IN THE HIGH COURT OF SINDH, KARACHI

Present:
Mr. Justice Muhammad Saleem Jessar
Mr. Justice Nisar Ahmed Bhanbhro

Const. Petition No.D-6801 of 2015

(Pakistan Defence Officers Housing Authority v. Federation of Pakistan and 2 others)

Petitioner	:	Through Barrister Sarfaraz Ali Metlo and M/s. Athar Hussain, Farooq, Faiz Ali, Sheeraz Ali Metlo and Muhammad Yaqoob Mahar, advocates
Respondents	:	Through Barrister Ghazi Khan Khalil and M/s. Ameer Nausherwan Adil, Zeeshan Ahmed and Kumail Abbas, advocates
Date of hearing & Order	:	**10.03.2026**

ORDER

NISAR AHMED BHANBHRO, J. Through this petition, the petitioner seeks following relief(s):

> *"a. Declare that the Petitioner is a Non Profit Organization and is entitled to the approval/ certificate as such under the provisions of the Income Tax Ordinance, 2001.*
>
> *b. Declare that the Petitioner is also entitled to the benefit of Section 100C of the Income Tax Ordinance, 2001*
>
> *c. Declare that the Orders dated 12.8.15 and 09.04.14 passed by the Respondents No.2 and 3 are arbitrary, illegal, mala fide and without jurisdiction.*
>
> *d. Direct the Respondents No 2 and 3 to issue approval / certificate of Non Profit Organization in terms of Section 2(36) of the Income Tax Ordinance 2011, to the Petitioner*
>
> *e. Restrain the Respondents, their officers from taking any action adverse to the interests and business of the Petitioner or for recovery of any amount income tax from the Petitioner.*
>
> *f. Grant any other relief deemed just and appropriate in the circumstances of the case."*

2. Learned counsel for the petitioner contends that the petitioner is a Non Profit Organization (**NPO**) created through President's Order No. 7 of 1980 and is exempt from payment of tax. He

contended that the petitioner applied for exemption from tax and approval as NPO under Section 2(36)(c) of the Income Tax Ordinance, 2001 (**ITO-2001**), which was declined vide order dated 09.04.2014 by the Respondent No 2. It is further contended that the appeal on the above-referred order was dismissed without cogent reasons through order dated 12.08.2015. He contends that the petitioner was exempted from payment of tax in terms of Article 21A of the Pakistan Defence Officers Housing Authority (Amendment) Order, 1982 and he prayed to allow the petition by directing the respondents to incorporate the petitioner as NPO and grant the benefit of Section 100 C of ITO-2001.

3. Learned counsel for the respondents No.2 and 3 contends that the petitioner is a state-owned enterprise and governed under the provisions of the State Owned Enterprises (Governance and Operations) Act, 2023. He further contended that the petitioner works as a commercial concern, therefore, the benefit of exemption was not allowed to the petitioner in terms of Section 49 of the **ITO-2001**. He contended that the petitioner failed to establish that it was an NPO and was continuously avoiding the payment of tax. He contends that the impugned orders dated 12.08.2025 and 09.04.2014 did not suffer from any illegality, therefore, the petition merits dismissal.

4. Heard arguments of the parties and perused the material available on record.

5. The crux of the controversy involved in the instant petition is that the petitioner / Pakistan Defence Officers Housing Authority, claims to be an NPO and seeks the benefit of exemption of tax on income, available under Section 100 (c) of ITO-2001. NPO has been defined under Section 2 (36) of the ITO-2001 in the following manner:

> ***"2. Definitions.*** *— In this Ordinance, unless there is anything repugnant in the subject or context —*

> ***(36) "non-profit organization**" means any person other than an individual, which is —*
>
> *(a) established for religious, educational, charitable, welfare purposes for general public, or for the promotion of an amateur sport excluding recreational clubs where the joining fee for membership exceeds one million for any class of new members;*
>
> *(b) formed and registered by or under any law as a non-profit organization;*
>
> *(c) approved by the Commissioner for specified period, on an application made by such person in the prescribed form and manner, accompanied by the prescribed documents and, on requisition, such other documents as may be required by the Commissioner; and none of the assets of such person confers, or may confer, a private benefit to any other person;"*

6. From the perusal of the definition codified in the above provision of law, it is clear that NPO is an organization which is established for religious, educational, charitable, welfare and by terms of amateur sports purposes for the general public. From the perusal of the President's Order No.7 of 1980, the Defence Officers Housing Authority has been defined as a body corporate having perpetual succession to acquire and hold property both movable and immovable in terms of Article 4 of the Order. The schemes, projects and work undertaken by or on behalf of the authority are declared to be the schemes and works for the public purpose, which clearly held that the authority was a body corporate in nature but was formed to execute the works for welfare purposes of general public. However, from perusal of the President's Order No.7 of 1980, it no where transpired that Petitioner was an NPO as such cannot claim benefit of Section 2(36) of ITO - 2001.

7. It is borne out from the record that The President's Order No.7 of 1980 was further amended vide the Pakistan Defence Officers Housing Authority (Amendment) Order, 1982, wherein Article 21A was inserted, which reads as under:

> *"21A. Authority to be exempt from certain taxes--The Authority shall be exempt from the tax payable under the*

Income Tax Ordinance, 1979 (XXXI of 1979), and the Wealth-tax Act, 1963 (XV of 1963)."

8. From the perusal of the above-referred Article, it is crystal clear that the authority was exempted from payment of tax payable under the Income Tax Ordinance, 1979. The petitioner filed an application with the respondents seeking an exemption from payment of tax and incorporation of its status as NPO. The application was declined on the ground that the petitioner, being a body corporate, was not covered under the provisions of Section 49 of ITO-2001 as such an exemption cannot be granted. It is correct that no exception for payment of tax can be granted to a corporation, company, a regulatory authority, a development authority, other body or institution established by or under a Federal law or a Provincial law. For the sake of convenience, Section 49 (supra) is reproduced below:

*"**49. Federal Government, Provincial Government, and Local Government income**.— (1) The income of the Federal Government shall be exempt from tax under this Ordinance.*

(2) The income of a Provincial Government or a 4[Local Government] in Pakistan shall be exempt from tax under this Ordinance, other than income chargeable under the head "Income from Business" derived by a Provincial Government or 5[Local Government] from a business carried on outside its jurisdictional area.

(3) Subject to sub-section (2), any payment received by the Federal Government, a Provincial Government or a 7 [Local Government] shall not be liable to any collection or deduction of advance tax.] 8

(4) Exemption under this section shall not be available in the case of corporation, company, a regulatory authority, a development authority, other body or institution established by or under a Federal law or a Provincial law or an existing law or a corporation, company, a regulatory authority, a development authority or other body or institution set up, owned and controlled, either directly or indirectly, by the Federal Government or a Provincial Government, regardless of the ultimate destination of such income as laid down in Article 165A of the Constitution of the Islamic Republic of Pakistan.

Provided that the income from sale of spectrum licenses 2 [and renewal thereof] by Pakistan Telecommunication Authority on behalf of the Federal Government after the first day of March 2014 shall be treated as income of the Federal Government and not of the Pakistan Telecommunication Authority.]"

9. The contention of the learned counsel for the respondents & DAG that the exemption was granted under the repealed laws, therefore, the provisions of Section 49 would equally apply to the case of the petitioner. No doubt the provision of ITO-1979 through Section 238 which reads as under:

*"**238. Repeal**. — The Income Tax Ordinance, 1979 (XXXI of 1979), shall stand repealed on the date this Ordinance comes into force in pursuance of sub-section (3) of section 1."*

10. But the prime question involved in the present matter is that whether on repeal of the ITO, 1979, the concession so granted to the Petitioner would be available or not. Since the legislation in its wisdom has granted exemption of tax to the Petitioner under the provisions of repealed law, and such actions stood validated through section 239(9) of the ITO - 2001, therefore the benefit of Article 21 - A of the President's Order No 1 of 1982 shall be available to the Petitioner and the exemption on the tax granted to the petitioner by means of Article 21-A referred above holds field and refusal of the respondents to grant such benefit to the petitioner is beyond the powers conferred upon them. The respondents No.2 and 3 failed to exercise their jurisdiction while dealing with the application of the petitioner and interpreted the law on a wrong premise, warranting indulgence of this Court to exercise the powers of judicial review under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973.

11. For the aforementioned reasons, this petition is allowed. The order dated 12.08.2015 passed by the Judicial Member, Appellate Tribunal Inland and Revenue (Pakistan) Karachi and order dated 09.04.2014 passed by Chief Commissioner IR stand set

aside. The application of the petitioner for grant of exemption from tax is allowed. The petitioner is entitled to the benefit of exemption in payment of tax under ITO-2001 in terms of Article 21 - A of the President's Ordinance No.2 of 1982.

JUDGE

JUDGE
HEAD OF CONST. BENCHES

Nadir /PS*

Approved for Reporting