied upon judgments reported as Pakistan Tobacco Co. Ltd. v. Government of Pakistan (1993 SCMR 493) and Inspecting Assistant Commissioner v. Pakistan Herald Ltd. (1997 SCMR 1256).

4. We have heard Mr. Akhtar Ali Mahmud, learned ASC for the petitioner. It is, inter alia, contended that the view taken by the Division Bench of the High Court is contrary to and in conflict with the rule laid down by this Court in Central Insurance Co. v. Central Board of Revenue (1993 SCMR 1232), which still holds the field and has not been dissented to. Although the High Court has cited this judgment and reproduced an extract there from, it appears that the same has not been strictly followed. In our view, a fit case for the grant of leave to appeal is made out to consider, inter alia, the following questions:-

- (i) Whether the view expressed by the High Court relying on the Inspecting Assistant Commissioner v. Pakistan Herald (supra) is not consistent with the law laid down by this Court while interpreting section 65 of the Ordinance 1979 in Central Insurance Co. v. Central Board of Revenue (supra)?
- (ii) Whether an order of assessment framed by assessing authority by misapplication, non-application of law or violative or inconsistent with the applicable law can be construed to be "conscious" framing of assessment and, thus, not open to revisiting by recourse to section 65 of the Ordinance 1979?

We order accordingly"

2. The issue before us is straightforward. According to the appellant, tax on government securities was to be assessed in accordance with the provisions of Section 17(1)(a) of the Income Tax Ordinance (hereinafter referred to as '**the Ordinance**'). The said provision stipulates as under:-

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"17. Interest on securities.-(1) The following income shall be chargeable under the head "Interest on securities", namely:-

- (a) interest on any securities of the Federal Government or a Provincial Government receivable by an assessee in any income year; and
- (b) interest on debentures or other securities for money issued by, or on behalf of, a local authority or a Pakistani company receivable by an assessee in any income year.

(2) Notwithstanding anything contained in sub-section (1),-

- (a) where any security of the Federal Government is issued with the condition that the interest thereon shall not be liable to tax, the interest receivable on such security shall be exempt from tax in accordance with such condition; and
- (b) tax payable on the interest receivable on any security of a Provincial Government issued with the same condition as aforesaid shall be payable by that Provincial Government."

3. The case of the respondent-Banks is that under Section 32 of the Ordinance, the respondent-Banks being assesseees are empowered to adopt the method of accounting of their choosing. Section 32 of the Ordinance is reproduced as under:-

"32. Method of accounting.-(1) Income, profits and gains except income from dividends, shall be computed for purposes of sections 17, 19, 22, 27 and 30 in accordance with the method of accounting regularly employed by the assessee.

(2) Notwithstanding anything contained in sub-section (1), the Central Board of Revenue may, in the case of any business or profession, or class of business, or profession, or any other source of income or any class of persons:-

- (a) required, by a general or special order published in the official Gazette that the accounts shall be maintained in such form and in such manner as may be prescribed; and
- (b) prescribe the manner in which payments of commercial nature shall be made or commercial transactions recorded, and thereupon, the income, profits and gains of the assessee shall be computed on the basis of the accounts or records maintained or payments made accordingly.

(3) Where no method of accounting has been regularly employed, or if the method employed is such that, in the opinion of the Deputy Commissioner, the income, profits and gains cannot be properly deduced therefrom, or where, in any case to which sub-section (2) applies, the assessee fails to maintain accounts,

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make payments or record transactions in the form or manner, as the case may be, prescribed under the said sub-section, then, the income, profits and gains of the assessee shall be computed on such basis and in such manner as the Deputy Commissioner thinks fit.

(4) For the purpose of sub-section (3), where the Central Board of Revenue deems necessary, it may, by a general or special order in writing, prescribe rates of net profit or gross profit and conditions of their applicability in respect of any trade, business or profession for any assessment year or years:

Provided that such rates shall be applicable in case of an assessee at his option to be exercised in writing before finalization of assessment proceedings for an assessment year."

4. Considering the provisions of Sections 17 and 32 of the Ordinance, reproduced above, we cannot help but notice that Section 32 provides an exception to the computation of income set out in Section 17, which obviously includes Section 17(1)(a). In these circumstances, the impugned judgments rendered by the High Court have in our opinion correctly held that the respondent-Banks were justified in adopting the method of accounting which was ~~hybrid~~ ^{hybrid} and had been consistently used by the respondent-Banks since long.

5. Learned counsel for the appellant, however, made reference to a decision of the Income Tax Appellate Tribunal, dated 18.09.1993, wherein it had been held that profits etc on government securities were to be accounted for in accordance with Section 17(1)(a) of the Ordinance. On this basis, it was contended that the Assessing Officer was obliged to follow the said ruling of the Income Tax Appellate Tribunal. The implication of this argument seems to be that the respondent-Banks were therefore, estopped from urging a different point of view because they had not challenged the said ruling. This contention in our opinion cannot be accepted firstly because there is no estoppel against the law and secondly because

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the High Court has even through the impugned judgments interpreted the law laid down in Sections 17 & 32 *ibid*.

6. Having heard learned counsel for the parties and having gone through the law also, we are clear that the interpretation of law made by the High Court is correct. We may also advert to the provisions of Articles 201 and 189 of the Constitution of the Islamic Republic of Pakistan, 1973 which stipulate that the law which is enunciated by the High Court under Article 201 becomes binding precedent for all forums within the Province and the law enunciated by this Court under Article 189 becomes binding precedent for all forums in the country.

7. In view of the foregoing discussion, these appeals are dismissed

Sd/- Jawwad S. Khawaja,J
Sd/- Iqbal Hamcedur Rahman,J
Sd/- Mushir Alam,J



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Mushir Alam
24/3/14

608/14

GR No:	608/14	Civil/Criminal
Date of Presentation:	20.2.14	
No. of Words:	1800	
No. of Pages:	15	
Requisition:	5-00	
Copy Fee:	5-30	
Court Fee:		
Date of Completion:	14-2-14	
Date of delivery of copy:	31/3/14	27/3/14
Compared by:		
Received by:	Mr. K. A. Wahab, AOR	