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Judgment Sheet

IN THE LAHORE HIGH COURT AT LAHORE
JUDICIAL DEPARTMENT

W.P No. 19821 of 2013

Soheri Bank Limited
Vs.
Federation of Pakistan etc.

JUDGMENT

Date of hearing: 28.11.2014

Petitioner By: Syed Ali Zafar, Advocate for the petitioner

Respondent By: Mr. Muhammad Ilyas Khan, Advocate for respondent No.3
Mr. Saifraz Ahmed Cheema, Advocate for respondent
Mr. Muhammad Sohail, Standing Counsel for Pakistan
Mr. Nasar Ahmed, Deputy Attorney General for Pakistan

Jiaz ul Ahsan, J. Through this common judgment, I intend to decide the instant petition as well as a number of other petitions mentioned in Schedule-A to this judgment. All these petitions raise common questions of law.

2. Through this constitutional petition, the petitioner challenges amendments made in the Income Tax Ordinance 2001 ("ITO") through Finance Act 2013. By virtue of the said amendments, the respondents have incorporated an "Explanation" after the proviso of Section 165 (1) of the ITO. Further, a new section 165-A has been added. The impugned explanation clarifies that Section 165 (1) overrides all conflicting provisions of other laws in so far as divulgence of information under Section 165 is concerned.

3. The newly added Section 165-A inter-alia requires banking companies to provide access to FBR through specified functionaries to its their database

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containing details of account holders and furnish information regarding their account holders to the Federal Board of Revenue on periodical basis.

4. The learned counsel for the petitioner submits that in the banking business, the relationship of banker and customer ought to be sacrosanct in nature and the banker is obliged to treat all personal information of its customers as confidential. He maintains that it is the duty of a banker to safeguard the confidentiality of its customer's transactions, which is not only a legal duty but also stems from the contract between the bank and its customer. It is argued that the respondents have violated the above-mentioned principal of banking secrecy in an unlawful manner and that too by making amendments in the Income Tax Ordinance, 2001 through a Money Bill. The learned counsel maintains that the impugned amendments could not have been introduced as a Money Bill in view of the fact that they did not meet any of the requirements as envisaged in Article 73 (2) of the Constitution of Islamic Republic of Pakistan, 1973 ("Constitution"). He submits that a plain reading of sub-clauses (u) to (g) of Article 73 (2) of the Constitution makes it clear that these only relate to "Imposition, Abolition, Remission, Alteration or Regulation" of any Tax. He, therefore, maintains that the insertion of the impugned provisions in the ITO is ultra-vires the Constitution. He submits that merely the fact that the impugned amendments have been made in the Income Tax Ordinance does not make such amendments fall under the purview of Article 73 (2) of the Constitution.

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5. Although learned counsel for the petitioner had taken other grounds in his petition, he has confined his challenge and arguments to the sole ground that the impugned amendments could not have been introduced through a

Money Bill. Since no other ground was argued, the other grounds will be deemed to have been abandoned.

6. The respondents were put to notice. Parawise comments were filed on behalf of respondent No.3, which have been perused.

7. The learned counsel for the respondent submits that there is no constitutional infirmity in the impugned enactments. The same have competently and validly been passed by the National Assembly as a Money Bill. He submits that the alleged violation of Secrecy norms of the banks do not render the impugned amendments contrary to constitutional propriety. He argues that the principal of banking secrecy is not an absolute rule anywhere in the world. It is universally and invariably subject to restrictions imposed by state law and regulations. The learned counsel for the respondent points out that banks are under a legal obligation to provide information to tax authorities about their account holders in situations where interest of the state is involved. Relying on Halsbury's Laws of England, Fourth Edition, Volume 3, Banking, Page 11, he submits that a bank is legally required to provide information where circumstances give rise to a public duty of disclosure. As such where state revenue is involved and fiscal considerations require disclosure of customer information, compliance by banks is a statutory obligation.

8. The learned counsel for the Respondents further maintains that requisition of necessary information from banks by the competent authorities is not a new phenomenon. He has referred to Anti Money Laundering Act, 2010 as well as National Accountability Bureau Ordinance, 1999, which obligate banks to provide information relating to account holders. Referring to

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Section 176 of the ITO, he argues that banks are already sharing information about their account holders with the Federal Board of Revenue in compliance with notices under Section 176 of the Income Tax Ordinance 2001. It is submitted that there are sufficient safeguards available in the ITO to maintain secrecy of the record and details of a tax payers financial transactions which cannot be disclosed or shared with any third party except as provided by law.

9. On the question of vires of the impugned amendments, the learned counsel submits that the impugned amendments relate to imposition / regulation of levy of income tax through calling for information about fiscal transactions in the bank accounts of customers. Hence the enactments fall within the scope of Article 72 (2) (a) and (g) of the Constitution. He maintains that matters relating to levy / imposition of tax and all incidental matters fall within the ambit of a Money Bill. Therefore, no illegality has been committed by undertaking the impugned amendments through a Money Bill. He finally argues that no vested right of the petitioner has been violated. Banks have no right to cover up dubious financial transactions under the garb of secrecy and confidentiality. The amendments are a part of the government's focus on undocumented and hidden economy, which is not contributing its due share to the national exchequer.

10. Notice was issued to the Attorney General of Pakistan in terms of Order XXVII-A CPC. A learned Standing Counsel as well as the learned Deputy Attorney General have appeared on behalf of the Federation. The learned Deputy Attorney General for Pakistan has referred to proviso added to Sections 165 and 165-A of the Income Tax Ordinance, 2001 ("Ordinance") to argue that all information received under the said Sections will be used for

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tax purposes only and kept confidential as envisaged in Section 165(4) of the Ordinance. He maintains that the said provision has been narrowly tailored for the restricted purpose of dealing with the matters involving tax. He further submits that the impugned amendments are clearly covered by provisions of Article 73(2)(g) of the Constitution of the Islamic Republic of Pakistan, 1973 ("Constitution") as amendments in question relate to regulation of tax. He emphasizes the fact that the information in question would not be used for any other purpose and its confidentiality has also specifically been ensured in so far as there is no obligation to disclose any information to any other person or regulatory authority. He further maintains that the language of Article 73(2)(g) of the Constitution also substantiates the above argument in so far as anything that relates to advancing the main purpose of the provision can also be introduced through Money Bill being incidental to the said purpose. In this regard, he has referred to 2013 PTD 1459, 2013 PTD 969 and 1998 PTD 1804 to argue that any purpose which is required to be given effect to the main purpose of the legislation, falls within definition of "incidental" and therefore falls within the purview of Article 73(2)(g) of the Constitution.

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11. The Deputy Attorney General further submits that Article 73(5) creates a jurisdictional bar to the effect that the certificate issued by the Speaker National Assembly certifying that a bill is a Money Bill is conclusive and cannot be called in question. He has however frankly conceded all judgments of this Court as well as the Hon'ble Supreme Court of Pakistan so far rendered in this regard deal with the said jurisdictional bar and have concluded that the bar is not absolute and in suitable cases, the Court can

examine vires of such money bill on the touchstone of Article 73 of the Constitution. He has also adopted the arguments advanced by learned counsel for FBR.

12. Since all parties have been heard at length, with their consent, this petition is admitted to regular hearing and is being decided as a "Pacca" case.

13. I have heard the learned counsel for the parties and gone through the record with their assistance.

14. The only question requiring determination by this Court is whether the impugned amendments made in the ITO through Finance Act 2013 could have been introduced through a Money Bill.

15. In order to answer the said question, it would be necessary to examine the meaning and scope of the impugned provisions in the backdrop of Article 73 (2) of the Constitution. For ease of reference, the impugned provisions are reproduced below: -

In Section 165,--

(a) In sub-section (1), after the proviso, the following explanation shall be added, namely:-

"Explanation.— For the removal of doubt, it is clarified that this sub-section overrides all conflicting provisions contained in the Protection of Economic Reforms Act, 1992 (XII of 1992), the Banking Companies Ordinance, 1962 (LVII of 1962), the Foreign Exchange Regulation Act,

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1947 (VII of 1947) and the regulations made under the State Bank of Pakistan Act, 1956 (XXXIII of 1956), if any, on the subject, in so far as divulgence of information under section 165 is concerned"; and

- (b) in sub-section (6), for the semicolon a full stop shall be substituted and thereafter the proviso shall be omitted;

"Section 165A. *Furnishing of information by banks.*

-(1) Notwithstanding anything contained in any law for the time being in force including but not limited to the Banking Companies Ordinance, 1962 (LVII of 1962), the Protection of Economic Reforms Act, 1992 (XII of 1992), the Foreign Exchange Regulation Act, 1947 (VII of 1947), and the regulations made under the State Bank of Pakistan Act, 1956 (XXXIII of 1956), if any, on the subject, every banking company shall make arrangements to provide to the Board in the prescribed form and manner.--

- (a) online access to its central database containing details of its account holders and all transactions made in their accounts;



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- (b) a list containing particulars of deposits aggregating rupees one million or more made during the preceding calendar month;
 - (c) a list of payments made by any persons against bills raised in respect of a credit card issued to that person, aggregating to rupees one hundred thousand or more during the preceding calendar month;
 - (d) a consolidated list of loans written off exceeding rupees one million during a calendar year; and
 - (e) a copy of each currency transactions report and suspicious transactions report generated and submitted by it to the Financial Monitoring Unit under the Anti-Money Laundering Act, 2010 (VII of 2010).

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(2) Each banking company shall also make arrangements to nominate a senior officer at the head office to coordinate with Board for provision of any information and documents in addition to those listed in sub-section (1), as may be required by the Board.

(3) The banking companies and their officers shall not be liable to any civil, criminal or disciplinary proceedings against them for furnishing information required under this Ordinance.

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(4) Subject to section 216, all information received under this section shall be used only for tax purposes and kept confidential."

16. Article 73 (2) of the Constitution makes a departure from the legislative procedure for introducing bills with respect to any matter in the federal legislative list. It provides the procedure with respect to the Money Bills and envisages that notwithstanding anything contained in Article 70, a Money Bill shall originate in the National Assembly. If the National Assembly passes the bill with or without incorporating recommendations of the senate, it shall be presented to the President for assent. Simultaneously when a Money Bill including the Finance Bill containing the Annual Budget Statement is presented in the National Assembly, a copy thereof shall be transmitted to the Senate, which may within fourteen days make recommendations thereon to the National Assembly. In this regard, the provisions of Sub-Article 2 of Article 73 of the Constitution are relevant to answer the question raised before this Court. For ease of reference, Article 73 (2) is reproduced below:-

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73. Procedure with respect to Money Bills. - [(1) ...

(1)

(2) For the purposes of this Chapter, a Bill or amendment shall be deemed to be a Money Bill if it contains provisions dealing with all or any of the following matters, namely:-



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(a) the imposition, abolition, remission, alteration or regulation of any tax;

(b) the borrowing of money, or the giving of any guarantee, by the Federal Government, or the amendment of the law relating to the financial obligations of that Government;

(c) the custody of the Federal consolidated Fund, the payment of moneys into, or the issue of moneys from, that Fund;

(d) the imposition of a charge upon the Federal Consolidated Fund, or the abolition or alteration of any such charge;

(e) the receipt of moneys on account of the Public Account of the Federation, the custody or issue of such moneys;

(f) the audit of the accounts of the Federal Government or a Provincial Government; and

(g) any matter incidental to any of the matters specified in the preceding paragraphs.

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17. It will be seen that sub-articles (a) and (g) of Article 73 (2) are relevant to the controversy and the answer to the question *ibid*, lies in interpreting the meaning and scope of the words "imposition, abolition, remission, alternation

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or regulation of any tax; and any matter incidental to any of the matters specified in the preceding paragraphs”.

18. While the learned counsel for the petitioner has argued that the impugned amendments do not fall within the parameters of sub-clause (a) to (g), the learned counsel for the respondent has vehemently argued that the impugned amendments relate to imposition and regulation of taxes and matters incidental thereto. As such they are covered by the said language. It would, therefore, be necessary to understand the real meaning of the terms “imposition, regulation, and incidental” as used in Article 73 (2) of the Constitution. The terms imposition, regulation / regulate have been defined in various dictionaries and has also been examined by superior courts in the following terms: -

Imposition

Phrase “Imposition” has been defined in different dictionaries as follows: -

K.J. Aiyar
Judicial Dictionary
16th Edition

At P. No. 850

Imposition:

Levy, collection and assessment. See Assessment, collection, imposition and levy. [Assistant Collector Central Excise v. National Tobacco Co AIR 1972 SC 2563, (1972) 2 SCC 560].

Legal Terms & Phrases
By M. Husain Khan
2006 Edition

At P. No. 447

Imposition:

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"The word 'imposition' has not been defined in Section 3 of Taxes Act, 1931 however, its meaning is well known. In Ballentine's Law Dictionary it means 'any form of tax or enforced contribution to the public treasury'. M/s. national tanneries of Pakistan Ltd. Vs. Federation of Pakistan etc. NLR 1991 Tax 66"

The Chambers Dictionary
12th Edition

At P. No. 765

Imposition:

"An act or instance of imposing or laying on; the act of laying on hands in ordination and certain sacraments; something imposed, a burden; a punishment task;"

Regulation:

Phrase "Regulation" has been defined in different dictionaries as follows: -

Black's Law Dictionary Fifth Edition:

Regulation. - The act of regulation; a rule or order prescribed for management or government; a regulating principle; a precept. Rule of order prescribed by superior or competent authority relating to action of those under its control. Regulation is rule or order having force of law issued by executive authority of government.

Regulate:

To fix, establish, or control; to adjust by rule, method, or established mode; to direct by rule or restriction; to subject to governing principles of laws. The power of Congress to regulate commerce is the power to enact

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all appropriate legislation for its protection or advancement; to adopt measures to promote its growth and insure its safety; to foster, protect, control, and restrain.

The Australian Oxford Dictionary, Second Edition:

Regulation. – The act or an instance of regulating, the process of being regulated. A prescribed rule; an authoritative direction.

Webster's New World College Dictionary has defined the word "regulation" as under:-

(i) a regulating or being regulated; (ii) a rule, ordinance, or law by which conduct, etc. is regulated.

PLD 2003 Lahore 73 (Malik Asghar and 3 others Vs. Government of Punjab)

To regulate is to fix, establish, or control, to adjust by rule, method, or establish mode; to direct by rule or restriction; to subject to governing principles or laws.

The power to regulate necessarily includes even a power to prohibit. The power to regulate implies, a power to foster, to protect, control and restrain.

1984 P.Cr.L.J 117 (Ch. Muhammad Akram and another Vs. District Magistrate Multan)

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Word "regulate", held, synonymous with word "control" or "govern". It may, therefore, cover orders of prohibitory nature which may be deemed necessary by the District Magistrate for the regulation of the movements of vehicles on roads and streets in any town or other places in which he thinks fit.

PLD 1958 SC (Pak.) 41 (M/s. East and West Steamship company Vs. Pakistan) (at page 45)

The power to regulate implies a power to foster, protect, control and restrain.

The word "Incidental" has been defined as follows: -

Oxford Advanced Learner's Dictionary, 8th Edition

To mean happening in connection with, supplementary

Longman Dictionary of Contemporary English, DVD-ROM

Happening or existing in connection with something else that is more important:

Incidental to

Companies that carry out investment business that is incidental to their main activity

Naturally happening as a result of something

Black's Law Dictionary 9th Edition

Incidental, adj. (17c) Subordinate to something of greater importance; having a minor role <the FAA determined that the wind played only an incidental part in the plane crash>.

The Essential Law Dictionary, SPHINX® PUBLISHING, Illinois, 2008 P.237

Incidental, ADJ Accompanying something else, usually in a subordinate way; occurring in connection with something else by chance or as a consequence.

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Biswas Encyclopedic Law Dictionary, 3rd Edition, 2008, Wadhwa Nagpur, P.799

"...the term 'incidental' has been defined to mean that 'depending upon or, appertaining to something else as primary; something necessary, appertaining to, or depending upon another which is termed the principal, something incidental to the main purpose.'" [2005 II LLJ 492]

Collector of Customs and others versus Sheikh Spinning Mills, 1999 SCMR 1402:

Although the words 'incidental' and 'ancillary' literally mean things of lesser or subordinate degree or of consequential nature, but in legislative interpretation, they mean more than this."

Wharton's Law Lexicon, 14th Edition

"A thing necessarily depending upon or following another that is more worthy."

19. The term "incidental" as used in Article 73 (2) of the Constitution appears to widen the scope of sub-clause (a) to (f) by providing that any matter connected with or supplementary to any of the matters specified in the preceding paragraphs will also be deemed to be a Money Bill. It is on this basis that Finance Bills regarding rates of taxes also contain provisions relating to machinery for collection, assessment, appeals, revisions etc. are treated as Money Bills because such matters are "incidental" to imposition of taxes. Similarly, a bill seeking to amend or consolidate the law relating to income taxes is treated as money bill provided such bill aims at imposition, abolition, remission or regulation of any tax or any matter incidental thereto. Thus there may only be one section in a Money Bill imposing a tax and several others which may deal with the scope, methodology and manner of its imposition, collection, assessment etc.

20. In the above context, Section 165 of the Income Tax Ordinance to which the impugned "explanation" has been added needs to be examined.

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Section 165 of the Income Tax Ordinance 2001 is reproduced below for ease of reference: -

*165. Statements.- (1) Every person collecting tax under Division II of this Part [or Chapter XII] or deducting tax from a payment under Division III of this Part [or Chapter XII] shall, [***] furnish to the Commissioner a [monthly] statement in the prescribed form setting out—*

(a) *the name, [Computerized National Identity Card Number, National Tax Number] and address of each person from whom tax has been collected under Division II of this Part [or Chapter XII] or to whom payments have been made from which tax has been deducted under Division III of this Part [or Chapter XII] in [each [month]];*

(b) *the total amount of payments made to a person from which tax has been deducted under Division III of this Part [or Chapter XII] in [each [month]];*

(c) *the total amount of tax collected from a person under Division II of this Part [or Chapter XII] or deducted from payments*

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made to a person under Division III of
this Part [or Chapter XII] in [each
[month]]; and

(d) such other particulars as may be
prescribed [.]

[Provided that every person as provided in
sub-section (1) shall be required to file withholding
statement even where no withholding tax is collected
or deducted during the period.]

[(2) Every prescribed person collecting tax
under Division II of this Part or Chapter XII or
deducting tax from payment under Division III of this
Part or Chapter XII shall furnish or e-file statements
under sub-section (1) by the 15th day of the month
following the month to which the withholding tax
pertains.]

[(3) [Board] may prescribe a statement
requiring any person to furnish information [***] in
respect of any transactions in the prescribed form and
verified in the prescribed manner [.]]

[(4) A person required to furnish a statement
under sub-section [(1)], may apply in writing, to the
Commissioner for an extension of time to furnish the
statement after the due date and the Commissioner if

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satisfied that a reasonable cause exists for non-furnishing of the statement by the due date may, by an order in writing, grant the applicant an extension of time to furnish the statement.]

[(5) The Board may make rules relating to electronic furnishing of statements under this section including,-

- (a) mandatory electronic filing of statements; and*
- (b) determination of eligibility of the data of such statements and e-intermediaries, etc.]*

[(6) Every person deducting tax from payment under section 149 shall furnish to the Commissioner an annual statement in the prescribed form and manner:

Provided that annual statement shall also be filed where the income exceeds three hundred thousand rupees but does not exceed three hundred and fifty thousand rupees in a tax year.]

21. A plain reading of Section 165 shows that it relates to furnishing of various statements by persons collecting or deducting taxes on behalf of the Government and these statements contain information in respect of persons

from whom tax is deducted or collected including the amount of payment collected and deposited. The information thus collected is utilized by the tax authorities in regulation of income tax and other taxes as well. On the basis of such information, the tax authorities find out and verify whether or not the withholding agent has correctly withheld taxes as per rates prescribed in the ITO and has deposited the taxes collected by it in the government treasury within the prescribed period. The information is used to monitor withholding agents and thereby regulating the collection of taxes through this mechanism. As such this information can also be utilized to see whether or not persons to whom payments have been made have correctly declared their receipts and incomes. Thus, provisions of Section 165 ibid fall within the ambit of the words "Provisions dealing with the imposition, or regulation of any tax" as used in sub-clause (a) to Article 73 (2) of the Constitution.

22. We now proceed to examine the meaning, scope and effect of the "Explanation" added to Section 165, which is impugned through this petition. The "Explanation" has been reproduced in Paragraph 13 above. The explanation has been added to Section 165 (1) purportedly to explain and remove doubts, if any, regarding the overriding effect of Section 3 of the Income Tax Ordinance 2001, which has been in place since promulgation of the said Ordinance with effect from 01.07.2002 in the following terms: -

"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."

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I, therefore, find substance in the argument of the learned counsel for the respondent that the explanation in question has not introduced anything new. Rather, it explains the existing provision of law which is evident from the phrase "for the removal of doubt. . . .".

23. The object of adding an explanation to a statutory provision was considered in the case of Colony Sarhad Textile Mills Vs. Collector, CE & LC (PLD 1969 Lahore 228): -

"The object of adding an explanation to a statutory provision is only to facilitate its proper interpretation and to remove any possible confusion or misunderstanding about its true meaning. It does not per se create or extinguish any liability which has to be spilt out only from the main provision sought to be interpreted with the assistance of the Explanation. In other words, the Explanation is to be relied upon only as a useful guide or in aid to the construction of the main provision."

In the case of Muhammad Hussain Petel Vs. Habib Wali Muhammad (PLD 19681 SC 1), it was held as under:-

"Section 13(2)(i) read with explanation - Explanation not a deeming clause but truly an explanation and relatable to clause (i) of Section 13 (2) in order to indicate what term "rent due" may include - Explanation, held, places no limitation on

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type and number of other charges payment of which
tenants may agree to make – [words & phrases].”

Arshad Akram & Co. Vs. Divisional Superintendent, Pakistan Railways

(PLD 1982 Lahore 109) wherein it was held that explanation does not enlarge scope of main section and added by construction of explanation, however, held, must depend upon its terms and language used.

PLD 1968 Lahore 202 (D.B.) Explanation to Section – Not substantive provision – Merely an aid to interpretation of Section.

AIR 1939 Lahore 587 (D.B.) Explanation to Section does not enlarge the scope of the original section that it is supposed to explain.

24. I am, therefore, of the opinion that the explanation impugned through this Petition is not a substantive provision, does not and indeed cannot add anything to the existing section and has been added to explain, facilitate and be utilized as an aid to the interpretation of the Section. Therefore, as a corollary, it can logically be concluded that the explanation being added to Section 165, which already falls within the purview of the language of Article 73 (2) (a) and (g) is also covered by the language of Sub-Articles (a) and (g). The provisions of Section 165-A are similar to section 165 ibid. It overrides various other laws which were even otherwise covered by the overriding provision of the ITO. Further in view of the fact that the laws mentioned in the said section are prior in time, on the settled principles of interpretation of statutes, it would prevail over previous laws being later in time in the event of a conflict between the two. In addition, a plain reading of the newly inserted

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Section 165-A makes it clear that the information sought would be used for the purpose of imposition, regulation and collection of taxes from account holders, who do not have national tax numbers or have not filed their returns in the previous years as has been explained through SRO No. 115 (I)/2014 dated 19.02.2014, which would be discussed in a subsequent part of this judgment. It is difficult to understand for what purpose could the information mentioned in Section 165A be used by the Federal Board of Revenue or its specified functionaries, other than imposing and regulating taxes and matters incidental thereto relating to citizens who are liable to pay taxes but stay outside the tax net without lawful cause or justification. The learned counsel for the respondent has vehemently stressed this purpose, scope, meaning and interpretation of Section 165A. This interpretation also appears to be in line with the intent and object of this provision in the mind of the law maker. It is, therefore, clear and obvious that Section 165-A falls within the ambit and scope of Article 73 (2) (a) and (g) of the Constitution and could therefore, be introduced through a Money Bill. On a combined reading of Article 73 (2) (a) and (g) of the Constitution with reference to the language of 165A of the ITO, I have no hesitation in holding that the provisions of the said Section meet the parameters of Article 73 (2) and could therefore be the subject matter of a money bill.

25. It is also significant to note that the concept of requiring information regarding financial transactions of citizens by tax authorities and other state functionaries for the purpose of imposition, regulation of taxes and matters incidental thereto is not new to our law. In this regard, reference may be made to Section 176 of the ITO, which provides as follows: -

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176. Notice to obtain information or evidence. —

(1) The Commissioner may, by notice in writing, require any person, whether or not liable for tax under this Ordinance —

(a) to furnish to the Commissioner or an authorised officer, any information relevant to any tax [leviable] under this Ordinance as specified in the notice; or

(b) to attend at the time and place designated in the notice for the purpose of being examined on oath by the Commissioner or an authorised officer concerning the tax affairs of that person or any other person and, for that purpose, the Commissioner or authorised officer may require the person examined to produce any accounts, documents, or computer-stored information in the control of the person [; "or"]

[(c) the firm of chartered accountants, as appointed by the [Board or the Commissioner], to conduct audit under section 177, for any tax year, may with

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*the prior approval of the Commissioner concerned, enter the business premises of a taxpayer, [***] to obtain any information, require production of any record, on which the required information is stored and examine it within such premises; and such firm may if specifically delegated by the Commissioner, also exercise the powers as provided in sub-section (4).]*

(2) The Commissioner may impound any accounts or documents produced under sub-section (1) and retain them for so long as may be necessary for examination or for the purposes of prosecution.

(3) [The person from whom information is required, may at his option, furnish the same electronically in any computer readable media.] Where a hard copy or computer disk of information stored on a computer is not made available as required under sub-section (1), the Commissioner may require production of the computer on which the information is stored, and impound and retain the computer for as long as is necessary to copy the information required.

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(4) For the purposes of this section, the Commissioner shall have the same powers as are vested in a Court under the Code of Civil Procedure, 1908 (Act V of 1908), in respect of the following matters, namely: -

- (a) enforcing the attendance of any person and examining the person on oath or affirmation;
- (b) compelling the production of any accounts, records, computer-stored information, or computer;
- (c) receiving evidence on affidavit; or
- (d) issuing commissions for the examination of witnesses.

(5) This section shall have effect notwithstanding any [law or rules] relating to privilege or the public interest in relation to the production of accounts, documents, or computer-stored information or the giving of information.

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26. It would, therefore, appear that similar information will be sought in terms of the newly inserted Section 165-A. The difference between the two is that while under Section 176, the commissioner can require similar information to be furnished by notice in writing, under Section 165-A, an obligation has been imposed on banks to provide such information

automatically and on periodical basis. Section 165A has been introduced to provide the requisite legal authority to the Federal Board of Revenue to identify holders of bank accounts, who do not have national tax numbers and have not filed returns of income tax for the immediately preceding year, to impose taxes and regulate taxation of such persons and for matters incidental thereto. It is hard to conceive of any other lawful purpose that this information can be used by the limited number of senior officials of FBR who would have access to such information. It may also be noted that such information can also be sought by other government agencies under different laws. In this regard, reference may be made to the Anti-Money Laundering Act 2006, Section 6 whereof provides vast powers to Financial Monitoring Unit to receive suspicious transaction reports and currency transaction reports from financial institutions / banks / money exchange companies. Likewise, similar powers are available to the National Accountability Bureau under the National Accountability Ordinance 1999. It is, therefore, obvious that there are no longer water tight compartments of secrecy of financial information of account holders. Where there is statutory backing, covering, specific situations like tax evasion, tax fraud, money laundering and national security considerations etc, the veil of secrecy can be pierced, subject to the law and the power of judicial review of the legality of executive actions by judicial fora. There is clearly a state interest in imposing and collecting taxes from those who are liable to pay taxes but fail to do so without lawful justification.

27. During pendency of the proceedings before this Court, SRO No. 1035(I)/2013 dated 05.12.2013 and later SRO No. 115 (I)/2014 dated 19.02.2014 were notified. Through the earlier SRO, objections and

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suggestions were sought from persons affected or likely to be affected by the impugned amendments. Through the later SRO, Chapter VIII (A) was inserted in the Income Tax Rules, 2002 whereby a significant exclusion was provided in terms of Rule 39F, which is reproduced below: -

39F. Exclusion. - (1) the information may not be provided by the banking company officer in respect of a person who holds National Tax Number and has also filed return of income for the immediately preceding tax year.

(2) The information regarding the person mentioned in sub-rule (1) may be provided to the reporting banking company by the Board, on 10th of every month.

Care and caution appears to have been adopted in the rules to limit the extent and use of information sought and persons who would have access to such information. Sub-Rule 3 of Rule 39D provides as under: -

39D. Authorized persons. - (1)

(2)

(3) The information required to be reported to the Board shall be provided by the banking company officer to the Chairman, Federal Board of Revenue or any officer authorized by the Chairman in this behalf.

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*Provided that the officer authorized by the
Chairman shall not be below the rank of Member of
the Board.*

28. The afore-noted provision materially and substantially limits the class of account holders, whose information is required to be provided. It clarifies that information regarding specific accounts maintained by persons, who do not possess national tax numbers and have not filed tax returns for the immediately preceding year is required to be provided to the Chairman or a Member of the Federal Board of Revenue or an officer authorized by the Chairman not below the rank of a Member of the Board. It appears that care has been taken in the rules not to create unnecessary burden on banking companies and to limit the extent and use of information sought and persons, who would have access to such information. Therefore, the apprehension of the petitioner that a Carte-blanche has been given to the Federal Board of Revenue relating to accounts of all depositors and the transactions made therein is obviously misplaced. The exclusion contained in Rule 39 (f) has clarified and circumscribed the power of the Board to have access to information regarding accounts of a specific category of the account holders, who are not within the tax net with the object of bringing them within the tax regime and impose and regulate matters of taxation of such account holders subject to and in accordance with law. On a Court query, on instructions and in light of the provisions of SRO No. 115 (I)/2014 dated 19.02.2014, it has categorically been stated on behalf of FBR that notwithstanding the provisions of Section 165-A, the banks will only be required to provide information in respect of persons who do not hold national tax numbers and

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have also not filed return of income tax for the immediately preceding year in accordance with and remaining within the parameters of Section 165A. For avoidance of doubt, it has been clarified that banking companies shall not be required to provide access, lists, information and copies of currency transactions etc. as envisaged in sub-clause (a) to (e) of Section 165A relating to other account holders, who possess tax numbers and have filed tax returns for the immediately preceding tax year.

29. The learned counsel for the petitioner has relied upon Mir Muhammad Idris and others Vs. Federating of Pakistan through Secretary Ministry of Finance and others (PLD 2011 SC 2013) and East Pakistan Chrome Tannery Pvt. Ltd. Vs. Federation of Pakistan and others (2011 PTD 2643) in support of his contentions.

30. I have gone through the afore-noted judgments. In the case of Mir Muhammad Idris ibid, an amendment had been made in the Banks (Nationalization) Act, 1974 through Finance Act, 2007 on the basis of which President of National Bank of Pakistan was reappointed for a 5th time. The Hon'ble Supreme Court of Pakistan held that such amendment could not have been made through a Money Bill as the same did not fall within the ambit of Article 73 (2), Clause (a) to (g) of the Constitution.

31. In the case of East Pakistan Chrome Tannery, the question was whether contribution towards workers welfare fund was a tax or fee. On coming to the conclusion that such contribution was a fee, it was held that the Workers Welfare Fund Ordinance (XXXVI of 1971) could not have been amended through a Money Bill because amendments were not covered by the scope of

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Article 73 (2) (a) to (g) of the Constitution of Islamic Republic of Pakistan, 1973.

32. The reports relied upon by learned counsel for the petitioner at the bar have been rendered on the basis of different set of facts and circumstances and the observations made therein are qualified by facts of those cases. These have no relevance or applicability to the issues germane to this case. Consequently, they are of no help to the case of the petitioner.

33. In view of the foregoing, I find that the impugned amendments fall within the purview of Article 73 (2) (a) and (g) of the Constitution of Islamic Republic of Pakistan, 1973 and are, therefore, intra vires the Constitution.

34. For reasons recorded above, this petition fails. This and all connected petitions are accordingly *dismissed*.

35. Before parting with this judgment, I would like to acknowledge and appreciate the able and valuable assistance rendered to this Court by learned counsels for both sides specially Mr. Muhammad Ilyas Khan, Senior Advocate, Supreme Court of Pakistan and Mr. Ali Zafar, Advocate, Supreme Court of Pakistan.

Sd/-IJAZ UL AHSAN
 JUDGE

Announced in Open Court on 26.12.2014.

Sd/-IJAZ UL AHSAN
 JUDGE

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