

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE QAZI FAEZ ISA
MR. JUSTICE YAHYA AFRIDI

(AFR)

Civil Petition Nos. 2143-L, 2144-L and 2145-L of 2020

(Against the order dated 20.10.2020 passed by the Lahore High Court, Lahore in PTR Nos. 131, 132 and 133 of 2006)

Commissioner Inland Revenue, Lahore. ... Petitioner
(in all cases)

Versus

The Bank of Punjab, Lahore. ... Respondent
(in all cases)

For the Petitioner: Ch. Muhammad Shakeel, ASC.
(In all cases)

For the Respondent: Dr. Ikram-ul-Haq, ASC.
(In all cases)

Date of Hearing: 4 February 2022

ORDER

Qazi Faez Isa, J. The order challenged in these petitions was passed by a Divisional Bench of the High Court in Petition for Tax Reference (**'PTR'**) No. 131 of 2006 and relied upon in PTR Nos. 132 and 133 of 2006 (collectively **'the References'**). The learned Ch. Muhammad Shakeel, representing the Commissioner Inland Revenue, Lahore submits that the References raised the question, whether income received by The Bank of Punjab (respondent) from declared/distributed dividends by Pakistani companies was to be taxed at the rate mentioned in paragraph A or at the rate mentioned in paragraph D of Part V, *Rates of Income Tax for Companies*, of the First Schedule to the Income Tax Ordinance, 1979 (**'the Ordinance'**), which was the applicable law at the time.

2. The relevant portions from the abovementioned paragraphs A and D are reproduced hereunder:

'A. Notwithstanding anything contained in this Schedule, except Part IV, in the case of a company, not being a modaraba, the rates of income tax on total income excluding such part of total income to which paragraph D and E or F or sections 80BB, 80C, 80CC and 80CD apply, shall be as under:-

- (1) in respect of the assessment year commencing on the first day of July 1992,-
- (a) in the case of a banking company; 66 per cent
 - (b) in the case of a public company other than a banking company; 44 per cent
and
 - (c) in the case of any other company; 55 per cent'

D. The rates of income tax in respect of the amount representing income from dividends declared or distributed by a Pakistani company or a modaraba shall be as under:-

- (a) Where such dividends are received by a public company other than the dividend received up to thirtieth June, 2001 by a public company carrying on insurance business.' 5 per cent of such amount

3. The learned Ch. Muhammad Shakeel states that the rate of tax payable by the respondent on its income derived from dividends is to be taxed as per the rate mentioned in the said paragraph A, that is at the rate of 66 per cent, and not at the reduced rate of 5 per cent, mentioned in the said paragraph D, because the respondent is a *banking company* and a *banking company* is specifically mentioned in paragraph A, but is not mentioned in paragraph D.

4. The learned Dr. Ikram-ul-Haq, representing the respondent, controverts the aforesaid and submits as under:

(i) The rate of tax mentioned in the paragraph A prescribes a general rate of tax, and which the respondent pays on its general income. However, the income derived from dividends declared / distributed by Pakistani companies is at the rate mentioned in paragraph D.

(ii) Three legal forums, that is, the Commissioner Appeals, the Income Tax Appellate Tribunal and the High Court, had decided the matter in favour of the respondent and did so in accordance with the applicable law, which was paragraph D of Part V of the First Schedule of the Ordinance.

(iii) In the impugned orders the High Court relied on a precedent of this Court in the case of *E.F.U. General Insurance Ltd. v Federation of*

Pakistan [(1997) 76 Tax 213 (S.C. Pak.)], which was decided by five honourable Judges (**'EFU case'**). In the *EFU case* the very same issue was under consideration (*see*, paragraphs 3 and 19 of the judgment therein), and the case was decided in favour of the appellant therein, which was an insurance company. However, to curtail/restrict the effect of this judgment clause (a) of the paragraph D was amended, by disallowing insurance companies to avail of the rate mentioned therein. The said clause (a) before and after its amendment is reproduced hereunder:

Before the amendment of clause (a) of paragraph D:

(a) Where such dividends are received by a public company.	5 per cent of such amount'
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After the amendment of clause (a) of paragraph D:

(a) Where such dividends are received by a public company other than the dividend received up to thirtieth June, 2001 by a public company carrying on insurance business.	5 per cent of such amount'
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However, the reason for deciding the *EFU case*, its *ratio decidendi*, is still applicable to companies, which are not insurance companies, and, admittedly the respondent is not an insurance company.

(iv) The said paragraph A specifically states that the rates mentioned therein would only be applicable if, amongst others, paragraph D is not applicable, but in the present case paragraph D was applicable and as dividends were paid by Pakistani companies.

(v) The legislature in its wisdom had prescribed a reduced rate of tax in respect of dividends paid by Pakistani companies to encourage that shares of Pakistani companies are purchased to help stimulate the establishment and development of the corporate sector and its businesses.

5. We have heard the learned counsel and with their able assistance read the impugned orders, the applicable provisions of the Ordinance and the cited precedent. The question raised in the References has already been decided by this Court in the *EFU case*, where it held that if

a company was entitled to the benefit of a particular provision of the Ordinance it could not be denied its benefit:

To give effect to the intention of the legislature and to harmonise different provisions of the Ordinance, the interpretation will be that for taxing such income the general provisions contained in the First Schedule providing for computation of tax or income of companies from business shall apply, and, while applying the provisions of the First Schedule for computation of tax on such income, if any benefit in the rate of tax is provided on any kind of income, general insurance companies cannot be deprived of such benefit in the absence of any provision that such benefit shall not be extended in respect of income from general insurance business. Admittedly, no such special provision appears in the First Schedule or in any provision of the Income Tax Law to deny the said benefit to the general insurance companies. There is no provision in the Ordinance or the Schedules that only one part of the First Schedule shall apply and the other shall not in the case of general insurance companies. Benefit in the rates of tax available under the First Schedule of the Ordinance can only be denied to the general insurance companies by suitably amending the law.' (paragraph 19, page 237)

Reliance probably on the last sentence (of the above quoted text) was the reason clause (a) of paragraph D was amended. However, the precedent of the *EFU case* is still applicable with regard to dividends declared/distributed by Pakistani companies in terms of paragraph D in respect of other companies, including a banking company. And, there is no reason to withhold the same from such companies, including a banking company.

6. In addition, the said paragraph A of Part V of the First Schedule of the Ordinance states that the rates mentioned therein would only apply provided, amongst others, paragraph D is not applicable. In the present case paragraph D applies. Such unambiguously clear language leaves no room to countenance another interpretation. And, all the more so when this Court had already given a clear and emphatic answer in the *EFU case*. Therefore, the rates mentioned in paragraph A would not be applicable in respect of dividend income which has been declared / distributed by Pakistani companies and the applicable rate of income tax on such dividend income would be the one mentioned in paragraph D.

7. We are constrained to observe that the income tax authorities unnecessarily wasted time, money and effort which could have been better utilised for more productive causes. They discarded the clear

determinations by three forums and the *EFU case* precedent. Such disdain and persistence without cause, does not engender confidence in taxpayers nor helps in establishing a system which treats them fairly and in accordance with the law. There is no reason to grant leave to appeal the impugned orders and leave is refused. Resultantly, these petitions are dismissed with costs throughout.

Islamabad
4 February 2022

Approved for Reporting
Arif