IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:
MR. JUSTICE MIAN SHAKIRULLAH JAN
MR. JUSTICE NASIR-UL-MULK
MR. JUSTICE EJAZ AFZAL KHAN

CIVIL APPEALS NO. 152 TO 190, 1156 TO 1162, 1165 TO 1169, 1174, 1176, 1177, 1181 AND 1182 OF 2010.

(On appeal against the judgment dated 24.12.2009 passed by the Lahore High Court, Lahore, in ICA No.462/2009 in W.Ps.No. 13145/2008 & 10144/2008, ICA No.363/2009 in W.P.No. 1849/2009, ICA No.362/2009 in W.P.No.12196/2008, ICA No.463/2009 in W.P.No.13828/2008, ICA No.464/2009 in W.P.No.13825/2008, ICA No.465/2009 in W.P.No.13827/2009, ICA No.354/2009 in W.P.No.13715/2008, ICA No.405/2009 in W.P.No.14063/2008, ICA No.392/2009 in W.P.No.802/2008, ICA No.395/2009 in W.P.No.14592/2008, ICA No.393/2009 in W.P.No.4976/2008 & W.P.No.13770/2008, ICA No.371/2009 in W.P.No.16500/2008, ICA No.667/2009 in W.P.No.14592/2008, ICA No.443/2009, ICA No.635/2009 in W.P.No.8872/2008, ICA No.488/2009 in W.P.No.14592/2008, ICA No.563/2009 in W.P.No.18407/2009, ICA No.370/2009 in W.P.No.12214/2008, ICA No.443/2009 in W.P.No.13997/2008, ICA No. 397/2009 in W.P.No.13874/2008, ICA No. 442/2009, ICA No.697/2009, ICA No. 445/2009 in W.P.No.3225/2008, ICA No. 322/2009, ICA No.472/2009, ICA No. 328/2009, ICA No. 331/2009 in W.P.No.15352/2008, ICA No.384/2009 in W.P.No.16594/2008, ICA No. 385/2009 in W.P.No.15695/2008, ICA No.387/2009 in W.P.No.15353/2008, ICA No.352/2009, ICA No. 386/2009 in W.P.No.16595/2008, ICA No.484/2009 in W.P.No.18645/2008, ICA No.938/2009 in W.P.No.8872/2008, ICA No. 613/2009 in W.P.No.1284/2009, ICA No.448/2009)

M/s Lahore Polypropylene Industries (Pvt) Ltd. etc. ...Appellants

Versus

Federation of Pakistan, etc. ...Respondents

ON COURT NOTICE ON BEHALF OF PROVINCES:

Mr. Mudassar Khalid Abbasi, A.A.G., Punjab.
Mr. Lal Jan Khattak, Addl. A. G. KPK.
Mr. Qasim Mirjat, Addl. A. G. Sindh.

For the appellants: Mian Ashiq Hussain, ASC
Mr. Arshad Ali Ch., AOR.
(in CAs.152-177, 1174, 1176/10)

(in CAs. 178, 188-190/10) : Nemo.

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(in CAs. 179 to 187/10) : Nemo.
(in CAs. 1156-1162/10), 1165-1169 : Nemo.
(in CA. 1177/10) : Nemo.
(in CAs. 1181-1182/10) : Nemo.

For the Respondents:

Respondent No. 3
(in C.As.152-158,160-168, 170-177, 1158, 1174, 1176, 1181/10)

Respondent No. 4:
(in CAs.1159, 1160, 1162/10)

Mr. M. Ilyas Khan, Sr. ASC
Raja Abdul Ghafoor, AOR

On behalf of LESCO:

Respondent No.3 Mr. M. Ramzan Ch. Sr. ASC
(in C.A.1168/10) :
Respondent No.4 :
(in C.As.152-178, 180-183, 185-190,
1156 to 1158, 1161, 1174, 1177, 1181 and 1182/10) :

Respondent No.5 :
(in C.As.165, 1159, 1160, 1162, 1165, 1166, 1167/10) :

Respondent No.1 (in C.A. 159-190/10) :
Respondent No.2. (in C.As.152-158/10) : Syed Arshad Hussain Shah, ASC

On behalf of FESCO:

Respondent No. 6. : Mian M. Javed, ASC
(in C.As.161-163, 169-177, 180, 187, & 189/10)

Other respondents in all cases: N. R.

Date of hearing: : 12.03.2012, 13.03.2012.

JUDGMENT

EJAZ AFZAL KHAN, J.- By this single judgment we propose to decide Civil Appeals No. 152 to 190, 1156 to 1162, 1165 to 1169, 1174 to 1177, 1181 and 1182 of 2010 arising out of the judgment dated 24.12.2009 of a Division Bench of the Lahore High Court whereby ICAs filed by the

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appellants were dismissed and judgment dated 15.5.2009 of the single Judge was maintained.

2. The order granting leave reads as under:-

> "After having heard the learned counsel on behalf of the parties at length we are inclined to grant leave, *inter alia*, on the following points:-
>
> (i) Whether such tax could have been levied pursuant to the provisions as enumerated in section 235 of the Income Tax Ordinance, 2001 and in view of the categoric bar as imposed under Article 142 (c) of the Constitution of Islamic Republic of Pakistan?
>
> (ii) Whether the impugned levy of tax is covered up under entry 47 of the Federal Legislative List?
>
> (iii) Whether the apparent distinction between the provisions as enumerated in sections 147 and 235 of the Ordinance have been taken care of?
>
> (iv) Whether such levy of tax could have been imposed without their being any corresponding income, on subjects falling under the Provincial fiscal domain?
>
> (v) Whether the impugned levy is violative of Articles 2A, 3, 4 and 77 of the Constitution of the Islamic Republic of Pakistan?
>
> 2. Leave to appeal is accordingly granted in all the above captioned petitions subject to the condition that amount of electricity bill shall be paid which will be adjusted subject to final decision. The learned ASC submitted that order passed by this Court has been complied with in Civil Petitions No.151 and 176 of 2010 and regarding rest of the petitions, it is submitted that amount of electricity bill has been paid to Lahore Electric Supply Company."

3. Appellants in these cases challenged the vires of Section 235 of the Income Tax Ordinance, 2001, together with the increase, in the percentage of advance tax on the electricity bills, brought about by the Finance Act No.I of 2008.

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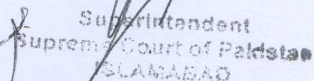

4. Learned counsel appearing on behalf of appellants contended since tax on consumption of electricity is a tax on expenditure in its pith and substance, it in view of Article 242 (c) of the Constitution of Islamic Republic of Pakistan lies within the domain of Provincial Assembly, therefore, it is *ultra-viries*. Such levy, the learned counsel submitted, is beyond the legislative competence of the Parliament as it is not reflected either in Item 47 or 52 of the Federal Legislative List. Expenditure, the learned counsel submitted, may be used as a measure for determining the earning capacity of an assessee but in that case it must have a nexus between the tax and the subject matter of the tax. Where such nexus, the learned counsel maintained, is visibly absent, it cannot be called a tax on income. Classification, the learned counsel submitted, is permissible when based on intelligible differentia and has nexus with the purpose sought to be achieved. Where, the learned counsel added, a bay of difference lies between industrial and commercial activity, they cannot be treated alike, therefore, their classification can neither be said to have been based on intelligible differentia nor can it be said to have any nexus with the purpose sought to be achieved. Equal treatment of unequals, the learned counsel submitted, is as bad as unequal treatment of equals, therefore, section 235 of the Income Tax Ordinance being discriminatory is liable to be struck down. The learned counsel next contended that when increase in the percentage of advance tax is so excessive that assessee instead of paying it from the income is forced to pay out of its capital, it cannot be termed as business friendly. Such increase, the learned counsel by concluding his argument submitted, being harsh, unreasonable and confiscatory out and out merits outright annulment. The learned counsel to support his contention relied on the cases of M/s. Sh.

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Abdur Rahim, Allah Ditta v. Federation of Pakistan (PLD 1988 SC 670), Ms Elahi Cotton Mills Ltd and others. V. Federation of Pakistan and 6 others (PLD 1997 SC 582), Pakistan Tobacco Company Ltd. and another. V. Federation of Pakistan and three others (1999 SCMR 382), Pakistan Industrial Development Corporation. V. Pakistan through Ministry of Finance (1992 PTD 576), Reference under the Government of Ireland Act, 1920 (Privy Council) 1936, Buxa Dooars Tea Company Ltd and others. V. State of West Bengal and others (1989) 3 Supreme Court cases 211), State and another v. Sajjad Hussain and others (1993 SCMR 1523), Azizur Rehman v. the State (Cr. A. No.17(S)/1990 - SCMR Vol.XXVI), Call Tell (Pvt.) Ltd. v. Federation of Pakistan (2004 PTD 3032), Government of Pakistan and others. v. Muhammad Ashraf and others (PLD 1993 SC 176).

5. As against that learned counsel appearing on behalf of the respondents contended that the impugned provision of the Ordinance is fully covered by item No.47 of the Federal Legislative List, therefore, it being within the legislative competence of the Parliament, cannot be said to be ultra-vires by any canons of interpretation. The learned counsel next submitted that it is income and not expenditure, which in the ultimate analysis, is taxed, therefore, it cannot be pushed within the purview of Article 242 (c) of the Constitution. He next contended that power to tax rests primarily in the State which is to be exercised by its legislature. Such power, the learned counsel added, is inherent and not dependent on any grant of the Constitution or the consent of the person, whose property is subjected to such taxation. Power of legislation for the purpose of taxation, the learned counsel submitted, cannot be restricted so long as it does not transgress or encroach upon the other legislature or violate any provision of the

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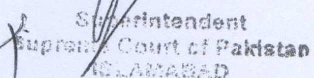

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Constitution guaranteeing fundamental rights. The learned counsel by referring to the case of M/s. Hoechst Pharmaceuticals Ltd., and another v. State of Bihar (AIR 1983 SC 1019) contended that where power of the Legislature to tax and its discretion to determine its extent is not disputed, the Court cannot sit in judgment over its propriety or justness. The learned counsel next contended that where the purpose behind imposing the levy on electricity charges is to bring almost every industrial and commercial activity under the tax net and an assessee paying even a rupee more can claim its re-fund, it cannot be called unjust, unreasonable or confiscatory on any account. The learned counsel by controverting the argument of the learned counsel for the appellants submitted that where a credit of tax collected under section 235 is given to the assessee under Section 147 (4) and 147 (4B) of the Ordinance while computing its liability, it cannot be said that this provision is not business friendly. The learned counsel by concluding his argument contended that where there is presumption in favour of constitutionality of the legislative enactment, it cannot be declared ultra-vires by placing narrow and pedantic interpretation thereon. The learned counsel to support his contention placed reliance on the cases of Ms Elahi Cotton Mills Ltd and others *(supra)*, M/s. Geeta Enterprises and others v. State of U.P. and others (AIR 1983 SC 1098), The Elel Hotels and Investment Ltd. v. Union of India (AIR 1990 SC 1664), Call Tell (Pvt.) Ltd. v. Federation of Pakistan *(supra)*, Federation of Pakistan v. Muhammad Sadiq (2007 PTD 57), Riaz Bottlers Pvt. Ltd. v. Lahore Electric Supply Co. (2010 PTD 1295), Aized Hussain v. Motor Registration Authority (PLD 2010 SC 983).

6. We have gone through the entire record carefully and considered the submissions of the learned counsel for the parties.

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7. Before we discuss the arguments of the learned counsel for the parties addressed at the bar it would not be out of place to refer to Section 235 of the Income Tax Ordinance, 2001 which reads as under:-

> "(1) There shall be collected advance tax at the rates specified in Part-IV of the First Schedule on the amount of electricity bill of a commercial or industrial consumer.
>
> (2) The person preparing electricity consumption bill shall charge advance tax under sub-section (1) in the manner electricity consumption charges are charged.
>
> (3) Advance tax under this section shall not be collected from a person who produces a certificate from the Commissioner that his income during tax year is exempt from tax.
>
> (4) The tax collected under this section shall be minimum tax on the income of a person (other than a company). There shall be no refund of the tax collected under this section, unless the tax so collected is in excess of the amount for which the taxpayer is chargeable under this Ordinance in the case of a company."

8. A bare reading of the above quoted provision would show that it provided a mode for collection of tax. The purpose behind this provision, as far as it can be gathered from the words used therein, is to bring almost every industrial and commercial activity under the tax net. It is not a concept new and un-heard of. It was also recognized by the Ordinance of 1979 to enable the State to recover the taxes without there being a "collection lag". It has already attained legitimacy because people by and large have not only accepted it but have also acted in accordance therewith for decades and decades together. This provision when read carefully does not straight away focus on determination of liability. What it focuses on is collection of tax. Collection of tax, no doubt, coincides with expenditure but what is taxed, in the ultimate analysis, is income and not expenditure. Therefore, it cannot be held to be a tax on expenditure by any means. Likewise it cannot either be

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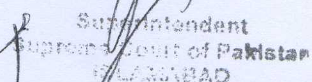

pushed within the purview of Article 242 (c) of the Constitution or taken outside the purview of item 47 or 52 of the Federal Legislative List by giving it a garb or guise of a tax on expenditure.

9. Yes, industrial and commercial activities have been treated alike for the purpose of collection but it would not be of much consequence when at the ultimate stage it is the income from either of the activities which matters and constitutes the decisive factor. A little less or a little more collection would not harm any of the assesses indulging in such activity when it gets the same adjusted or refunded in view of the provision contained in Section 147(4) and 147(4B) of the Ordinance. In this background the argument that increase in percentage is so excessive that the assessee instead of paying it from its income is forced to pay out of its capital, sounds more rhetorical than real. The argument that the said provision is not business friendly also appears to be of the same ilk and specie.

10. The argument that the provision is harsh, unreasonable and confiscatory and therefore merits outright annulment seems to have emanated from an apprehension which is neither real nor reasonable. The fact is that the time has proved this apprehension to be conjectural. Minor and microscopic disparities may be there as far as the mode of collection is concerned but that would not furnish a justification for declaring the provision as *ultra-vires* because equality amongst the objects grouped together may not be mathematically precise, scientifically perfect and logically complete. We, therefore, do not agree with the learned counsel for the appellants that such classification can neither be said to have been based on intelligible differentia nor can it be said to have any nexus with the purpose sought to be achieved. Even if it be so, which is not the case here,

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the Courts always lean in favour of constitutionality of legislation unless of course it is *ex-facie* violative of the Constitutional provision. This Court in the case of **Ms Elahi Cotton Mills Ltd and others** *(supra)* repelled the argument against the constitutionality of 80-C, 80-CC and 80-D of the Ordinance 1979, by holding as under:-

> "44. Adverting to the above first reason, it may be observed that it is true that the power to tax cannot be used to embarrass and destroy the business/occupations which are sine qua non for the propriety of the people and the country. The object of the levy and recovery of taxes as pointed out hereinabove is to run the State and to make efforts for creation of an agalitarian society. If the rates of taxes are so high and disproportionate to the actual earnings or earning capacities that they destroy the -tax-payers, the very object of their levy and recovery is defeated. It has, therefore, been held by the superior Courts of the foreign jurisdiction as well as of Pakistani jurisdiction including this Court that the taxes should not be expropriatory and confiscatory in nature and that the same should not be imposed in such a way so as to result in acquiring properties of those to whom the incidence of taxation fell and if that is so, then such legislation would be violative of fundamental rights to carry on business or to hold properties as guaranteed by the Constitution. The learned counsel for the appellants have heavily relied upon the judgment of this Court in the case of Government of Pakistan v. Muhammad Ashraf (supra), in which this Court accepted the above legal proposition that a tax, which is confiscatory in its nature, would be violative of the fundamental rights relating to carrying on business and holding properties, but remanded the case to. the High Court to examine the question, as to whether the rate of regulatory duty on Soyabean. Oil imposed was of confiscatory nature. We are inclined to reiterate the principle of law enunciated in the above report. However, we are unable to agree with the learned counsel for the appellants that the rates of taxes imposed under the impugned sections 80-C, 80-CC and 80-D of the Ordinance are confiscatory and expropriatory in nature.

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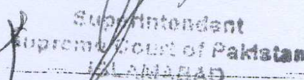

Since there is a presumption in favour of legislative competence as held in a number of judgments referred to hereinabove, the burden to show that the impugned taxes are confiscatory or expropriatory, was on the appellants. In our view, they have failed to bring on record any reliable material on the basis of which it can be concluded that the same are confiscatory or expropriatory. Messrs Dr. Ilyas Zafar and Iqbal Naim Pasha, while arguing Civil Appeal No.478 of 1995, submitted that the appellants in the above appeal declared Rs.6,47,243 as the net profit for the assessment year involved but they were made to pay presumptive tax amounting to Rs.66,00,282. Whereas Mr. Sikandar Hayat, who argued for the appellant (National Construction Company) in Civil Appeal No. 1496 of 1995, contended that the appellant suffered loss of Rs.24,88,18,613 in the assessment year 1992-93 but they were made to pay presumptive tax under section 80-C Rs.1,35,29,726. The above two instances cannot be treated as sufficient for rebutting the presumption in favour of the competency of the Legislature. The question, as to whether a particular tax is confiscatory or expropriatory, is to be determined with reference to the actual earning or earning capacity of an average prudent successful entrepreneur in a particular trade or business. The fact that a particular assessee has suffered loss/losses during certain assessment years, is not germane to the above question. In this regard reference may again be made to the case of the Madurai District Cooperative Bank Ltd. v. Third Income Tax Officer, Madurai (supra),referred to hereinabove in para. 28(x), wherein taxable income of the assessee declared was Rs.51,763; whereas the tax imposed was Rs.76,674.07 including surcharge. Indian Supreme Court sustained the above levy and inter alia held that what is not income under the Income Tax Act can be made income under the Finance Act or exemption granted by the Income Tax Act can be withdrawn by the Finance Act or its efficacy can be reduced.

Furthermore, in the case of Union of India and another v. A. Sanyasi Rao and another (supra), the Indian Supreme Court upheld the finding of the Andhra Pradesh High Court that the

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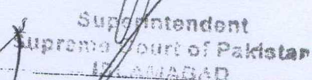

impugned tax was confiscatory in nature. In the above case, under clause (a) of subsection (1) of newly-added impugned section 44-AC of the Indian Income Tax Act, 1961, it was provided that 40% purchase price of any goods in the nature of alcoholic liquor for human consumption (other than Indian made foreign (liquor), shall be deemed to be the profits and gains of the buyer from business or trading in such goods chargeable to tax under the head "profit and gains of business or profession"; whereas under newly-added impugned section 206-C, a seller of the items referred to in subsection (t) of section 44-AC, was required to deduct a tax from the purchasers on the purchase prices on the items at the rates mentioned in Table to subsection (3) thereof, which included alcoholic liquor at the rate of 15%. In spite of the fact that the above levy was very exorbitant and that it was found that the same was confiscatory in nature, Andhra Pradesh High Court as well as the Indian Supreme Court did not declare the above provision as invalid. On the contrary, as is evident from the aforequoted extract from the aforesaid judgment in para. 27 hereinabove, the Indian Supreme Court concluded that "we uphold the validity of section 206-C. We also hold that section 44-AC is a valid piece of legislation read in the manner indicated by us". Section 44-AC is not to be read an independent provision but as an adjunct to and an explanatory to section 206-C. "They pressed into service one of the principles of interpretation i.e., reading down section 44-AC as an adjunct to an explanatory to section 206-C instead of reading above section 44-AC as an independent provision though subsection (1) of the same contained non obstante clause by providing that notwithstanding anything to any contrary contained in sections 28 to 43-C. It was further held that the assessee would be entitled to go through the process of assessment is provided in the above provisions of sections 28 to 43-C though this was not so in view of non obstante clause in section 44-AC."

11. An effort was made to make a mountain out of a mole-hill by placing narrow and even pedantic interpretation on the entries in the Federal Legislative List, but that would be of no avail as narrow and pedantic

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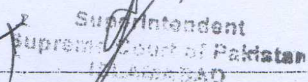

interpretation of the entries in the Federal Legislative List has not been looked up to by the Courts in the Indian sub-continent. In the case of The Elel Hotels and Investment Ltd. v. Union of India *(supra)*, the Supreme Court of India while examining the viability of narrow and pedantic interpretation of the entries in the Federal Legislative List held as under:-

> "6. On a consideration of the matter, we arc of the opinion that the submission of the learned Attorney General as to the source of the legislative power to enact a law of the kind in question require to be accepted. The Word 'i- ncome' is of elastic import. In interpreting expressions in the legislative lists a very wide meaning should be given to the entries. In understanding the scope and amplitude of the expression 'income' in Entry 82, list I, any meaning which fails to accord with the plenitude of the concept of 'income' in all its width and comprehensiveness should be avoided. The cardinal rule of interpretation is that the entries in the legislative lists are not to be read in a narrow or re-stricted sense and that each general'word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in it. The widest possible construction, according to the ordinary meaning of the words in the entry, must be put upon them. Reference to legislative practice may be admissible in reconciling two conflicting provisions in rival legislative lists. In construing the words in a constitutional document conferring legislative power the most liberal construction should be put upon the words so that the same may have effect in their widest amplitude."

12. This aspect of the case was more happily dealt with together with the legislative competence of the Parliament in the case of Ms Elahi Cotton Mills Ltd and others *(supra)*. The relevant paragraph deserves a verbatim reproduction which reads as under:-

> "34. Keeping in view the above case-law and the treatises and the aforesaid legal inferences drawn therefrom, we may now revert to

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the question of vires of impugned sections. It may again be observed that the power to levy taxes is a sine qua non for a State. In fact it is an attribute of sovereignty of a State. It is mandatory requirement of a State as it generates financial resources which are needed for running a State and for achieving the cherished goal, namely, to establish a welfare State. In this view of the matter, the Legislature enjoys plenary power to impose taxes within the framework of the Constitution. It has prima facie power to tax whom it chooses, power to exempt whom it chooses, power to impose such conditions as to liability or as to exemption as it chooses, so long as they do not exceed the mandate of the Constitution. It is also apparent that the entries in the Legislative List of the Constitution are not powers of legislation but only fields of legislative heads. The allocation of the subjects to the lists is not by way of scientific or logical definition but by way of mere simple enumeration of broad catalogue. A single tax may derive its sanction from one or more entries and many taxes may emanate from one single entry. It is needless to reiterate that it is a well-settled proposition of law that an entry in the Legislative List must be given a very wide and liberal interpretation. The word "income" is susceptible as to include not only what is in ordinary parlance it conveys or it is understood, but what is deemed to have arisen or accrued. It is also manifest that income-tax is not only levied in the conventional manner i.e., by working out the net income after adjusting admissible expenses and other items, but the same may also be levied on the basis of gross receipts, expenditure etc. There are new species of income-tax, namely, presumptive tax and minimum tax.

In our view, sections 80-C and 80-CC of the Ordinance fall within the category of presumptive tax as under the same the persons covered by them pay a pre-determined amount of presumptive tax in full and final discharge of their liability in respect of the transactions on which the above tax is levied. Whereas section 80-D of the Ordinance is founded on the theory of minimum tax which has been elaborately dealt with in the treatises, the relevant portions of which have been quoted in extenso hereinabove. If we were to read Entry 47 in isolation without referring to Entry 52, one can urge that Entry 47 does no: admit the imposition of presumptive tax as

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> the expression "taxes on income" employed therein should be understood as to mean the working out of the same on the basis of computation as provided in the various provisions of the Ordinance. We are inclined to hold that presumptive tax is in fact akin to capacity tax i.e., capacity to earn. In this view of the matter, we will have to read Entry 47 in conjunction with Entry 52 which provides taxes and duties on production capacity of any plant, machinery, undertaking, establishment or installation in lieu of the taxes or duties specified in Entries 44, 47, 48 and 49 or in lieu of any one or more of them. Since under Entry 52, tax on capacity in lieu of taxes mentioned in Entry 47 can be imposed, the presumptive tax levied under sections 80-C and 80-CC of the Ordinance is in consonance with the above two entries if read in conjunction. "

13. The case of M/s. Sh. Abdur Rahim, Allah Ditta v. Federation of Pakistan *(supra)* cited at the bar by the learned counsel for the appellants does not tend to support his case when we, after examining the provision, held above that the tax imposed is a tax on income in its pith and substance and not on expenditure on any account. Reference to a few collateral observations made in the case of Ms Elahi Cotton Mills Ltd and others *(supra)* would not advance the case of the appellants when its ratio is pre-eminently opposed to the case set up by the learned counsel for the appellants. The judgment rendered in a Reference under the Government of Ireland Act, 1920 (Privy Council) 1936, too, would not prop up the case of the appellants as we have already held above that the tax levied by the above quoted provision is a tax on income and not on expenditure. Reference to the cases of Pakistan Tobacco Company Ltd. and another. V. Federation of Pakistan and three others and Buxa Dooars Tea Company Ltd and others. V. State of West Bengal and others *(supra)* would not be germane to the case in hand when classification in this case has been held to be based on intelligible differentia having nexus with the purpose sought to be achieved.

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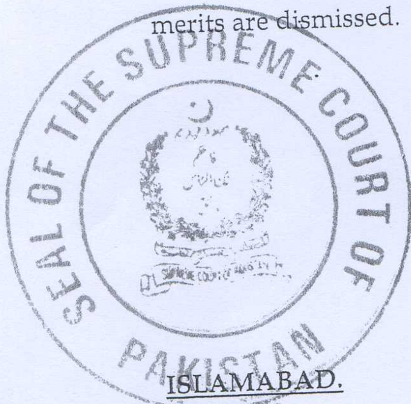
Cases of State and another v. Sajjad Hussain and others and Azizur Rehman v. the State *(supra)* having distinguishable facts and features have no relevancy to the case in hand. Reference to the cases of Call Tell (Pvt.) Ltd. v. Federation of Pakistan and Government of Pakistan and others. v. Muhammad Ashraf and others *(supra)* is of no use as their ratio is opposed to the proposition canvassed at the bar by the learned counsel for the appellants.

14. When considered in this background, we have no hesitation to hold that the view taken by the Division Bench of the Lahore High Court Lahore is perfectly in accordance with the letter and spirit of the taxing provision on the one hand and those of the Constitution on the other. We, therefore, don't feel inclined to interfere therewith.

15. For the reasons discussed above these appeals being without merits are dismissed.



Sd/- Mian Shakirullah Jan, J
Sd/- Nasir-ul-Mulk, J
Sd/- Ejaz Afzal Khan, J

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