IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Agha Faisal
Mr. Justice Shah Nawaz Memon

Income Tax Reference Applications Nos. 449 to 453 of 2022
(Commissioner Inland Revenue Zone-I, RTO, Hyderabad vs. M/s. Hyderabad Development Authority, Hyderabad)

Date of hearing: 28.10.2026
Date of decision: 02.11.2026

Applicant: Through Mr. Kanji Mal Meghwar, Advocate.

Respondents: *Nemo*.

JUDGMENT

DR. SHAH NAWAZ MEMON, J.: — These five Income Tax Reference Applications arise out of a common order dated 04.07.2022 passed by the learned Appellate Tribunal Inland Revenue, Karachi Bench ("the Tribunal") for tax years 2011 to 2015. They are filed by the Commissioner Inland Revenue, Zone-I, RTO, Hyderabad ("the Commissioner") under section 133 of the Income Tax Ordinance, 2001 ("the Ordinance"). The questions of law are common to all five and they are therefore decided by this single judgment.

I. FACTS OF THE CASE

2. The respondent, Hyderabad Development Authority ("HDA"), is a body corporate established under the Hyderabad Development Authority Act, 1976 (Sindh Act XIII of 1976) ("the HDA Act"), as since amended and revived, for the development, improvement and beautification of the urban areas of Hyderabad.

3. For tax years 2011 to 2013 the respondent filed returns declaring losses, and the returns were treated as assessments. The Additional Commissioner found those assessments erroneous in so far as prejudicial to the interest of revenue and amended them under section 122(5A) of the Ordinance,[1] charging minimum tax on turnover together with default surcharge and penalty. For tax years 2014 and 2015, where losses were again declared, the returns were likewise amended, with disallowances and additions. The basis of the department's action throughout was that the respondent had been treating itself as exempt from tax.

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[1] Section 122(5A) of the Ordinance reads: "Subject to sub-section (9), the Commissioner may amend, or further amend, an assessment order, if he considers that the assessment order is erroneous in so far it is prejudicial to the interest of revenue."

4. The orders were remanded in appeal so that the status of the respondent might be ascertained, and fresh orders were then made. The learned Commissioner Inland Revenue (Appeals), Hyderabad, upheld them by orders dated 30.08.2021 (tax years 2011 to 2013) and 20.09.2021 (tax years 2014 and 2015), holding that exemption was not available to the respondent in view of section 49(4) of the Ordinance.

5. The respondent appealed to the Tribunal and, by additional grounds taken without objection from the department, contended that it performs the functions of the Provincial Government and falls outside the taxing power of the Federation. By its order dated 04.07.2022 the Tribunal accepted that contention. It relied principally on *SRB v. CAA*,[2] on the Rules of Business of the Government of Sindh, 1986, in which HDA appears in Schedule II as an administrative department of the Local Government and Housing Town Planning Department, and on the HDA (Amendment and Revival) Act, 2013, under which the Minister for Local Government presides over HDA and its senior officers are appointed by the Provincial Government. Applying the control and function test, the Tribunal held HDA to be a Provincial Government department enjoying the immunity of the Provincial Government, and directed the demands for all five years to be deleted. The Tribunal did not take up the remaining grounds raised in the appeals against the individual assessments, and declined to follow the Lahore High Court decision cited by the department, which it considered to be inconsistent with the decisions of the Supreme Court.

II. THE QUESTIONS PROPOSED

6. The Commissioner has proposed the following questions of law for our opinion:

   (a) Whether the Tribunal was justified to hold that HDA was not liable to pay tax on its income by relying on *SRB v. CAA* (2017 SCMR 1344), wherein the Supreme Court decided the liability of the Civil Aviation Authority to pay sales tax on services under the Sindh Sales Tax on Services Act, 2011?

   (b) Whether the exemption granted by the Supreme Court in the case of the Civil Aviation Authority (a Federal authority situated in all Provinces) in connection with its sales tax liability to a particular Province would also apply to the income tax liability to the Federal Government of a Development Authority situated in a particular Province?

   (c) Whether the Tribunal was justified to hold that HDA, which is a body corporate as per section 3 of its enabling law, does not fall within the purview of sub-section (4) of section 49 of the Ordinance?

[2] *SRB v. CAA* [2017 SCMR 1344], paras 40 and 43, as extracted in the order of the Tribunal.

(d) Whether the Tribunal was justified in not taking into consideration the judgment of the Lahore High Court in *Rawalpindi Development Authority* (reported as 2019 PTD 1734), wherein it was held that a Development Authority, being a corporate body coming within the definition of a company, falls under sub-section (4) of section 49 of the Ordinance?

III. SUBMISSIONS

7. Mr. Kanji Mal Meghwar, learned counsel for the Commissioner, submitted that the Tribunal erred in law in holding that the respondent cannot be taxed under the Ordinance. He submitted that whenever the Ordinance grants an exemption from tax it does so specifically, and nothing is to be inferred unless the law itself grants it. He referred to sections 3 and 49 of the Ordinance and urged that no exemption is granted even to a federal or a provincial corporation. He also relied on the judgment of the Lahore High Court in *Rawalpindi Development Authority*.[3]

8. Notice was served on the respondent and service was held good, but no one has appeared on its behalf. These references have been pending since 2022, and since the questions they raise are essentially questions of law that can be decided on the record, we see no reason to keep them on our docket indefinitely and proceed to decide them. We have gone through the record, including the order of the Tribunal, which sets out the case the respondent advanced before it, namely that it is a department of the Provincial Government performing the functions of that Government, and so entitled to the same immunity from federal tax.

IV. THE STATUTORY FRAMEWORK

9. Income tax is imposed by the Ordinance on every person who has taxable income for the year,[4] and a body corporate formed by or under any law in force in Pakistan is a company, and so a person, for the purposes of the Ordinance (sections 2(12), 2(42) and 80).[5] Exemptions are carved out by the Ordinance itself. Section 3 provides:

> "3. Ordinance to override other laws.—The provisions of this Ordinance shall apply notwithstanding anything to the contrary contained in any other law for the time being in force."

10. Section 49, on which the respondent's claim to exemption principally depends, reads:

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[3] *Rawalpindi Development Authority* [2019 PTD 1734] (Lahore).

[4] Section 4(1) of the Ordinance reads: "Subject to this Ordinance, income tax shall be imposed for each tax year, at the rate or rates specified in Division I or II of Part I of the First Schedule, as the case may be, on every person who has taxable income for the year."

[5] Section 80(2)(b) of the Ordinance reads: "For the purposes of this Ordinance — … (b) 'company' means — … (ii) a body corporate formed by or under any law in force in Pakistan;"

> "49. Federal Government, Provincial Government, and Local Government income.—(1) The income of the Federal Government shall be exempt from tax under this Ordinance.
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> (2) The income of a Provincial Government or a Local Government in Pakistan shall be exempt from tax under this Ordinance, other than income chargeable under the head "Income from Business" derived by a Provincial Government or Local Government from a business carried on outside its jurisdictional area.
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> (3) Subject to sub-section (2), any payment received by the Federal Government, a Provincial Government or a Local Government shall not be liable to any collection or deduction of advance tax.
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> (4) Exemption under this section shall not be available in the case of corporation, company, a regulatory authority, a development authority, other body or institution established by or under a Federal law or a Provincial law or an existing law or a corporation, company, a regulatory authority, a development authority or other body or institution set up, owned and controlled, either directly or indirectly, by the Federal Government or a Provincial Government, regardless of the ultimate destination of such income as laid down in Article 165A of the Constitution of the Islamic Republic of Pakistan:[6]
>
> Provided that the income from sale of spectrum licenses and renewal thereof by Pakistan Telecommunication Authority on behalf of the Federal Government after the first day of March 2014 shall be treated as income of the Federal Government and not of the Pakistan Telecommunication Authority."

11. Section 53, which provides for exemptions and tax concessions in the Second Schedule, reads:

> "53. Exemptions and tax concessions in the Second Schedule.—(1) The income or classes of income, or persons or classes of persons specified in the Second Schedule shall be—
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> (a) exempt from tax under this Ordinance, subject to any conditions and to the extent specified therein;
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> (b) subject to tax under this Ordinance at such rates, which are less than the rates specified in the First Schedule, as are specified therein;
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> (c) allowed a reduction in tax liability under this Ordinance, subject to any conditions and to the extent specified therein; or
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> (d) exempted from the operation of any provision of this Ordinance, subject to any conditions and to the extent specified therein."

[6] Sub-section (4) was added to section 49 by the Finance Act, 2007, and was therefore on the statute book for each of the tax years under reference.

V. THE SCHEME OF SECTION 49

12. The question is whether the income of the respondent is exempt from tax under the Ordinance. Liability under the Ordinance is the rule and exemption the exception, and the exception must be found in the Ordinance in so many words. The claimant must bring its case within the exemption, and the exemption is not to be assumed.[7] It is not to be inferred from the status a person enjoys under some other law, or from the nature of the functions it performs. Section 3 reinforces the point: whatever the HDA Act, or the rules distributing the business of the Provincial Government, may say about the relationship between the respondent and that Government, the question whether its income is exempt from income tax is answered by the Ordinance. The Lahore High Court read section 49 in the same way, holding that the exemption is available only to the Federal Government, the Provincial Government and the Local Government.[8]

13. Sub-sections (1) to (3) of section 49 speak of the Federal Government, a Provincial Government and a Local Government. They do not mention a corporation, an authority or any other body corporate, and a statutory body does not become any of the three merely because Government created or controls it.[9] The Supreme Court has recently held that a housing authority established by statute is not a local authority within section 49(2) merely because it performs public functions within a defined area; the status depends on the legal attributes actually conferred on it by law.[10] Sub-section (4) then removes any doubt about such bodies: the exemption "shall not be available" in the case of a corporation, company, regulatory authority, development authority or other body or institution established by or under a Provincial law, and equally in the case of such a body set up, owned and controlled, directly or indirectly, by a Provincial Government. It adds that this is so regardless of the ultimate destination of the income, as laid down in Article 165A of the Constitution.[11] The legislature has thus dealt in terms with the very class of body to which the respondent belongs.

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[7] *Oxford University Press* [2019 SCMR 235], para 9 (the onus lies on the taxpayer to show that its case comes within the exemption); *NTDC* [2017 SCMR 1506], para 15 (an exemption cannot be claimed on mere assumption or supposition).

[8] *Rawalpindi Development Authority* [2019 PTD 1734] (Lahore), para 7.

[9] *OGRA* [2019 PTD 587] (Islamabad), paras 3, 6 and 8, holding that statutory bodies, including regulatory authorities and a housing authority, are neither the Federal Government, a Provincial Government nor a Local Government, so that sub-sections (1) to (3) do not reach them, and describing sub-section (4) as declaratory of Article 165A. The tax years here all fall after 2007, so the question of retrospective effect considered there does not arise. Compare *PTA* [2020 PTD 1683] (Islamabad), paras 21 to 24, which turned on the proviso to sub-section (4) treating spectrum licence fees as income of the Federal Government.

[10] *DHA Islamabad v. CIR* (Civil Appeals Nos. 1309 to 1312 of 2019, decided on 17.08.2026, approved for reporting), paras 9, 14 and 17, dismissing the appeals against the judgment of the Islamabad High Court in *OGRA* so far as it concerned the Defence Housing Authority. The Court construed section 49(2) as it stood before "local authority" was replaced by "Local Government".

[11] Article 165A(1) of the Constitution reads: "For the removal of doubt, it is hereby declared that Majlis-e-Shoora (Parliament) has, and shall be deemed always to have had, the power to make a law to

14. The same approach runs through section 53, under which exemptions and tax concessions for particular incomes or persons are to be found in the Second Schedule, subject to the conditions and to the extent stated there. The Ordinance thus grants exemption by naming the income or the person. The Tribunal's order does not rest on any entry in the Second Schedule, and none has been pointed out to us that covers the respondent.

VI. THE RESPONDENT AND SECTION 49(4)

15. That the respondent is a development authority established by Provincial law is not in dispute. Before the learned Commissioner (Appeals) its own authorised representative described it as a body corporate established by an Act of the Provincial legislature, Sindh Act XIII of 1976, and the order of the Tribunal proceeds on the same footing. Its enabling law makes it responsible for the development of the urban areas of Hyderabad, including schemes and public works such as water supply, drainage and sewerage, and, as the proposed questions also record, it is a body corporate under section 3 of that law.[12] Its receipts, including grants of Government, fees and charges, and the proceeds of its schemes, go into its own Fund, which vests in the Authority and not in the Consolidated Fund of the Province.[13] The Fund is applied by the Authority itself for its own purposes, by decision of its members in meeting, though its budget requires the sanction of Government.[14] The income is thus the Authority's own. Whatever the degree of Government control over it, the respondent is a "development authority … established by or under a Provincial law", and equally a "corporation" or "company" within sub-section (4).

16. The Tribunal approached the matter from a different direction, treating the respondent as a department of the Provincial Government entitled to that Government's immunity. We do not disturb what the Tribunal has found about the respondent's association with the Provincial Government, namely the Ministerial chairmanship, the *ex officio* membership of senior Provincial officers, the appointment of its Director General by the Provincial Government and its place in the Rules of Business. Those features, however, do not take

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provide for the levy and recovery of a tax on the income of a corporation, company or other body or institution established by or under a Federal law or a Provincial law or an existing law or a corporation, company or other body or institution owned or controlled, either directly or indirectly, by the Federal Government or a Provincial Government, regardless of the ultimate destination of such income."

[12] Section 3(2) of the HDA Act, in the text published by the Law Department, Government of Sindh (as Sind Ordinance No. VI of 1976), reads: "The Authority shall be a body corporate, having perpetual succession and a common seal with power, subject to the provisions of this Ordinance, to acquire and hold property, both movable and immovable, and may by the said name, sue and be sued."

[13] Section 51(1) and (2) of the HDA Act: "There shall be a separate fund known as the Hyderabad Development Authority Fund which shall vest in the Authority", consisting of grants made by Government and by local councils, loans, sale proceeds of property, moneys received from the Federal Government or any international agency, all fees, receipts and charges received under that law, moneys received for services rendered by any agency, proceeds of self-financing schemes, and all other sums receivable by the Authority.

[14] Sections 10(1) and 52(1) of the HDA Act (decisions by majority of members in meeting; utilisation of the Fund by the Authority); section 54(1) and (3) (budget to be submitted to Government, which may sanction it or make modifications).

the respondent out of sub-section (4). They describe a body "set up, owned and controlled, either directly or indirectly, by … a Provincial Government", which is the second category the sub-section names, and the sub-section applies to it regardless of the destination of its income. The Rules of Business distribute the business of Government among its departments. They do not confer an exemption from income tax, and by reason of section 3 they could not displace sub-section (4) of section 49 if they did. Whether the respondent is described as an authority or as an administrative department, the result under sub-section (4) is the same.

VII. THE JUDGMENT IN CAA, ARTICLE 165 AND THE LAHORE DECISION

17. The Tribunal's conclusion rests on *SRB v. CAA*, and we have considered that judgment, and the extracts from it set out in the Tribunal's order, with the care due to a decision of the Supreme Court. The question there was whether a Province could, under the Sindh Sales Tax on Services Act, 2011, tax the services of the Civil Aviation Authority, a regulatory authority created by the Federal Legislature and performing functions within the Federal Legislative List. The Supreme Court held that it could not, because a Province taxing such an authority would be taxing the operations of the Federation, which exercises its executive authority through authorities of that kind. The present case is of another kind. The question is not whether a Province may tax a federal authority, but whether the income of a body established by Provincial law is exempt from a federal tax under a federal statute, and on that the statute itself speaks in section 49(4). The sub-section was not in issue in *CAA*, which concerned a provincial sales tax and the competence to impose it, and a judgment is an authority for what it decides. Indeed the Supreme Court did not decide the Article 165(1) question at all, observing that once a Province could not tax the Authority the question of exemption under that Article became irrelevant.[15]

18. The Tribunal also drew on the control and function approach and on Article 165 of the Constitution,[16] under which a Provincial Government is not liable, in respect of its property or income, to taxation under an Act of Parliament. The Supreme Court has considered that Article in relation to bodies established by statute. As it summarised the position in *XEN Shahpur*, the exemption in Article 165(1) is available to a government and not to a separate juristic person, even one wholly owned by Government, Article 165A having been enacted for the removal of doubt as to the power of Parliament to tax the

[15] *SRB v. CAA* [2017 SCMR 1344], para 42. At para 11 the Court noticed that *CBR v. WAPDA* [PLD 2014 SC 766] had held WAPDA not exempt under Article 165(1), but did not pursue the point.

[16] Article 165(1) of the Constitution reads: "The Federal Government shall not, in respect of its property or income, be liable to taxation under any Act of Provincial Assembly and, subject to clause (2), a Provincial Government shall not, in respect of its property or income, be liable to taxation under Act of Majlis-e-Shoora (Parliament) or under Act of the Provincial Assembly of any other Province."

income of such bodies; and a development authority established by statute was held to be a separate juristic personality that could not be equated with Government for the purposes of that Article.[17] *XEN Shahpur* itself, which the Tribunal also considered, concerned an Executive Engineer, a civil servant discharging the functions of the Provincial Government, so that it was the Government itself that was taxed, and the Court observed that Article 165A was for that reason not attracted. The respondent stands differently, as a body corporate established by statute, and section 49(4), which was added to the Ordinance in 2007, gives statutory expression to the same distinction.

19. The Lahore High Court, in *Rawalpindi Development Authority*, which was cited before us, considered the same sub-section in relation to a development authority. It held that a development authority, being a body corporate and therefore a company, could not claim exemption under section 49 in view of sub-section (4), and it found that the claim to be a department of the Provincial Government was not proved on the record before it.[18] The Tribunal did not follow that decision, regarding it as inconsistent with the Supreme Court decisions. With respect, we see no inconsistency to be reconciled, because those decisions were not concerned with the construction of sub-section (4), which must be applied as it is written, and the settled reading of Article 165 points the same way. Our conclusion rests on the text of the Ordinance, and not on the Lahore judgment, with which it is, however, in accord. Nor does it matter that the Tribunal reached a different finding on the respondent's association with Government, since, as explained above, the result under sub-section (4) does not turn on it.

VIII. THE REMAINING GROUNDS

20. In a reference this Court decides the questions of law arising from the order of the Tribunal, and that order stands modified accordingly.[19] The Tribunal allowed the five appeals on the ground of exemption alone. The appeals also raise grounds specific to the individual assessments, among them the manner in which the earlier orders were amended, the disallowances and additions made, and the default surcharge and penalty. These depend on the record and on the appreciation of facts, which is the province of the Tribunal.[20] They have

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[17] *XEN Shahpur* [2016 SCMR 1030], para 14, noticing *Associated Cement* [1993 SCMR 468] and *KDA* [2005 PTD 2131]; see also *PTV* [2011 SCMR 1117], paras 12 and 13.

[18] *Rawalpindi Development Authority* [2019 PTD 1734] (Lahore), paras 6 to 9. The petition of the Authority against the assessment and recovery notices was dismissed.

[19] Section 133(5) of the Ordinance, as it stood when these references were filed, reads: "The High Court upon hearing a reference under this section shall decide the question of law raised by the reference and pass judgment thereon specifying the grounds on which such judgment is based and the Tribunal's order shall stand modified accordingly. The Court shall send a copy of the judgment under the seal of the Court to the Appellate Tribunal." See also *Inter Quest* [2025 SCMR 257], para 7, where the Supreme Court, noticing *Squibb Pakistan* [2017 SCMR 1006], recalled that a reference is akin to an appeal and that the reference jurisdiction is similar to appellate jurisdiction.

[20] *PSX* [2026 SCMR 373], para 23, where the Supreme Court also left open whether the law has changed in very recent years, a question that does not arise here.

not been decided and remain open. The consequence of our answers is therefore not that the demands stand restored, but that the appeals must be decided by the Tribunal on those grounds.

IX. THE ANSWERS TO THE QUESTIONS

21. Our answers to the questions proposed are as follows:

(a) In the negative. The Tribunal was not justified in holding the respondent not liable to tax on the strength of *CAA*, which was decided on a different question and not on section 49(4) of the Ordinance.

(b) In the negative. The decision of the Supreme Court on the provincial sales tax liability of a federal authority does not extend to the federal income tax liability of a development authority established by Provincial law, which is governed by section 49(4).

(c) In the negative. The respondent falls within the purview of section 49(4) of the Ordinance.

(d) The Tribunal noticed the Lahore decision but did not follow it. It was not justified in declining to apply section 49(4), on which that decision proceeds, and the question is answered in the negative.

X. ORDER

22. The reference applications are allowed. The order of the Tribunal dated 04.07.2022 in ITA Nos. 1476, 1477, 1478, 1503 and 1504/KB/2021, to the extent that it holds the respondent to be exempt from, and not liable to, tax under the Ordinance, is set aside. The appeals stand restored to the Tribunal, which shall decide the remaining grounds in accordance with law after hearing the parties.

23. Let a copy of this judgment be placed in each of the connected files.

24. Let a copy of this judgment be sent under the seal of the Court to the learned Appellate Tribunal Inland Revenue in terms of section 133(5) of the Ordinance.

J U D G E

J U D G E

Karachi,
Dated: 2nd day of November 2026

Ayaz PS.