

**ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI**

C.P. No.D-6752 of 2022

Along with C.Ps. No.D-4982 of 2019 and D-1507 of 2023

DATE	ORDER WITH SIGNATURE OF JUDGES
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Priority

1. For hearing of Misc. No.14552 of 2023
2. For hearing of Misc. No.28514 of 2022
3. For hearing of main case

06.03.2025

M/s. Khalid Jawed Khan, Umer Akhund, Ali Almani and Arshad Hussain Shahzad, Advocates for the Petitioners

M/s. Faheem Ali Memon and Muhammad Aqeel Qureshi, Advocates for the Respondent

Ms. Alizeh Bashir, Assistant Attorney General, Pakistan

We have partly heard all learned Counsel. It appears that controversy as raised in these set of petitions is in respect of exemption from Income Tax granted to the industries established under Special Economic Zones Act, 2012 especially by virtue of Sections 36 & 37 of the said Act. It is the case of the Petitioners that in terms of Clause 126E of Part-I of the Second Schedule to the Income Tax Ordinance, 2001, ("Ordinance") complete exemption has been provided from Taxes on all sorts of the Incomes, including any Deemed Income or Turnover Tax under Section 113 of the Ordinance. It appears that Clause 126E was introduced / substituted by way of Finance Act, 2013 bringing it in alignment with the Special Economic Zones Act, 2012. It further appears that the Department was of the opinion that the said exemption is not applicable on Deemed Income or Turnover Tax on which the Industries approached Board of Investment, which handles issues pertaining to the Special Economic Zones Act, 2012, who sought a clarification from the Ministry of Law & Justice,

Government of Pakistan on 05.11.2020. After a detailed discussion an opinion was given by the said Division to the effect that the *“Turnover Tax charged pursuant to Section 113 of the ITO 2001 is a tax on income, therefore, the same is covered by the exemption provided under Clause 126E of Schedule-II to the ITO 2001 as mandated by Sections 36 and 37 of the SEZ Act, 2012”*. Despite such opinion of the Ministry of Law & Justice, the Federal Board of Revenue and its affiliated Departments did not accept such opinion and kept on demanding tax on these different sorts of Incomes. It further appears that thereafter an amendment was also made in Part-IV of the Second Schedule to the Ordinance, in the Year-2021, whereby, it was provided that the provisions of section 113 of the Ordinance regarding minimum tax shall not apply to persons qualifying for exemption under Clause 126E & 126EA of Part-I of this schedule for Tax Year-2021 and onwards. The said Clause was then omitted by way of Finance Act, 2022 and thereafter was once again re-inserted by way of another amendment. It is the case of the Department that the exemption in respect of minimum tax is governed by Second Schedule of Part-IV, which remained omitted for Tax Years-2022 & 2023. It is also the case of the Department that exemption was also not available prior to Tax Year-2021, whereas the taxpayers claim that notwithstanding the amendment in Part-IV of the 2nd Schedule, the exemption for all these years is still available in terms of clause 126E of Part-I of the 2nd Schedule, which has an overriding effect. This stance of the Petitioners is also supported by the opinion of the Ministry of Law & Justice that once the exemption has been provided under the Special Economic Zones Act, 2012, which has been correspondingly included by insertion of S.No.126E in Part-I of the 2nd Schedule thereof, entire Income is exempt from all sort of taxes under the Ordinance.

As to the difference of opinion of the two Ministries / Divisions of the Government, i.e. Law & Justice Division, whereby it has been stated that the Petitioners are exempt from all such taxes leviable under the Ordinance pursuant to clause 126E *ibid* read with the Special Economic Zones Act, 2012, and FBR, which is under the Revenue Division that no such exemption is available, for this, in our considered view, even otherwise a mechanism is provided in Rule 8(2)¹ of The Rules of Business, 1973, notified by the Federal Government in terms of Articles 90 and 99 of the Constitution of Pakistan, 1973, which clearly reflects that in the event of a difference of opinion between the Divisions concerned (here the Revenue Division Vs. the Ministry of Law and Justice Division), the Minister primarily concerned, shall try to resolve the difference in consultation with the other Ministers concerned. It further provides that if no agreement is reached and the Minister primarily concerned, desires to press the case, the case shall be submitted to the Prime Minister or, if the Prime Minister so desires, to the Cabinet. The proviso creates an exception for urgent issues, whereby, the Minister, primarily concerned, may submit the case to the Prime Minister at any stage. Therefore, the matter has to be referred to the Prime Minister as admittedly, there is a dispute between two Divisions of the Government and until the matter is reconciled in terms of Rule 8(2) of the 1973 Rules, as above, the court must not exercise any discretion under Article 199 of the Constitution and indulge itself into adjudication the issue. The above view of ours is

¹ “8. **Inter Division Procedure.** —(1)

(2) In the event of a difference of opinion between the Divisions concerned, the Minister primarily concerned shall try to resolve the difference in consultation with the other Ministers concerned. If no agreement is reached and the Minister primarily concerned desires to pass the case, the case shall be submitted to the Prime Minister or, if the Prime Minister so desires, to the Cabinet;

Provided that in a matter of urgency the Minister primarily concerned may submit the case to the Prime Minister at any stage;

Provided further that the Prime Minister is the Minister-in-Charge, the final views of other Divisions concerned shall be obtained before the case is submitted to the Prime Minister.”

supported by the dicta laid down by the Supreme Court in ***Muhammad Akram***² and by the Lahore High Court in ***Barrister Sardar Muhammad***³.

Learned Assistant Attorney General, Pakistan present in Court when confronted, requests for time to seek instructions from the concerned office. Let such instructions be obtained positively before the next date of hearing, whereas, learned Counsel appearing for FBR is also directed to place on record the opinion of FBR in writing either through Member, Inland Revenue or by the Chairman, FBR as to the issue in hand and the opinion of the Ministry of Law & Justice Division.

To come up on **14.04.2025**. Interim order passed earlier to continue till next date of hearing. Let copy of this order be issued to the office of Additional Attorney General, Karachi for compliance. Office to place a copy of this order in all connected matters.

ACTING CHIEF JUSTICE

JUDGE

Qurban/PA*

² Per Saeed-uz-zaman Siddiqui, J; (1995 SCMR 1647)

³ Per Mansoor Ali Shaj, J; as his lordship then was (PLD 2013 Lahore 343)