

***IN THE HIGH COURT OF SINDH AT KARACHI***

**PRESENT:**

Mr. Justice Aqeel Ahmed Abbasi  
Mr. Justice Abdul Mobeen Lakho

**Constitution Petition No. D – 4178 of 2023**

**&**

**Constitution Petition No. D – 4297 of 2023**

PETITIONER : Engro Corporation Limited through  
Mr. Khalid Jawed Khan, advocate.

Respondent No.1 : Federation of Pakistan through Secretary,  
Finance, Revenue & Economic Affairs  
Represented by Mr. Muhammad Qasim Khan,  
Deputy Attorney General.

Respondent No.2&3: Federal Board of Revenue & Commissioner IR  
Through Mr. Ameer Bakhsh Metlo, advocate.

Date of Hearing : 31<sup>st</sup> August; 8<sup>th</sup>, 15<sup>th</sup> Sep.; 5<sup>th</sup> & 10<sup>th</sup> Oct. 2023.

Date of Order : **10<sup>th</sup> October 2023.**

**ORDER**

**Aqeel Ahmed Abbasi, J** : - In both the constitutional instant petitions, petitioners have sought declaration to the effect that the petitioners are entitled to exemption on inter-corporate dividend received from the subsidiaries/group formed under Section 59B of the Income Tax Ordinance, 2001.

2. Notices in the above petitions were issued vide order dated 31.08.2023 in C.P.No.D-4178 of 2023, and on 08.09.2023, in C.P.No.D-4297 of 2023 respectively in the following terms:-

- “1. *Urgency granted.*
2. *Exemption granted subject to all just exceptions.*
- 3-4. *Through instant petition the petitioner has sought declaration to the effect that they are entitled to*

*exemption on inter-corporate dividend received from its subsidiaries/group formed under Section 59B of the Income Tax Ordinance, 2001 inspite of the fact that the exemption available under Clause 103(A) of the Schedule Part-I of the Income Tax Ordinance, 2001 has been omitted through Finance Act in the year 2016, but it was restored in the year 2019 through Finance Act, 2019 and thereafter, it was again omitted through Finance Act, 2021, whereas, according to learned counsel for the petitioner such insertion/amendment in the schedule would not affect the right of the petitioner as it was covered under Section 59(B) prior to omission in the year 2016.*

*Learned counsel for the petitioner, while inquired, has candidly submitted that similar petitions were dismissed by Division Bench of this Court, vide judgment dated 28.2.2023 passed in C.P.No.D-8569 of 2018 (International Brands Limited v. Federation of Pakistan & others) and other connected petitions. Copy of the same has been placed on record. It has been informed that against such judgment the petitioner has filed CPLA No.721-K to 727-K of 2023 along with other connected CPLAs, wherein, on 10.8.2023 following order has been passed:-*

**“O R D E R**

The impugned judgments have been rendered by a Division Bench of the High Court, therefore, these matters need to be fixed before a three Member Bench. However, learned counsel for the petitioners request for suspension of the operation of the impugned judgments.

2. Learned counsel appearing for the respondents waive notices in all these petitions and state that till the next date of hearing no action for recovery will be taken against the petitioners.

3. In view of the above, let these cases be fixed before a three Member Bench in the last week of this month. The respondents may file concise

statements, before the next date of hearing, if so desired. “

*Learned counsel for the petitioner submits that either instant petition may be dismissed in terms of aforesaid judgment, so that the petitioner may approach Hon’ble Supreme Court of Pakistan by filing CPLA and may obtain restraining order against recovery of disputed amount till the decision by the Hon’ble Supreme Court of Pakistan.*

*Learned counsel for the petitioner submits that another petition i.e. C.P.No.D-4178/2023 (Engro Corporation Limited v. Federation of Pakistan) is fixed today after notice, therefore, requests that instant matter also be taken up along with aforesaid petition on the next date of hearing.*

*Prima facie, we are bound by judgment of Division Bench of this Court on the similar subject matter, however, in order to obtain instance of the respondents to the extent of recovery of disputed amount, we would issue pre-admission notice to the respondents as well as D.A.G. for 15.09.2023 to be served through first three modes. Let reply/objections shall be filed with advance copy to learned counsel for the petitioner.”*

3. Pursuant to aforesaid Notices, duly served upon the respondents, no comments have been filed so far, however, learned counsel for the respondents, under instructions, submits that the controversy agitated through instant petitions has already decided vide Judgment dated 28.02.2023 passed by a Divisional Bench of this Court in Constitutional Petition No.D-8569 of 2018 [*Re: International Brands Limited v. Federation of Pakistan & others*] against the petitioner, therefore, submits that instant petitions are also liable to be dismissed in similar terms.

4. While confronted with hereinabove position, learned counsel for the petitioners has conceded to such position, however, submits that against

the aforesaid judgment, the petitioners have approached the Hon'ble Supreme Court by filing CPLA No.721-K to 727-K of 2023 [alongwith other connected CPLAs], wherein, on 10.08.2023, the Hon'ble Supreme Court was pleased to pass an order as referred to hereinabove, granting relief against recovery of the disputed amount, on the assurance given by the respondents to this effect, therefore, requests that above petitions may be dismissed in terms of the decision of the Divisional Bench of this Court as referred to hereinabove, however, in view of undertaking given before the Hon'ble Supreme Court on behalf of the department, respondents may be restrained from seeking enforcement of the recovery of the disputed amount for a period of two months from the date of the order of dismissal of above petitions, so that petitioners may also file CPLAs before the Hon'ble Supreme Court against such order and may obtain similar restraining orders, as already passed by the Hon'ble Supreme Court in the above CPLAs on 10.08.2023.

5. In response to above submissions, learned counsel for the respondents submits that Hon'ble Court may pass appropriate order as may deem necessary under the circumstances of the case, however, since no instruction in this regard have been issued by the department, therefore, he is not in a position to concede to such request.

6. In view of hereinabove facts and circumstances of the case, by respectfully following the judgment already passed by a Divisional Bench of this Court in C.P.No.D-8569 of 2018 [*Re: International Brands Limited v. Federation of Pakistan & others*], instant Constitutional Petitions are dismissed in similar terms alongwith all listed/pending applications. However, keeping in view the order passed by the Hon'ble Supreme Court in CPLA No.721-K to 727-K of 2023 [alongwith other connected CPLAs], wherein, respondents have given undertaking not to enforce the recovery of the disputed amount, we may grant four (04) weeks' time to the

petitioners from the date of receipt of this order to approach the Hon'ble Supreme Court by filing CPLAs, if so advised, and to obtain appropriate orders against recovery of the disputed amount, as referred to hereinabove and till then, respondents shall not enforce the recovery of the disputed amount from the petitioner.

It is, however, clarified that restraining order passed today will cease to have effect after four (04) weeks' from the date of receipt of this order.

Instant Constitutional Petitions stands dismissed in the above terms alongwith all listed/pending applications.

**JUDGE**

**JUDGE**

**A.S.**