

ORDER SHEET  
**IN THE HIGH COURT OF SINDH AT KARACHI**  
Suit Nos. 575 & 101 of 2018 and 1471/2016

DATE

ORDER WITH SIGNATURE OF JUDGE

**Plaintiff in Suit No.575/18:** IBL Healthcare Limited Through  
Through Mr. Ovais Ali Shah,  
Advocate.

**Plaintiff in Suit No.101/18:** DFL Corporation (Pvt) Ltd.

**Plaintiff in Suit No.1471/16:** IGI Insurance Ltd.  
Through M/s. Hyder Ali Khan and  
Sami-ur-Rehman, Advocates.

**Defendants:** Through Mr. Muhammad Aqeel  
Qureshi and Dr. Shah Nawaz  
Memon, Advocates.

**Federation of Pakistan:** Through Mr. Osman A. Hadi,  
Assistant Attorney General.

**Date of Hearing:** 15.05.2019

**Date of Order:** 15.05.2019

**J U D G M E N T**

**Muhammad Junaid Ghaffar J.** In these Suits, all Plaintiffs have challenged the levy of tax on bonus shares pursuant to amendments brought through Finance Act, 2014, in Section 2(29), 38(1) and Section 236(M) of the Income Tax Ordinance, 2001. This controversy stands decided by a learned Single Judge of this Court in the case of ***Muhammad Hussain and others v. Pakistan The Secretary Revenue Division and others*** reported as **2016 PTD 622,** whereby, the amendments have been held to be valid and intra vires and Suits have been dismissed. While confronted, Mr. Ovais Ali Shah learned Counsel for one of the Plaintiffs has contended that the said judgment is *per incuriam* and has not considered and correctly appreciated the law

including the Judgment in the case of ***Ebrahim Brothers Limited v. Commissioner of Income Tax, Karachi*** reported as **1992 SCMR 1935**. He has also relied upon the cases of ***Bashir Ahmad and others v. The State*** reported as **PLD 1960 West Pakistan Lahore 687**, ***Manu alias Menthar and others v. The State*** reported as **PLD 1964 West Pakistan Karachi 34**, ***Mst. Surriya Rehman through Attorney v. Siemens Pakistan Engineering Company Ld. Through Chief Executive Officer/Managing Director and another*** reported as **PLD 2011 Karachi 571**, ***Captain S.M. Aslam v. Mst. Rubi Akhtar*** reported as **1996 CLC 1**. Per learned Counsel even otherwise the said judgment has been challenged in High Court Appeal and has been suspended, therefore, is not applicable to the present Plaintiffs. Similarly Mr. Hyder Ali Khan, also appearing for some of the Plaintiffs submits that a judgment by Single Judge is not binding and is only persuasive, and therefore, the same is not presently applicable. He has further argued that insofar as the law regarding suspension of judgment and grant of leave by the Hon'ble Supreme Court is concerned, the same has no applicability on the present facts, as it is only a judgment of a learned Single Judge, which is under consideration. He has relied upon the case of ***Collector of Sales Tax and Federal Excise v. Messrs WYETH Pakistan Limited*** reported as **2009 YLR 2096**.

2. Learned Assistant Attorney General submits that since matter stands decided, therefore, there cannot be any exception and Suits are liable to be dismissed.

3. I have heard all the learned Counsel as well as learned Assistant Attorney General and perused the record. It is not in dispute that the issue has already been decided by a learned Single Judge of this Court

through the aforesaid Judgment against the Plaintiffs by dismissing the Suits. Insofar as the arguments of the learned Counsel for the Plaintiffs are concerned; though they may be correct to the extent that a judgment of a Single Judge is not binding on this Bench, and is only persuasive; however, if the subsequent Single Bench is of the opinion that the earlier judgment, notwithstanding its persuasiveness, enunciates a correct principle of law, and ought to be followed, then for all legal purposes it becomes a binding judgment and no further deliberation is required. It is only when the subsequent Bench is of the opinion that the earlier judgment is persuasive and is not to be considered as a binding precedent, and for some reason the subsequent Bench is not in agreement with the said judgment; only then further arguments are to be heard and at a different conclusion can be reached. In this case, this is not so. In that context I would like to make it clear that a Single Bench decision of my learned brother is not binding on me but I can certainly take note of it till such time that the judgment is set aside and when their Lordships of the Supreme Court do so decide I will of course loyally and obediently follow such judgment of the Supreme Court. On the other hand I am not prepared to assume that simply because leave has been granted against a judgment that judgment ceases to be good or necessarily wrong. We will accept the law as laid down by the Supreme Court but until such law is laid down the mere grant of leave will not preclude me from referring to such judgment and even following it to some extent or even adopting the reasons on which the judgment of my learned brother is based<sup>1</sup>. I am fully in agreement with the earlier view, and therefore, I am not inclined to consider any further arguments and draw any exception to it. It was further argued that the Judgment has

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<sup>1</sup> Muhammad Ismail v The State (PLD 1974 Karachi 29)

been impugned before a Division Bench of this Court, and has been suspended, and an attempt was made that since appeal is pending, therefore, these Suits may also be kept pending. However, it is settled law that suspension of judgment is always inter-se parties and this Court after having concurred with the view of another learned Single Judge is bound by the said judgment; hence this argument cannot be sustained. Reliance may also be placed on the case of ***Yousuf A Mitha v Aboo Baker (PLD 1980 Karachi 492)***.

4. The learned Single Judge in the earlier case has considered the entire aspect of the case regarding validity of tax on issuance of bonus shares and formulated the following legal Issue:-

Whether Sections 2(29), 39(1) (M), 236-M and 236-N of the Income Tax Ordinance, 2001 as inserted through the Finance Act, 2014 are ultra vires of the law and the Constitution?"

5. The same was answered against the Plaintiffs. Since only a legal controversy is involved and can be decided by this Court in terms of Order 14 Rule 2 CPC, therefore, the above issue is also adopted for adjudication in this matter and for the reasons already recorded in the judgment as above (dated 8.9.2015 in Suit No.1764/2014 and other connected matters) all listed Suits stands dismissed along with pending applications. Office to prepare decree accordingly.

6. However, since the judgment stands suspended in Appeal, whereas, 50% of the disputed amount already stands deposited with the department, exercising discretion, the operation of this order is suspended for a period of 30 days from today enabling the Plaintiffs to seek remedy of appeal, if so advised.

Judge

Ayaz P.S.