

## IN THE HIGH COURT OF SINDH AT KARACHI

Present:  
Mr. Justice Muhammad Shafi Siddiqui  
Mr. Justice Agha Faisal

Income Tax Cases No.233 to 238 of 2001

The Commissioner Income Tax  
Versus  
Karachi Stock Exchange (G) Ltd.

Date of Hearing: 03.05.2023  
Appellant: Through Mr. Munawwar Ali Memon Advocate  
Respondent: Through Mr. Abdul Khaliq Khatri Advocate.

### J U D G M E N T

**Muhammad Shafi Siddiqui, J.**- Appellant's counsel argued this bunch of Income Tax Cases filed under section 136(2) of Income Tax Ordinance, 1979 from the record of Income Tax Case No.233 of 2001, which would cover all other connected cases, since a solitary common question of law is proposed i.e.

*Whether on facts and circumstances of the case learned ITAT was justified in holding that income from property is exempted from tax under Clause (93) of Second Schedule to Ordinance 1979 despite of the fact that it was neither a religious nor a charitable institution?*

2. Counsel has not pressed into service the first question as proposed in the memo. Tribunal decided the appeals on 26.07.2000 whereas an application under section 136(1) under Income Tax Ordinance, 1979 was filed for referring the matter to the High Court on the question proposed by appellant which application was declined on 31.03.2001<sup>1</sup> hence these Income Tax Cases filed on 28.09.2001, within 120 days of such receipt.

3. We have heard the learned counsel for parties and perused record.

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<sup>1</sup> Served on 31.05.2021

4. The Deputy Commissioner of Income Tax, as empowered at the relevant time, under the regime of Ordinance 1979, on perusal of the statement of changes took a notice that certain components of the revenues as generated, was not declared by the respondent as part of the revenue operation. In response thereto the authorized representative of the assessee/respondent was then required to identify source of such receipts in terms of Section 62 of the ibid Ordinance and various information were called for. The response of the representative of the assessee/respondent was to the extent that the revenue was by way of premium (“*Salami*”) for granting permission to operate from portions (cubicals) of the property of respondent, as identified in terms of the agreement, separately executed in that regard. The revenue so generated formed part of the capital reserve.

5. Reliance was placed on Clause (93) of Second Schedule of 1979 Ordinance which reads as under:-

*“Income of Religious or charitable trust etc.- Any income which is derived from investments in securities of the federal government and house property held under trust or other legal obligations, wholly, or in part only, for religious or charitable purposes and is actually applied or finally set apart for application thereto.”*

6. The Second Schedule of the ibid Ordinance exempts certain incomes or classes of income or persons or classes of persons enumerated therein from tax subject to the conditions and to the extent specified thereunder.

7. The respondent (Karachi Stock Exchange/Pakistan Stock Exchange) seeks exemptions of certain revenue as identified above, under Clause (93) of ibid Second Schedule. It is further claimed that firstly Karachi Stock Exchange (Now Pakistan Stock Exchange), which is a company by guarantee, means no dividends are to be paid to its members and secondly that, as is evident from the Memorandum &

Articles of Association, the property of the company is under legal obligation for utilizing its income for the object of the company. The company/assessee's exemption thus stated and claims to have nexus with Clause (93) above and the revenue so identified relates to property held under legal obligation for religious and charitable purposes.

8. The charitable purpose is defined under section 2(14) of *ibid* Ordinance as under:-

*“(14) “charitable purpose” includes relief of the poor, education, medical relief and the advancement of any other object of general public utility ;”*

It is the last component of this definition i.e. *“advancement of any other object of public utility”* which is pressed into service by the respondent for the purposes of exemption, as claimed.

9. Respondent Karachi Stock Exchange (Now identified as Pakistan Stock Exchange) is a commercial organization and is engaged in business of trading securities. It forms a main commercial hub where facilities for securities' trade are provided wherein members operating there from assemble for their financial gains besides other support to cater their financial growth such as outlets of any financial institutions including Banks whose existence is inevitable for such operations from the subject property, on payment of consideration which is called *“Salami”* by the respondent and seeks exemption of such revenue in this regard. The entity of Karachi Stock Exchange/Pakistan Stock Exchange, now or at the relevant time, can neither be equated to have been operating for charitable purposes or for imparting relief to the poor, education or medical issues nor for the advancement of any other object of public utility. As an ancillary cause the benefit may have been bubble over to individuals having interest in security trade through entrusted members and having commercial interest in dealing with trade of securities through the members of the Stock Exchange but to apply such exemption

to the revenue generated by respondent is not sufficient to categories this event/activity of trade as advancement of any other object of public utility, let alone other phrases like for poor, education and medical relief.

10. Primarily, from the specified portions of that building/property the individuals are looking after their own monetary interests and revenue component, so generated, either as a commission in trade of securities or as license fee for operating from a particular portion of that property or rent for occupying the cubical/portions, as in the case of Banks operating on payment of consideration, in no way termed to be an activity to keep the respondent under the umbrella of charitable activity or an act towards “advancement of any other object of general public utility.

11. The conclusion drawn by the Income Tax Appellate Tribunal in terms of paragraph 45 and 46, which are reproduced as under, ***do not find support of law:-***

*“45. We find that the aims and objects of the appellant are not only to further the interests of brokers and dealers but also to assist, regulate and control the trade in securities, to maintain high standards of commercial honour and integrity, to promote and include honourable practices, discourage and suppress malpractices, to settle disputes and decide all questions of usage, custom or courtesy in the conduct of trade and business. As such, on the ratio of decisions supra, the aforementioned objects are found to be serving a charitable purpose because an object beneficial to a section of public is an object of general public utility. We further find that appellant’s membership comprises a section of community sufficiently defined and identifiable by a common quality of a public and in personal nature. It is further found that the house property owned by the appellant is held under a legal obligation for either being used by the appellant in pursuance of its objects or, if let out, the income derived from such property is either actually applied or set apart for application thereto for being expended within Pakistan.*

*46. Accordingly, we held that the income derived by the appellant from property is exempted from tax under clause (93) of Part I of the Second Schedule to the Income Tax Ordinance, 1979 and direct the DCIT to allow the exemption.”*

12. We do not subscribe to such findings of Income Tax Appellate Tribunal in view of our understanding of law as relates to Clause (93) of the Second Schedule of Income Tax Ordinance, 1979 and the relevant definitions of charitable purposes in terms of 2(14) of the ibid Ordinance. Reliance is placed on the pronouncement of this Court in an unreported case i.e. C.P. No.D-3601 of 2018 (Pakistan Stock Exchange Limited v. Sindh & others). Resultantly, we allow these Income Tax Cases by replying the only question proposed and reproduced above in “negative” in favour of the appellant department and against the respondent, resultantly the orders of Commissioner/Deputy Commissioner is maintained.

13. A copy of the order be sent under the seal of the Court and the signature of the Registrar to the Appellate Tribunal Inland Revenue Karachi in terms of Section 133(5) of Income Tax Ordinance, 2001.

Dated:

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