IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Agha Faisal

CP D 4245 of 2017 *CP D 2403 of 2018* *CP D 1579 of 2020*	:	*Indus Motor Company Limited vs. Federation of Pakistan & Others*
For the Petitioner/s	:	Mr. Hussain Ali Almani, Advocate
For the Respondent/s	:	Mr. Kafil Ahmed Abbasi Deputy Attorney General Dr. Shahnawaz Memon Advocate for Respondent No.3 (CP D 1579 of 2020) Mr. Ameer Bakhsh Metlo Advocate for Respondent No.3 (CP D 4245 of 2017 & CP D 2403 of 2018)
Date/s of hearing	:	03.11.2020
Date of announcement	:	22.12.2020

JUDGMENT

Agha Faisal, **J**. The issue agitated before us in the present petitions pertains to the substitution of Division VII ("Division VII") of Part 1 of the First Schedule of the Income Tax Ordinance 2001 ("Ordinance") vide the Finance Act 2016 ("FA 2016"). The crux hereof is whether the substitution culminated in the deletion of the provisos in Division VII; hence, providing a lower incidence of taxation *inter alia* in respect of debt securities and investments in mutual funds. It is considered illustrative to reproduce the relevant pre amendment provision of the law as well as the text of the substitution carried out vide the FA 2016.

Pre FA 2016

"DIVISION VII
CAPITAL GAINS ON DISPOSAL OF SECURITIES

The rate of tax to be paid under section 37A shall be as follows:

S. No.	Period	Tax Year 2015	Tax Year 2016
1.	Where holding period of a security is less than twelve months	12.5%	15%
2.	Where holding period of a security is twelve months or more but less than twenty four moths	10%	12.5%
3.	Where holding period of a security is twenty four months or more but less than four years	0%	7.5%
4.	Where holding period of security is more than four years	0%	0%

Provided that the rate of companies shall be as specified in Division II of Part I of First Schedule, in respective of debt securities;

Provided further that a mutual fund or a collective investment scheme or a REIT scheme shall deduct Capital Gains Tax at the rates as specified below, on redemption of securities as prescribed, namely:-

Category	Rate
Individual and association of persons	10% for stock funds 10% for other funds
Company	10% for stock funds 25% for other funds

Provided further that in case of a stock fund if divided receipts of the fund are less than capital gains, the rate of tax deduction shall be 12.5%:

Provided further that no capital gains tax shall be deducted, if the holding period of the security is more than four years."

Substitution vide FA 2016

"5. Amendment of the Ordinance XLIX of 2001. In the Income Tax Ordinance 2001 (XLIX of 2001), the following further amendments shall be made, namely: ….

(ii) for Division VII, the following shall be substituted, namely:

(Underline added for emphasis.)

"DIVISION VII
CAPITAL GAINS ON DISPOSAL OF SECURITIES

The rate of tax to be paid under section 37A shall be as follows:

S.No.	Period	Tax Year 2015	Tax Year 2016	Tax Year 2017	
				Filer	Non-Filer
1.	Where holding period of a security is less than twelve months	12.5%	15%	15%	18%
2.	Where holding period of a security is twelve months or more but less than twenty-four months	10%	12.5%	12.5%	16%
3.	Where holding period of a security is twenty-four months or more but the security was acquired on or after 1st July, 2012	0%	7.5%	7.5%	11%
4.	Where the security was acquired before 1st July, 2012	0%	0%	0%	0%
5.	Future commodity contracts entered into by the members of Pakistan Mercantile Exchange	0%	0%	5%	5%"

The latter two petitions[1] pertain to the tax periods (Tax Years 2017 and 2019) post FA 2016 and claim benefit per their interpretation of the amendment. The first petition[2] pertains to tax year 2016, i.e. prior to the amendment; however, it is argued that the petitioner is entitled to the benefit with retrospective effect for that period as well. Since the subject matter is common *inter se*, therefore, these petitions were heard and reserved conjunctively and shall be determined vide this common judgment.

Factual context

2. The pre amendment verbiage of Division VII contained *provisos* having a direct effect on the rate of taxation *inter alia* in respect of debt securities and investments in mutual funds. An amendment was carried out, vide FA 2016, whereby Division VII was substituted and the verbiage of the substituted

[1] CP D 2403 of 2018 & CP D 1579 of 2020.
[2] CP D 4245 of 2017.

provision did not include the earlier provisos. The petitioner's case simply is that the provisos stand deleted; however, the respondents' case is that merely the table in Division VII has been replaced and the provisos subsist as before. The petitioner has assailed specific constituents of show cause notices[3] with respect to denial of the asserted rate of taxation in respect of debt securities and investments in mutual funds; however, the respondents have taken the primary plea that assailing show cause notices is not permissible within the confines of writ jurisdiction.

Maintainability

3. The penultimate issue before us is that of maintainability of the subject petitions. Respondents' counsel asserted that show-cause notices, or constituents thereof, cannot be assailed in writ jurisdiction[4]; hence, these petitions merit dismissal forthwith. Per petitioner's counsel a petition is maintainable where important question of interpretation of law is raised and there is no factual dispute[5]; more so if the highest authority has expressed its opinion, so resort to statutory remedies is illusory[6]; and that constituents of a show cause notice may be assailed and struck down[7].

4. The interpretation of the substitution in Division VII, vide the FA 2016, was undertaken by the Federal Board of Revenue ("FBR") vide Circular 7[8] of 2016 and it is considered illustrative to reproduce the pertinent constituent herein below:

"Government of Pakistan
Revenue Division
Federal Board of Revenue
*****

Circular No. 7 of 2016
(Income Tax)

C.No. 4(99)IT-Budget/2016-Pt-I Islamabad, the 27th July, 2016

SUBJECT: **FINANCE ACT, 2016 – EXPLANATION OF IMPORTANT AMENDMENTS MADE IN THE INCOME TAX ORDINANCE, 2001**

Finance Act, 2016 has brought certain amendments in the Income Tax Ordinance, 2001 (the Ordinance). Some important amendments are explained here under:

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[3] Individual to each respective petition.

[4] *Dr. Seema Irfan & Others vs. Federation of Pakistan & Others* reported as *PLD 2019 Sindh 516 ("Dr. Seema Irfan")*; *Deputy Commissioner Income Tax / Wealth Tax Faisalabad vs. Punjab Beverage Company (Private) Limited* reported as *2007 PTD 1347*.

[5] *Usmani Glass v. STO*, reported as *PLD 1971 SC 205*; *Dewan Cement v. Pakistan*, reported as *2010 PTD 1717*; *Filters Pakistan v. FBR*, reported as *2010 PTD 2036*; *Shahnawaz Ltd. V. Pakistan*, reported as *2011 PTD 1558*; *Engro Vopak v. Pakistan*, reported as *2012 PTD 130*; and *Association of Builders v. Sindh*, reported as *2018 PTD 1487*

[6] *Julian Hoshang Dinshaw Trust v. ITO*, reported as *1992 SCMR 250*; *Khyber Electronic Lamps v. Collector*, reported as *1996 CLC 1365*; *Collector v. SH Ahmed*, reported as *1999 SCMR 138*; *Attock Cement v. Collector*, reported as *1999 PTD 1892*; *Pak Land Cement v. CBR*, reported as *2007 PTD 1524*; and *Iqbal Hussain v. Pakistan*, reported as *2010 PTD 2338*

[7] *Engro Vopak v. Pakistan*, reported as *2012 PTD 130*; *Standard Chartered Bank v. Pakistan*, reported as *2017 PTD 1585*; and *Asia Petroleum v. Pakistan*, Unreported (*CP D 2559 of 2009 & Others*)

[8] *Circular 7 of 2016 dated 27.07.2016* ("*Circular 7*").

> Certain representations have been received in the Board as to whether tax on redemption of securities under Mutual Fund, collective investment scheme or REIT shall continue to be taxed at reduced rate or not. It is clarified that no change has been introduced in provisions in the Division VII of Part I of the First Schedule. Redemption of securities in a mutual fund, a collective investment scheme or REIT scheme shall continue to be taxed under second and third proviso read with sub-rule (1A) of Eight Schedule. Hence tax on redemption of securities under Mutual fund, collective investment scheme or REIT shall continue to be taxed at reduced rate under second and third proviso in Division VII of Part I of the First Schedule."

It is thus apparent that since the revenue authority has already interpreted the substitution under consideration; therefore, the reliance of the petitioner's counsel upon ratio of the superior court judgments[9], deeming resort to statutory remedies as illusory, is merited and duly found to be applicable to the present facts and circumstances.

5. There is no cavil to the argument that the present petitions seek interpretation of law requiring no factual determination; hence, may not be non-suited on account of maintainability[10]. Finally, in view of the binding judgments[11] referred to by the petitioner's counsel, there appears to be no impediment before us to consider the legality of the impugned constituents of the show-cause notices under scrutiny.

6. In so far as the respondents' reliance upon authority, assailing the maintainability of the present petitions, is concerned, we are of the view that such reliance does not augment their case in the present scenario. *Dr. Seema Irfan* is a judgment of an earlier Division bench[12] of this court wherein a myriad of commonwealth authority was sieved to maintain that a show-cause notice may not ordinarily be justiciable in writ jurisdiction; unless it is manifest *inter alia* that the same suffers from want of jurisdiction; amounts to an abuse of process; and / or is *mala fide*, unjust and / or prejudicial towards the recipient. It is clear that the embargo on entertaining a challenge to a show-cause notice was adjudged to be qualified. In our deliberated view that the petitioner's counsel has ably set forth a case for the present petitions to qualify within the exception to the rule; hence, the respondents' challenge to maintainability cannot be sustained.

7. In view of the foregoing it is observed that the present petitions are maintainable and warrant determination upon their respective merits.

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[9] *Julian Hoshang Dinshaw Trust v. ITO*, reported as *1992 SCMR 250*; *Khyber Electronic Lamps v. Collector*, reported as *1996 CLC 1365*; *Collector v. SH Ahmed*, reported as *1999 SCMR 138*; *Attock Cement v. Collector*, reported as *1999 PTD 1892*; *Pak Land Cement v. CBR*, reported as *2007 PTD 1524*; and *Iqbal Hussain v. Pakistan*, reported as *2010 PTD 2338*

[10] *Usmani Glass v. STO*, reported as *PLD 1971 SC 205*; *Dewan Cement v. Pakistan*, reported as *2010 PTD 1717*; *Filters Pakistan v. FBR*, reported as *2010 PTD 2036*; *Shahnawaz Ltd. V. Pakistan*, reported as *2011 PTD 1558*; *Engro Vopak v. Pakistan*, reported as *2012 PTD 130*; and *Association of Builders v. Sindh*, reported as *2018 PTD 1487*

[11] *Engro Vopak v. Pakistan*, reported as *2012 PTD 130*; *Standard Chartered Bank v. Pakistan*, reported as *2017 PTD 1585*; and *Asia Petroleum v. Pakistan*, Unreported (*CP D 2559 of 2009 & Others*)

[12] Of which one of us was a member, *Agha Faisal J*.

Effect of substitution of Division VII vide FA 2016

8. The FA 2016 clearly stipulates that "***for Division VII the following shall be substituted***". It is settled law that fiscal statutes are to be strictly construed[13] so the question is whether the substituted content is to be taken as that expressed in the FA 2016 or the interpretation propagated by the respondents.

9. The term *substitute* is dictionary defined as taking the place of another[14]. Judicial interpretation[15] has been afforded to the said term to mean that it may be employed to signify replacement or cancellation of the previous one. Learned Deputy Attorney General graciously assisted us in this regard by placing before us a judgment[16] of Indian Supreme Court wherein it was held as follows:

> "The word substituted has its own significance. In Government of India & Ors. V. Indian Tobacco Association, this Court noted dictionary meaning of the word substitute as can be seen from para 15 of the said judgment:
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> > 15. The word substitute ordinarily would mean to put (one) in place of another; or to replace. In Black's Law Dictionary, 5th Edn. at p. 1281, the word substitute has been defined to mean to put in the place of another person or thing, or to exchange. In Collins English Dictionary, the word substitute has been defined to mean to serve or cause to serve in place of another person or thing; to replace (an atom or group in a molecule) with (another atom or group); or a person or thing that serves in place of another, such as a player in a game who takes the place of an injured colleague.
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> 13) This expression has also come up for interpretation by the Courts in Zile Singh v. State of Haryana and Others, the import and impact of substituted provision were discussed in the following manner:
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> > 23. The text of Section 2 of the Second Amendment Act provides for the word upto being substituted for the word 5 (2005) 7 SCC 396 6 (2004) 8 SCC 1 after. What is the meaning and effect of the expression employed therein shall be substituted?
> >
> > 24. The substitution of one text for the other pre-existing text is one of the known and well-recognised practices employed in legislative drafting. Substitution has to be distinguished from suppression or a mere repeal of an existing provision.
>
> 14) Ordinarily wherever the word substitute or substitution is used by the legislature, it has the effect of deleting the old provision and make the new provision operative. The process of substitution consists of two steps: first, the old rule is made to cease to exist and, next, the new rule is brought into existence in its place. The rule is that when a subsequent Act amends an earlier one in such a way as to incorporate itself, or a part of itself, into the earlier, then the earlier Act must thereafter be read and construed as if the altered words had been written into the earlier Act with pen and ink and the old words scored out so that thereafter there is no need to refer to the amending Act at all. No doubt, in certain situations, the Court having regard to the purport and object sought to be achieved by the Legislature may construe the word "substitution" as an "amendment" having a prospective effect. Therefore, we do not thing that it is a universal rule that the word substitution necessarily or always connotes two severable steps, that is to say, one of repeal and another of a fresh enactment even if it implies two steps. However, the aforesaid general meaning is to be given effect to, unless it is found that legislature intended otherwise…"

It would therefore be safe to conclude that when the legislature employed the word substitute[17]; the plain meaning thereof appears to be replacement of the entire provision as it has the effect of deleting the old provision and make the new provision operative.

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[13] *Pakistan Television v. CIR*, reported as *2019 PTD 484*.

[14] Black's Law Dictionary, page 1567 of the Ninth Edition.

[15] *[N N Chakravarty vs. State of Assam* reported as *AIR 1960 Assam 11*; *I C Sharma vs. Union of India* reported as *(1992) 21 ATC 63 at 64*; *Vijaylakshmi Rice Mills New Contractors Company vs. State of Andhra Pradesh* reported as *1976 UJ (SC) 367*; Judicial Dictionary, 13th Edition, K J Aiyar at page 935.

[16] Per *A K Sikri J* in *Gottumkkala Venkata Krishnaamraju vs. Union of India & Others (Writ Petition (Civil) 732 of 2018*.

[17] In the FA 2016 with respect to Division VII.

Contrast in verbiage

10. The aforementioned view is bolstered by the verbiage employed by the legislature in the very statute, FA 2016, while amending Division VIII of Part 1 of the First Schedule to the Ordinance. The said provision chronologically followed the amendment to Division VII and it was specifically expressed that "*in Division VIII, for the **Table**, the following shall be substituted*". It is clear that the verbiage herein is at a stark contrast to the verbiage employed for substitution of Division VII as it is manifest that only the table is to be substituted. No argument was advanced before us to explain as to why the same verbiage, i.e. replacement of the table/s only, was not employed by the legislature for the amendment to Division VII; if the desired effect was contemplated to be the same.

Contrast between charging section and collection provision

11. The respondents had argued that notwithstanding their reliance upon the Circular 7[18], the provisos had in any event been saved by virtue of section 100B read with Rule1(1A) of the Eighth Schedule[19] ("Rule1A").

12. Section 37A[20] of the Ordinance stipulates that capital gains, unless exempt, shall be chargeable to tax at the rate specified in Division VII. While the statute appears to have deleted the relevant provisos completely, however, Rule 1A states that second and third proviso in Division VII regarding capital gains arising on redemption of securities shall continue to apply.

13. It is imperative to record that section 37A of the Ordinance is the charging section for the present purposes; whereas, Rule 1A is a constituent of the collection mechanism. There appears to be a *prima facie* inconsistency between the charging section and the collection mechanism, however, it is settled law that under such circumstances primacy is to be accorded to the statute itself and since a provision providing for a mode of collection could not

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[18] *Circular 7 of 2016 dated 27.07.2016* ("*Circular 7*").

[19] 1. Manner and basis of computation of capital gains and tax thereon. (1) Capital gains on disposal of listed securities, subject to tax under section 37A, and to which section 100B apply, shall be computed and determined under this Schedule and tax thereon shall be collected and deposited on behalf of taxpayers by NCCPL in the manner prescribed.
(1A) Capital gains on disposal of units of open ended mutual funds and to which section 100B apply, shall be computed and determined under this Schedule and tax thereon shall be collected and deposited by NCCPL in the prescribed manner: Provided that second and third proviso in Division VII of Part I of the First Schedule regarding capital gains arising on redemption of securities shall continue to apply.

[20] 37A. Capital gain on disposal of securities.—(1) The capital gain arising on or after the first day of July 2010, from disposal of securities, other than a gain that is exempt from tax under this Ordinance], shall be chargeable to tax at the rates specified in Division VII of Part I of the First Schedule..

be equated to the charging section, hence, the collection mechanism could neither abridge nor expand the scope of the charging provision of an act[21].

14. The august Court has held[22] that a statute was the edict of the legislature and the language employed in the statute was determinative of the legislative intent and a taxpayer could only be obligated to pay tax if an obligation was imposed thereupon. In view of our findings supra it is observed that nothing has been placed before us to suggest that the obligation of the petitioner to pay tax at the pre amendment rate subsists post substitution of Division VII vide the FA 2016; at least in respect of tax years 2017 and 2019.

15. Petitioner's counsel had also highlighted another aspect with regards to the machinery provision of section 100B[23] of the Ordinance. Subsection 2(d) thereof specifies that the provisions of subsection 1 shall not apply to companies in respect of debt securities. The benefit of this exclusion only applies to the petitioner in respect of CP D 1579 of 2020, as it is the only petition wherein the rate of taxation in respect of debt securities is assailed; however, since we have already concluded that Division VII stood entirely substituted vide the FA 2016, therefore, further deliberation in this regard is not merited at this juncture.

Benefit of interpretation

16. It is trite law that interpretation of a fiscal statute has to be made strictly and any doubts arising from the interpretation of a fiscal provision must be resolved in favor of the taxpayer. The august Court[24] has summarized the settled principles in such regard and enunciated as follows:

> "i. There is no intendment or equity about tax and the provisions of a taxing statute must be applied as they stand;
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> ii. The provision creating a tax liability must be interpreted strictly in favor of the taxpayer and against the revenue authorities;
>
> iii. Any doubts arising from the interpretation of a fiscal provision must be resolved in favor of the taxpayer;
>
> iv. If two reasonable interpretations are possible, the one favoring the taxpayer must be adopted;"

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[21] Per *Saqib Nisar CJ (as he then was) in Pakistan Television v. CIR*, reported as *2019 PTD 484*.

[22] Per *Saqib Nisar J (as he then was)* in *Pakistan Television v. Commissioner Inland Revenue*, reported as *2017 SCMR 1145*.

[23] 100B. Special provision relating to capital gain tax. (1) Capital gains on disposal of listed securities and tax thereon, subject to section 37A, shall be computed, determined, collected and deposited in accordance with the rules laid down in the Eighth Schedule.
(2) The provisions of sub–section (1) shall not apply to the following persons or class of persons, namely: (a) a mutual fund; (b) banking company, a non-banking finance company and an insurance company subject to tax under the Fourth Schedule; (c) a modaraba; 3 (d) a company, in respect of debt securities only; and (e) any other person or class of persons notified by the Board.

[24] *Pakistan Television v. CIR*, reported as *2019 SCMR 282*; reiterating *Pakistan Television v. CIR* reported as *2017 SCMR 1136*.

> v. When a tax is clearly imposed by a statutory provision any exemption from it must be clearly expressed in the statute or clearly implied from it;
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> vi. Where the taxpayer claims the benefit of such express or implied exemption, the burden is on him to establish that his case is covered by the exemption;
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> vii. The terms of the exemption ought to be reasonably construed; and
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> viii. If a taxpayer is entitled to an exemption on a reasonable construction of the law it ought not to be denied to him by a strained, strict or convoluted interpretation of the law."

A Division Bench of this Court had observed in *Citibank*[25] that it is a fundamental principle of interpreting fiscal statutes that there is no intendment or equity with regard to the charging provision, which must be applied as they stand. *Munib Akhtar J* maintained the established principle of law that even if two reasonable interpretations were possible, the one favoring the taxpayer would be adopted[26].

17. In view of the foregoing, bolstered by reliance upon the binding ratio that fiscal statutes ought to be strictly construed and any doubts arising from the interpretation of a fiscal provision must be resolved in favor of the taxpayer[27], it is our deliberated view that the substitution carried out in Division VII, vide the FA 2016, replaced the entire constituent thereof (which includes the provisos still being relied upon by Respondents) and not merely the tables therein.

Petitions[28] *for the tax period post FA 2016*

18. It is an admitted position that Division VII has not been amended / substituted, vide subsequent finance acts[29] or otherwise, to reinsert the provisos under deliberation. The department has relied upon its own interpretation of the law, vide Circular 7[30], to read Division VII in a manner inconsonant with our findings, as contained supra. In such regard it is our considered view that the benefit of the post amendment Division VII, without recourse to the pre amendment provisos, ought to have been accorded to the petitioner; hence, the impugned constituents[31] of the show cause notices, impugned in the said petitions, are found to be an abuse of process, unjust and prejudicial towards the petitioner.

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[25] Per *Munib Akhtar J* in *Citibank NA vs. Commissioner Inland Revenue* reported as *2014 PTD 284*; cited with approval by the honorable Supreme Court in *Pakistan Television*.

[26] Reliance is also placed upon *Oxford University Press vs. Commissioner of Income Tax & Others* reported as *2019 SCMR 235*; Per *Munib Akhtar J*.

[27] *Pakistan Television v. CIR*, reported as *2019 SCMR 282*

[28] CP D 2403 of 2018 & CP D 1579 of 2020.

[29] Finance Acts 2017, 2018 and 2019.

[30] *Circular 7 of 2016 dated 27.07.2016* ("*Circular 7*").

[31] Paragraph 3 of the Show Cause Notice dated 20.03.2018 impugned in CP D 2403 of 2018 and Paragraphs 3 & 4 of the Show Cause Notice dated 29.11.2019 impugned in CP D 1579 of 2020.

Petition[32] *for the tax period pre FA 2016*

19. The petitioner's case was that beneficial amendments apply retrospectively and since the amendment though FA 2016 was made while its return had yet to be filed and assessment order was pending; hence, the petitioner is entitled to the benefit of the substitution with retrospective effect[33]. It was alternatively argued that since the petition is for tax year 2016 and the amendment in question is effective from 1.7.2016, hence, it would also apply to the said tax year.

20. As a general rule amendments introduced vide fiscal statutes are prospective in nature and charging provisions are to be applied prospectively[34], unless retrospective effect has been accorded thereto by the legislature itself[35], however, assessment or recovery provisions could be considered retrospective unless the enactment expressed or implied otherwise. It is a general rule that a retrospective impact was to be avoided unless the express language of the enactment warranted such an interpretation.

In the present case primacy has been given to the charging provision of the law over the recovery provision, since the latter does not confer any benefit upon the tax payer in any event, hence, no case has been set forth to consider the effect of the amendment to Division VII vide the FA 2016 to apply retrospectively in the said circumstances.

21. Even in the context of beneficial legislation it is has been held that retrospective effect is designed to soften an injury, occasioned through no fault of the tax payer, or that such effect may be considered unless made prospective by implication. There is no injury demonstrated before us as varying rates of taxation could not be equated as such; and finance acts are considered to have prospective effect, unless stipulated otherwise. The law envisages protection of a tax payer's vested rights so that its position is not altered to its detriment by a subsequent enactment. If the principle of retrospective effect is given to all incidences of lowering of tax rates, vide

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[32] CP D 4245 of 2017.

[33] *CIT v. Shahnawaz*, reported as *1993 SCMR 73*; *Gulistan Textile Mills v. Collector (Appeals)*, reported as *2010 PTD 2148*; *CIT v. BRR Investments*, reported as *2011 PTD 2148*; *Kurdistan Trading Company v. C.I.R.*, reported as *2014 PTD 339*; and *China Harbor Engineering Company v. FoP*, reported as *2016 PTD 427*

[34] Per *Yahya Afridi J* in *Super Engineering & Another vs. CIR* reported as *2019 SCMR 1111*; Per *Saqib Nisar CJ (as he then was)* in *Member BOR Punjab & Others vs. Qaisar Abbas & Others* reported as *2019 SCMR 446*; Per *Iftikhar Muhammad Chaudhry J (as he then was)* in *Zila Council Sialkot vs. Abdul Ghani & Others* reported as *PLD 2004 Supreme Court 425*.

[35] Per *Umar Atta Bandial J* in *CIR vs. Trillium Pakistan (Private) Limited* reported as *2019 SCMR 1643*; Per *Asif Saeed Khosa J* in *Government of Sindh vs. Khan Ginners (Private) Limited & Others* reported as *PLD 2011 Supreme Court 347*;

finance acts, then the entire scheme of revenue generation for specific periods may stand altered by subsequent legislation.

22. A tax year is defined in the Ordinance[36] and provides that for the purposes of this Ordinance and subject to the pertinent section, the tax year shall be a period of twelve months ending on the 30th day of June and shall, subject to sub-section (3), be denoted by the calendar year in which the said date falls, meaning thereby that for year ending on 30.6.2016 the tax year would be 2016. In this context, we find that the tax rates legislated vide the FA 2016, in respect of Division VII, could not be given retrospective effect for a tax year already concluded prior to enactment of FA 2016. Moreover, in the pre amendment table, the rates for tax year 2016 were already notified; the applicable rates were stated therein subject to the provisos, which post amendment did not subsist. Therefore, we are respectfully unable to concur with the proposition that the new table, post amendment (in absence of the provisos), would also apply to tax year 2016.

23. In view of the discussion and reasoning delineated supra, the petitions under scrutiny are determined in seriatim as follows:

a. The first petition pertaining to the tax period pre FA 2016, being CP D 4245 of 2017, is determined to be devoid of merit, hence, dismissed.

b. The subsequent petitions pertaining to the tax periods post FA 2016, being CP D 2403 of 2018 and CP D 1579 of 2020, are determined to warrant interference in the exercise of writ jurisdiction; hence, the impugned constituents[37] of the show cause notices impugned in the said petitions are hereby quashed.

JUDGE

JUDGE

[36] Section 2(68) read with section 74 of the Ordinance.

[37] Paragraph 3 of the Show Cause Notice dated 20.03.2018 impugned in CP D 2403 of 2018 and Paragraphs 3 & 4 of the Show Cause Notice dated 29.11.2019 impugned in CP D 1579 of 2020.