

**IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)**

PRESENT:

**Mr. Justice Iftikhar Muhammad Chaudhry, HCJ
Mr. Justice Tariq Parvez
Mr. Justice Ghulam Rabbani**

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to C.C.B.
and also placed
in W.C.D.*

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Civil Appeals No.1607 to 1630 of 2007

(On appeal from the judgment dated 9.5.2007 passed by the Peshawar High Court, Peshawar in T.Rs. No.28, 28, 29, 31, 32, 33, 34, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 48, 49, 50, 51, 52 & 53 of 2006)

Commissioner of Income Tax, Medium Taxpayer's Unit, Peshawar
...Appellant in all cases

Versus

Akhtar Munir and others	(CAs 1607-1609/07)
Nizam Gul	(CAs 1610-1612/07)
Shahid Gul	(CAs 1613-1615/07)
Irshad Khan	(CAs 1616-1618/07)
Shahid Islam	(CAs 1619-1621/07)
Malik Qemat Khan	(CAs 1622-1621/07)
Muhammad Ishaque	(CAs 1625-1627/07)
Muhammad Amjad	(CAs 1628-1630/07)
	...Respondents

For the appellants: Mr. Shahid Raza, ASC
Mr. Mir Adam Khan, AOR

For the respondents: Mr. Abdul Latif Yousafzai, Sr. ASC

Date of hearing: 04.10.2011

J U D G M E N T

Iftikhar Muhammad Chaudhry, CJ.— These appeals, by leave of the Court, have been directed against the judgment dated 9.5.2007 passed by the Peshawar High Court, Peshawar.

2. Briefly stating facts of the case are that the respondents/members of Association of Persons (AOP), participated in the bidding process of M/s Deans Hotel, Peshawar initiated by Privatization Commission, and ultimately were declared successful bidders against an amount of Rs.36,40,00,000/-, payments whereof were made as per the following schedule:-

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[Signature]
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Supreme Court of Pakistan
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Date of payment	Amount paid by the AOP	Assessee's share
04.03.1998	10000000/-	909091
22.02.1999	81000000/-	7363637
22.05.1999	91000000/-	8272727
22.08.1999	91000000/-	8272727
22.11.1999	91000000/-	8272727

By means of Finance Act, 1998, Clause (6F) was incorporated in Part-IV of the 2nd Schedule of the Income Tax Ordinance, 1979 [hereinafter referred to as "the Clause (6F)"], allowing exemption of the investment from 1st July, 1998 to 16th Day of December, 1999. For convenience same is reproduced herein-below:-

"6F. The provisions of Section 13 or Chapter XI or Chapter XII shall not apply in respect of any amount invested in purchasing of any land or any other assets sold through public auction by the Federal government or a Provincial Government or a body established or controlled by such government.

Provided that the exemption under this clause shall no be available on or after 16th Day of December, 1999."

3. The respondents, who were the members of AOP, claimed exemption from the payment of Income Tax, by submitting the return for the assessment years 1998-1999 and 1999-2000 under the above provision of law. However, the said benefit of exemption incorporated in above provision of the law was not allowed to the assessee vide order dated 18th May, 2004, passed by the Assessing Officer, u/s 63 of the repealed Income Tax Ordinance, 1979 [hereinafter referred to as "the Ordinance, 1979"]. Details of the income tax found to be outstanding against them, need not to be noted here being not relevant to resolve the controversy cropped up in the instant proceedings. Appeals filed by the respondents against the above order before the Commissioner of Income Tax (Appeals), Peshawar [CIT(A)] were rejected vide Orders No.1804-1806 dated 13th October, 2004. The assessee filed second appeal before the Income Tax Appellate Tribunal, Peshawar [ITAT] who agreed to grant benefit of the Clause (6F). Against the order of ITAT, the appellant/Department filed a

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Reference before the Peshawar High Court u/s 133 of Income Tax Ordinance, 2001 to examine following question:-

"Whether on the facts and in the circumstances of the case the learned Income Tax Appellate Tribunal was justified to hold that clause (6F) of Part-IV of the Second Schedule to the Repealed Income Tax Ordinance, 1979 inserted through Finance Act, 1998 was operative retrospectively and applied even to payments made before the insertion of the said clause?"

However, the Peshawar High Court, rejected the Reference filed by the appellants vide impugned judgment. As such petition for leave to appeal was filed wherein leave was granted to examine the following questions:-

- a) *What is the legal import of term "investment" with reference to section 13 of Income Tax Ordinance, 1979 and clause (6F) of Part-IV of Second Schedule inserted through Finance Act, 1998 and all others legal provisions relevant in this behalf.*
- b) *Whether clause (6F) mentioned above inserted through Finance Act, 1998 has retrospective effect and can be applied even to the payments/investment made before the insertion of the said clause on 1.7.1998, as held by learned Income Tax Appellate Tribunal.*
- c) *Whether the learned High Court can travel beyond the reference and beyond the specific formulation resorted to by the Commissioner of Income Tax Ordinance, 2011."*

4. Learned counsel for the appellant contended that the Clause (6F), as per its implications, had to operate prospectively and not retrospectively. In the instant case, regarding purchase of Deans Hotel, the investment was made by the respondents on 4th March, 1998, therefore, the exemption from payment of income tax was not available to the respondents and they were legally obliged to pay income tax on the said investment.

5. On the other hand, learned counsel for the respondents explained that on 4th March, 1998 advance money of Rs.1,00,00,000/- was deposited, whereas, rest of the amount was paid after 1st July, 1998 till 22nd November, 1999, much before the cut-off date i.e. 16th December, 1999, fixed for claiming exemption of tax on the investment as per Clause (6F) and on receipt of full payment sale deed was executed by the Privatization Commission, therefore, notwithstanding the fact whether this provision shall operate retrospectively or prospectively, the fact remains that exemption was

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available to them as they completed the transaction during the period when said concession was available.

6. We have heard the learned counsel for the parties and have gone through the relevant laws on the subject.

7. It is a cardinal principle of law that prospective or retrospective effect of a legislation determining rights of the parties, have to be gathered from the language applied therein. As it has been noted that Clause (6F) has been inserted in Part-IV of the 2nd Schedule w.e.f 1st July, 1998 and as per its contents the provision of section 13 or Chapter-XI or Chapter-XII had been excluded in respect of any amount, invested in purchasing of any land or any other asset sold through public auction by the Federal Government or a Provincial Government or a body established or controlled by such Government. The Federal Government was represented by the Privatization Commission and the auction of the property was held on 4th March, 1998 at the time when there was no exception but in the meanwhile an exemption was made applicable from 1st July 1998. Therefore, as per language of this section, if the investment had been made prior to 30th of July, 1998 no exemption would be available but at the same time question arises as to whether against the transaction of Rs.36,40,00,000/-, if an amount of Rs.1,00,00,000/- had been paid, which would tantamount to investment because according to the ordinary meaning of the investment, it means any placing of money to secure income or profit: that in which the money is invested. [*Chambers, English Dictionary*].

8. Essentially the profit of the investment shall be available to the assessee after having become full owner of the property purchased by them and merely making payment of advance of Rs.1,00,00,000/- on 4th March, 1998 out of Rs.36,40,00,000/- neither will secure the money nor will give profit, therefore, inescapable conclusion has to be made that on completion of the transaction after making payment of full amount, which has been made as per the schedule, noted hereinabove, before 16th December, 1999 the cut off date, the sale deed was executed, therefore, we tend to agree with the learned counsel for the respondent. Additionally, tax as defined u/s 2(43) of the Ordinance 1979 is required to be paid during the income year i.e.

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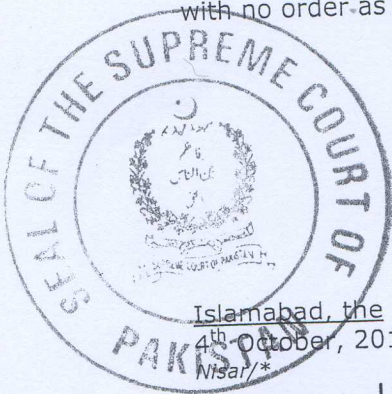
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the financial year next preceding the said assessment year or such period as the Central Board of Revenue may, in the case of any person or class of persons, or any source of income, specify by notification in the official Gazette, and includes any period which, under any provision of the Ordinance, is deemed to an income year, or in respect of which a return of total income is required to be furnished, or any income is liable to be determined or assessed, or any tax is payable.

9. In the instant case after making investment, the income year would be either 1st July, 1998 to 30th June 1999 or 1st July, 1999 to 30th June, 2000 and as transaction had been completed during the period when the exemption was available i.e. upto 16th December, 1999, therefore, assessee were entitled for the exemption and the advance amount, which had been paid on 4th March, 1998 against the amount of Rs.36,40,00,000/- should not be considered an investment for the purpose of earning profit or acquiring income out of this amount as the same is not possible unless the transaction has been completed after making the payment of total consideration.

10. As it has been pointed out by the learned counsel for the respondent that on 28th May, 1998 Pakistan became a Nuclear Power, thereafter it had to face difficulties in running its finances as such incentives were given to the investors to make investment, enabling the government to meet the requirements of the Financial Market and to cater the needs of the country. Therefore, we are of the opinion that the High Court had not travelled beyond the specific formulations, which have been reproduced hereinabove, while examining as to whether the respondents were entitled for the exemption under the provision or not.

11. Thus, for the foregoing reasons instant appeals are dismissed with no order as to costs.



Islamabad, the
4th October, 2011
Nisar/*

019/10/11

Judicial Officer Muhammad Chaudhry HCS
Judicial Officer Parvez J
Judicial Officer Akhlaq Raddi J

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