

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.D-8233 of 2019 a/w

C.Ps. No.D-8164, 8234 to 8247, 8271 to 8284, 8342 to 8245, 8367 to 8377, 8382, 8385, 8389, 8390, 8394 to 8397, 8403, 8416, 8417, 8427 to 8434, 8442, 8443, 8446, 8447 to 8453, 8470, 8499, 8500, 8501, 8502, 8503, 8506, 8507, 8508, 8517, 8518, 8525 to 8532, 8534, 8539, 8540, 8543 to 8547, 8552, 8559, 8560 & 8561 of 2019

C.Ps. No.D-2048, 2049, 2208, 2209, 2210, 2456, 2652, 2661, 355 to 359, 3615, 6487, 6497, 6498, 6582, 6583, 659, 660, 661, 665, 6682, 6727, 6728, 6729, 6771, 6792, 6807, 6814, 6815, 6816, 6818, 6823 & 6823 of 2020

C.Ps. No.D-1351, 1828, 1829, 1830, 335, 4, 5, 6, 7, 8, 9, 444 & 955 of 2021

C.Ps. No.D-111 to 115, 139, 140, 141, 1517, 1518, 1718, 2494, 3049, 357, 36, 464, 52 to 55, 60, 61, 62, 63, 65, 7540, 93, 94 & 993 of 2022

Date	Order with signature of Judge(s)
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PRIORITY

1. For hearing of CMA No.36288/2020.
2. For hearing of main case.

07.02.2023

Advocates for the Petitioners

Messrs Rashid Anwar, Anwar Kashif Mumtaz, Naveed A. Andrabi, Ammar A. Saeed, Usman Alam, Hussain Ali Almani, Hyder Ali Khan, Ameen M. Bandukda, Sami-ur-Rehman, Syed Muhammad Ali Mehdi, Imran Iqbal Khan, Ovais Ali Shah, Abid H Shaban, Basil Nabi Malik, Naeem Suleman, Tauqeer Randhava, Asghar Bangash, Ali Akbar Poonawala, Kashan Ahmed, Arshad Hussain Shehzad, Maimona Nasim, Syed Danish Ghazi, Maaz Waheed, Qazi Umair Ali, Muhammad Inziam Sharif, Fahim Bhayo, Muhammad Din Qazi, Abdul Rahim Lakhani, Abdul Jabbar Mallah, Atta Muhammad Qureshi, Ameer Haider Khan, Maryam Riaz, Imtiaz Ali Sahito, Naveeda Bisharat, Imtiaz Ali, Sufiyan Zaman, Muneeb U Qidwai, Jawaid Farooqi, Umer Ilays Khan, Faiz Durrani, Samia Faiz Durrani, Ghulam Muhammad, Gharib Shah, Bilal Ahmed Khan, Rizwan Ahmed, Emad ul Hasan, Syed Aamir Ali Shah, Farhan Ali Shah, Faizan Faizi & Ali Nawaz Khuhawar.

Advocates for the Respondents

Messrs Ameer Bakhsh Metlo, Dr. Shah Nawaz, Rana Sakhawat Ali, Shahid Ali Qureshi, M. Taseer Khan, Iqbal, Fayaz Ali Metlo, Imran Ali Mithani, Alizeh Shahani, Qaim Ali Memon, Munawwar Ali Memon, Khalid Mehmood Siddiqui, Zohaib Ahmed, Fozia M. Murad, Muhammad Bilal Bhatti, Ayaz Sarwar Jamali, Riaz Sarwar Jamali, Motia Sikandar on behalf of Muhammad Zubair Hashmi, Bushra Zia, Asma Zehra, Irfan Mir Halepota, Farha Naz Qazi, Tauqeer Ahmed Seehar, Iqbal Hussain, Fouzia M. Murad, Sami Malik, Arshad Ali Tunio, Imzan Ahmed Maitlo, Muhammad Idrees Rahmoon, Zulfiqar Ali Jalbani, Ali Tahir, Hafeezulah, Syed Mohsin Imam, Abdul Sattar Pathan, Barrister S. Ahsan Ali Shah, Abdul Sami, Barrister Faheem Raza, Asif Ali Siyal, Mujeeb Zeeshan Kumbhar, Sajjad Ali Solangi., Manzooran Gopan (Law Officer, Law Department), Qazi Ayazuddin Qureshi & G.M. Bhutto (Assistant Attorney General).

Section 65B was inserted into the Income Tax Ordinance 2001 vide Finance Act 2010 and it conferred a tax credit for investment, provided that the requisite investment and installation of the pertinent plant and

machinery took place within a specified time. The time frame was extended from time to time through amendments to the provision through respective Finance Acts. Post the Finance Act 2018 the benefit was statutorily stated to remain in effect till 30th June 2021 and provided for a ten percent tax credit for qualifying companies. Vide Finance Act 2019, the provision was varied and the time period was abridged to expire on 30th June 2019 and in addition thereto for the tax year 2019 the quantum of the tax credit was curtailed to five percent.

The Petitioners have challenged the constitutionality of section 65 B of the Income Tax Ordinance 2001, as amended vide the Finance Act 2019, *inter alia*, upon grounds that past and closed transactions cannot be reopened; vested rights created through a specific provision cannot be rescinded by amendment of the same provision; while construing a provision intending a retrospective effect, and dealing with vested rights, the words used therein cannot be stretched to include matters that do not fall within the plain language thereof; and that the provision in its present form was confiscatory in nature.

Arguments heard. For reasons to be recorded later and subject to what is set out therein by way of amplification or otherwise, these petitions are allowed in terms of and to the extent restricted herein below:

1. Section 65B(2) of the Income Tax Ordinance 2001 is read to reflect that the provisions of sub-section (1) shall apply if the plant and machinery was purchased before the 30th day of June 2019 and installed before the 30th day of June 2021.

2. Subject to the foregoing, section 65B(3) of the Income Tax Ordinance 2001 is read to reflect that the amount of credit admissible under this section shall be deducted from the tax payable by the taxpayer in respect of the tax year in which the plant or machinery, under reference, is installed.

3. The determination of whether the purchase and installation, of the pertinent plant and machinery, was concluded within the period specified supra shall be undertaken by the department in respective proceedings pending or initiated there before.

4. Notwithstanding the foregoing, the 1st proviso to section 65B(1) of the Income Tax Ordinance 2001, inserted vide Finance Act 2019, is hereby struck down.

The office is instructed to place copy of this order in each of the listed petitions.

JUDGE

JUDGE