JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

WRIT PETITION NO. 2243 OF 2024

Benson Pharmaceuticals

Versus

Federation of Pakistan and others

Petitioner by : Ms. Raheema Khan, Advocate.
Respondents by : Ms. Naila Irshad, Advocate for Respondent No.2.
Mr. Muhammad Saeed Raja, D.A.G.
Date of hearing : 08.10.2026

Muhammad Azam Khan, J. Through the instant constitutional petition filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner, Benson Pharmaceuticals, an Association of Persons engaged in the manufacture and supply of pharmaceutical products, has questioned the constitutional validity of Section 153(3)(a) of the Income Tax Ordinance, 2001 ("the Ordinance"), and the related withholding-tax provisions. The petitioner states that the impugned statutory scheme subjects Associations of Persons to a higher and non-refundable minimum-tax burden while extending preferential treatment to companies engaged in the same business. The prayer made in the petition is reproduced below:-

> a). Declare Part III of Division III of the First Schedule Read with R.1 of 10th Schedule of Income Tax, Ordinance, 2001 and other unlawful and illegal taxes as void ab initio.
>
> b). Declare Section 153 (3) (a) of Income Tax Ordinance, 2001 as illegal and void ab initio, and consequently set aside and quash the same.
>
> c). Declare Section 153 (3) (a) of the Income Tax Ordinance, 2001 is in violation of the Rights guaranteed under Constitution of Pakistan, 1973.
>
> d). Declare that the impugned Section 153 (3) (a) of Income Tax Ordinance, 2001 violates the Petitioner's fundamental right to protection of property, as enshrined in Article 23 & 24 and right to equality under Article 25 of the Constitution of Pakistan, 1973, and

FOR READING ONLY

as such is unconstitutional, unlawful, illegal and void ab initio, and consequently set aside the same."

2. Learned counsel for the petitioner contended that the petitioner is a duly registered partnership firm, assessed as an Association of Persons, which holds Drug Manufacturing Licence No.000447 and has been manufacturing and supplying medicines to governmental and non-governmental institutions, besides exporting pharmaceutical products, for more than twenty-five years. Learned counsel submitted that the petitioner regularly files its annual income tax returns and discharges its tax obligations, including payment of advance tax. It was argued that, despite carrying on the same manufacturing activity as a corporate pharmaceutical undertaking, the petitioner is denied the treatment available to a company manufacturing the goods supplied by it under clause (a)(i) of the proviso to Section 153(3) of the Ordinance. Elaborating upon the statutory distinction, learned counsel submitted that Section 153(3) generally characterizes the tax deductible under subsections (1) and (2) as minimum tax, whereas clause (a) of its proviso excludes payments received against the sale or supply of goods by a company manufacturing such goods, or by a listed public company, from minimum-tax treatment. According to learned counsel, this distinction enables the specified companies to obtain adjustment and, where an excess payment is established, refund of tax, while an Association of Persons manufacturing and supplying comparable goods remains subject to a minimum-tax liability. It was contended that the resulting disparity rests upon the legal form of the undertaking rather than the nature of its business, the goods supplied or the economic activity generating its income. Learned counsel further argued that the differential treatment operates at two levels: the rate of deduction and the character of the tax deducted. Referring to the rates reproduced in the petition, learned counsel submitted that a company was subjected to withholding at 4.5% of the gross amount payable, whereas an undertaking other than a company was subjected to withholding at 5.5%. It was argued that the petitioner consequently bears a higher deduction which, on its interpretation of Section 153(3), also constitutes a non-refundable minimum tax. Learned counsel additionally referred to clause

FOR READING ONLY

(24A) of Part II of the Second Schedule, pleading that a reduced rate of 1% was prescribed for distributors of pharmaceutical products, and submitted that the fiscal treatment of undertakings operating within the pharmaceutical sector must be examined in the context of these distinctions. Learned counsel maintained that companies and Associations of Persons engaged in the manufacture and supply of the same products are similarly situated for the purposes of the impugned levy. It was submitted that their different organizational forms do not, by themselves, justify imposing materially different burdens upon otherwise comparable transactions. The impugned classification, according to learned counsel, affords a fiscal advantage to corporate manufacturers while placing partnership concerns at a competitive disadvantage, thereby offending the guarantees of lawful treatment and equality embodied in Articles 4 and 25 of the Constitution. Learned counsel argued that the State's power to classify taxpayers must be exercised upon reasonable grounds and cannot be employed to favour one category while unduly burdening another category undertaking the same activity. In support of the plea of discrimination, learned counsel relied upon the judgment cited in the petition as 2010 SCMR 431**,** submitting that legislative classification must rest upon reasonable grounds and that persons placed in similar circumstances must receive equal treatment. It was argued that the impugned distinction fails that requirement because the petitioner's manufacturing operations are comparable to those of a pharmaceutical company benefiting from the statutory exclusion. Learned counsel submitted that the constitutional inquiry must address the practical incidence of the levy, including the combined effect of the higher withholding rate and the denial of adjustment or refund claimed by the petitioner. Learned counsel next contended that retention of tax exceeding the petitioner's liability, merely by characterizing the deduction as minimum tax, deprives it of money which it claims is lawfully refundable. Such retention, it was argued, infringes the petitioner's rights under Articles 23 and 24 of the Constitution and is inconsistent with the principles of natural justice. Learned counsel also invoked the doctrine of unjust enrichment, maintaining that the revenue authorities cannot justifiably retain amounts claimed to have been paid in excess

FOR READING ONLY

while comparable corporate manufacturers are permitted to seek adjustment or refund. Reference was made to Article 38 and the Preamble to the Constitution in support of the submission that fiscal legislation should promote equitable treatment and avoid unjust economic disparities. Addressing the economic consequences of the impugned provisions, learned counsel submitted that unequal taxation of undertakings carrying on the same business distorts competition, restricts investment and growth, and may ultimately prejudice consumers. It was argued that manufacturers should compete on the basis of efficiency, innovation and product quality, whereas the challenged scheme gives corporate undertakings an advantage arising from their organizational status. By way of comparative support, learned counsel referred to Articles 101 and 102 of the Treaty on the Functioning of the European Union, the competition provisions of the United States–Mexico–Canada Agreement, which replaced the North American Free Trade Agreement, and the OECD Guidelines for Multinational Enterprises, invoking them as expressions of the importance of fair competition. Finally, learned counsel submitted that the challenged provisions, insofar as they discriminate against the petitioner and impair its asserted constitutional rights, attract Article 8 of the Constitution. Reliance was also placed upon the judgment cited in the petition as PLD 2012 SC 923 in support of the Court's duty to enforce constitutional guarantees. Learned counsel accordingly sought the declarations reproduced above, contending that the impugned minimum-tax distinction and related rate provisions should be declared unconstitutional, unlawful and void ab initio.

3. Conversely, Mr. Muhammad Saeed Raja, learned Deputy Attorney General, as well as Ms. Naila Irshad, learned counsel for the respondents, controverted the submissions advanced on behalf of the petitioner and raised a preliminary objection to the maintainability of the petition. They submitted that the Ordinance provides a hierarchy of remedies comprising an appeal before the Commissioner (Appeals) under Section 127, an appeal before the Appellate Tribunal under Section 131, and a reference to the High Court under Section 133, besides alternative dispute resolution under Section 134A. He also referred to

FOR READING ONLY

Section 7 of the Federal Board of Revenue Act, 2007. According to learned counsel, the petitioner had failed to demonstrate any sufficient reason for bypassing the available statutory remedies. In support, he relied upon *Adamjee Insurance Company Ltd. v. Pakistan through Secretary to Government of Pakistan* (1993 SCMR 1798), *Commissioner of Income Tax v. Hamdard Dawakhana (Waqf)* (PLD 1992 SC 847), and *Muhammad Arif v. Income Tax Officer* (PLD 1989 SC 109), amongst the authorities cited in the respondents' comments. Learned counsel further invoked Section 227 of the Ordinance, contending that proceedings against orders made under the Ordinance must follow the remedies prescribed therein. He relied upon *Hussain Bakhsh v. Settlement Commissioner, Rawalpindi* (PLD 1970 SC 1) in support of that objection. It was additionally submitted that the petitioner's assertions concerning excess deductions and entitlement to refund raise factual questions requiring examination of the relevant tax record and evidence. Referring to *Nawaz v. Additional Settlement and Rehabilitation Commissioner, Gujrat* (PLD 1970 SC 39), learned counsel argued that such disputed matters ought not to be determined in constitutional jurisdiction. He also maintained that the petitioner had failed to establish an infringement of any fundamental right warranting the exercise of discretionary relief under Article 199 of the Constitution.

4. On the merits, learned counsel submitted that the impugned provisions were enacted by Parliament in the exercise of its constitutional legislative authority. He referred to Articles 70(4) and 142(a), read with the Fourth Schedule to the Constitution, and maintained that the selection of taxpayers, determination of rates and prescription of the mode of taxation fall within the legislative domain. He argued that the revenue authorities are bound to implement the enacted law and possess no authority to alter its classifications or extend concessions beyond their statutory scope. According to learned counsel, the petitioner's disagreement with the fiscal consequences of its chosen organizational form does not establish that Parliament exceeded its legislative competence or infringed a constitutional limitation. Addressing the plea of discrimination, learned counsel contended that companies incorporated under the

FOR READING ONLY

Companies Act, 2017, or the preceding Companies Ordinance, 1984, and Associations of Persons constitute distinct classes of taxpayers. He submitted that Article 25 permits reasonable classification and does not require every category of business undertaking to receive identical fiscal treatment merely because it engages in a similar commercial activity. It was argued that the legislature may extend particular tax benefits to incorporated entities as an incentive for incorporation and documentation of the economy. Learned counsel maintained that the relevant comparison must account for the legal and regulatory characteristics of the respective entities rather than being confined to the products manufactured or supplied by them. Elaborating upon the justification advanced for the distinction, learned counsel submitted that companies operate under a more stringent regulatory framework, including oversight by the Securities and Exchange Commission of Pakistan and requirements governing their corporate affairs and financial records. He maintained that the legislative policy underlying the differential treatment is to encourage bookkeeping, maintenance of proper accounts and greater documentation of business activity. According to learned counsel, these regulatory differences provide an intelligible basis for distinguishing incorporated companies from individuals and Associations of Persons, and bear a rational connection with the objectives of the fiscal scheme. In support of these submissions, learned counsel placed particular reliance upon *Messrs Elahi Cotton Mills Ltd. and others v. Federation of Pakistan and others* (1997 PTD 1555). Referring to paragraphs 31 and 46 of that judgment, he submitted that the legislature enjoys wide latitude in selecting persons, subject matters and transactions for taxation, and may classify taxpayers into categories attracting different rates. He further argued that a permissible classification must rest upon an intelligible differentia having a rational nexus with the object sought to be achieved. Learned counsel referred to the treatment of Sections 80C and 80D of the Income Tax Ordinance, 1979, in that case, submitting that broadening the tax base and securing minimum taxation were recognized as relevant legislative objectives. He maintained that the petitioner's challenge must be examined against those principles. Learned counsel next submitted that the

FOR READING ONLY

petitioner had conflated provisions governing the rate of deduction with provisions determining whether the deduction constitutes minimum tax. He argued that the challenge was principally directed against Section 153(3)(a)(i), yet the petitioner had not clearly demonstrated how the statutory treatment of manufacturing companies infringed any right independently available to an Association of Persons. He also disputed the petitioner's portrayal of the overall tax burden, maintaining that companies and Associations of Persons have separate liabilities and that the comparison could not properly be made by isolating a withholding rate from the remaining fiscal framework. Regarding clause (24A) of Part II of the Second Schedule, learned counsel submitted that the concession concerning distributors was irrelevant to the petitioner's asserted claim for refund of minimum tax under Section 153. Responding to the invocation of Articles 23 and 24 of the Constitution and the doctrine of unjust enrichment, learned counsel submitted that no lawful refund had been determined in the petitioner's favour and remained unpaid. He maintained that the petitioner's assertion of entitlement to refund rested upon its own interpretation of the statutory scheme, whereas the amounts in question were retained as tax payable under the enacted law. It was argued that the imposition and collection of income tax pursuant to legislation cannot, merely because the taxpayer considers the liability burdensome, be equated with an unlawful deprivation of property. Learned counsel accordingly denied that the respondents had unjustly enriched themselves or withheld an established entitlement of the petitioner.

5. Lastly, learned counsel for the respondents submitted that fiscal measures may produce different advantages, disadvantages or hardships for different taxpayers, but such consequences do not, by themselves, establish an infringement of fundamental rights. He maintained that Section 153 applies uniformly to persons falling within its respective statutory categories and that the petitioner had identified no discriminatory action by the revenue authorities within the class to which it belongs. He also disputed the relevance of the foreign instruments cited by the petitioner, submitting that they were neither binding authorities nor persuasive guides to the constitutional validity of the particular

FOR READING ONLY

tax classification challenged before this Court. He ultimately prayed that the petition be dismissed with substantial costs.

6. The starting point of the present constitutional inquiry is the legislative authority vested in Majlis-e-Shoora (Parliament) under the Constitution of the Islamic Republic of Pakistan, 1973. As the highest legislative institution of the Federation, Parliament is entrusted with determining legislative policy and translating that policy into binding law within the sphere of its constitutional competence. Article 141 empowers Parliament, subject to the Constitution, to legislate for the whole or any part of Pakistan, including through laws having extra-territorial operation, while Article 142(a) assigns to it exclusive legislative competence over matters enumerated in the Federal Legislative List. In relation to the subject under consideration, Entry 47 of Part I of the Fourth Schedule expressly places taxes on income other than agricultural income within that legislative sphere. Article 77 further requires that taxation for the purposes of the Federation be imposed by or under the authority of an Act of Parliament, thereby ensuring that a fiscal burden has a legislative foundation. Read together, these provisions establish Parliament's authority to formulate the statutory framework governing income taxation, including the identification of taxable persons and receipts, prescription of rates, provision of concessions and determination of mechanisms for collection. The existence of that authority must, however, be distinguished from the constitutional validity of a particular exercise thereof: legislative competence answers whether Parliament may legislate upon the subject, whereas constitutional scrutiny examines whether the resulting provision conforms to the limitations governing that power. The qualification "subject to the Constitution" in Articles 141 and 142 therefore defines the relationship between legislative authority and constitutional supremacy. Parliament's position within the federal legislative sphere does not place an enactment beyond constitutional examination, just as the availability of judicial review does not transfer responsibility for fiscal policy to the Court. The inquiry must consequently remain directed to the constitutional validity of the challenged measure, with due regard to the legislative choices entrusted to Parliament. In the

FOR READING ONLY

present case, the relevant starting point is thus Parliament's competence to legislate concerning income taxation, followed by examination of whether the particular distinctions and consequences challenged by the petitioner are consistent with the constitutional guarantees upon which it relies.

7. The petitioner has sought a declaration that Section 153(3)(a) of the Income Tax Ordinance, 2001, as amended through parliamentary legislation, is unconstitutional and void ab initio, thereby requiring this Court to examine its validity against the constitutional guarantees invoked. The petitioner's reliance upon Article 25 must accordingly be examined through the requirements of intelligible differentia and rational nexus. The first requirement concerns the basis upon which the legislature has separated the relevant categories; the second concerns the connection between that separation and the object sought to be achieved. A distinction may be readily identifiable yet fail to bear a rational relationship with the legislative purpose. Conversely, persons engaged in a common commercial activity may possess relevant legal or regulatory characteristics which justify different treatment for the purposes of a particular fiscal measure. Neither similarity of products nor difference of legal form, considered in isolation, settles the constitutional question. The comparison must be made by reference to the subject and purpose of the impugned provision. Thus, the petitioner's assertion that it manufactures the same goods as a company requires examination alongside the respondents' explanation concerning incorporation, regulatory supervision and documentation. The Court must determine whether the differences relied upon are relevant to the particular tax distinction challenged, rather than accepting either party's description of the categories as sufficient in itself. Before invalidation is considered, the Court must also examine whether the provision reasonably admits of a construction consistent with the Constitution. The preference for such a construction protects the legislative choice to the extent that the statutory language permits; it does not empower the Court to replace that choice. Reading down cannot be employed to remove an express qualification merely because its removal would produce a result regarded as fairer, nor can interpretation become a means of extending a

FOR READING ONLY

fiscal concession to a category which the enactment expressly excludes. Where constitutional compatibility can be achieved through a legitimate construction, the provision should be sustained on that basis. Where it cannot, the Court must address the established defect and the extent of the relief it requires. The governing discipline throughout is therefore precise: identify the challenged statutory rule, determine its actual operation, test the alleged infringement against the applicable constitutional standard, consider any reasonably available constitutional construction, and confine the resulting determination to the defect, if any, established by that examination.

8. The petitioner's challenge to Section 153(3) of the Income Tax Ordinance, 2001 proceeds upon the premise that manufacturing companies and manufacturing Associations of Persons occupy an identical position for fiscal purposes because they manufacture and supply comparable goods. That premise captures their commercial similarity but does not encompass every characteristic relevant to their taxation. Income tax concerns the taxable person in relation to its income, and the legislature's selection of a method of taxation may take account of the legal constitution of the undertaking, the regulatory framework governing its affairs and the institutional arrangements through which its financial transactions are documented and examined. Section 153(1)(a) brings payments for the sale of goods within the withholding mechanism, while Section 153(3) generally characterizes tax deductible under subsections (1) and (2) as minimum tax. Clause (a)(i) of the proviso to subsection (3) excludes payments received against the sale or supply of goods by a company manufacturing those goods from minimum-tax treatment; clause (a)(ii) separately extends that exclusion to a public company listed on a registered stock exchange in Pakistan. The exclusion does not exempt those recipients from income taxation, nor does it create an unconditional entitlement to refund. It places the relevant deduction within the applicable framework of assessment and adjustment, under which any refund depends upon an excess being established in accordance with law. The petitioner's complaint therefore concerns the distinction between methods of determining and satisfying tax liability, rather than an exemption enjoyed by

FOR READING ONLY

companies from the obligation to contribute revenue. Article 25 requires that distinction to possess an intelligible basis and a rational connection with the legislative objective. The legal categories specified in the proviso are ascertainable, but their identification is only the first element of the inquiry; the further consideration is whether their relevant characteristics explain the different treatment of their receipts. The respondents' reliance upon incorporation, regulatory supervision and documentation addresses that consideration. Their explanation connects the exclusion with the institutional framework governing corporate undertakings and with the policy of encouraging incorporation and greater visibility of economic activity. The petitioner's manufacture of identical pharmaceutical products establishes commercial comparability, but does not, by itself, remove the fiscal relevance of those organizational and regulatory differences.

9. The relationship between that regulatory framework and the ascertainment of tax liability gives substance to the classification. Corporate organization carries institutional arrangements concerning the conduct, supervision and documentation of business affairs which differ from those governing a partnership assessed as an Association of Persons. The respondents' justification relates those arrangements to the legislative choice concerning minimum taxation: the distinction is presented as an incentive for incorporation and documentation, alongside the greater regulatory structure attached to the corporate category. Its rationale does not rest upon an assumption that every Association of Persons maintains deficient records or that every company invariably complies with its obligations. A partnership may maintain comprehensive accounts, regularly file returns and discharge its liabilities with considerable financial discipline; a company may fail to comply with the requirements governing it. Those individual circumstances do not eliminate the differences between the institutional frameworks applicable to the respective categories. The petitioner's assertion that it has conducted its business for more than twenty-five years, regularly filed returns and paid advance tax consequently bears upon its own compliance, but does not establish equivalence of regulatory

FOR READING ONLY

position for the purpose of clause (a)(i) of the proviso to Section 153(3). Fiscal classification operates by reference to relevant characteristics of the group and is not necessarily displaced by the circumstances of an individual member. The corresponding allegation of competitive disadvantage also requires examination within that framework. Different tax consequences may affect the costs of undertakings competing in a common market, but the existence of that effect does not independently establish unconstitutional discrimination. Article 25 accommodates differentiated treatment founded upon relevant differences and does not demand an identical effective burden for every undertaking supplying the same products. The constitutional question concerns the relationship between the distinction and its fiscal purpose. Incorporation, regulatory supervision and financial documentation bear upon the organization and ascertainment of the taxpayer's affairs and therefore possess relevance beyond the description of the goods sold. The explanation advanced by the respondents supplies a rational connection between the identified categories and the differentiated tax treatment, which the petitioner's reliance upon commercial similarity and individual compliance does not, in itself, displace.

10. The petitioner's comparison further combines the amount deducted at the payment stage with the legal treatment of that deduction in the recipient's tax liability. These are related but distinct elements of the statutory scheme. Section 153(1)(a), read with the applicable provisions of Division III of Part III of the First Schedule, governs deduction from payments for goods, whereas Section 153(3) and its proviso determine the minimum-tax character of the relevant deduction and the specified exclusions from that treatment. A withholding percentage identifies the amount taken from a payment; it does not, by itself, establish the recipient's ultimate liability under the governing fiscal framework. A lower deduction therefore does not necessarily demonstrate a lower overall liability, just as a higher deduction does not establish an unlawful excess without examination of the applicable statutory obligation. The exclusion of manufacturing companies from minimum taxation cannot consequently be assessed through a comparison of percentages or the abstract availability of

FOR READING ONLY

refunds alone. The combined operation of withholding, assessment and adjustment is material to the alleged disparity. Minimum taxation itself embodies a legislative choice to secure a specified contribution by reference to receipts or transactions brought within the regime, rather than to determine liability exclusively through a computation of net profits. The Explanation to Section 153(3) expressly connects the income referred to in that subsection with the amount on which tax is deductible under subsection (1) or (2). An asserted excess over a computation made under a different regime does not automatically become an excess over the liability fixed by the applicable law. Equally, a deduction exceeding the profit declared in an individual period does not alone establish confiscation. The actual incidence of the measure depends upon its base, rate, operation within the relevant trade and relationship with earning capacity. A substantiated claim of destructive or confiscatory taxation remains constitutionally examinable, but neither the minimum-tax description nor a comparison with a more favourable assessment outcome supplies that conclusion without further analysis.

11. The asserted entitlement to refund and the invocation of Articles 23 and 24 of the Constitution and the doctrine of unjust enrichment depend upon the same distinction between a liability imposed by law and an excess established under law. Retention of an amount payable pursuant to a constitutionally valid minimum-tax provision has a legal foundation; the fact that another category receives adjustment does not convert that retention into unjust enrichment. An established refund remaining unpaid presents a controversy concerning enforcement of an accrued entitlement, whereas the present challenge principally contests the statutory basis upon which the petitioner's receipts receive minimum-tax treatment. The protection of property therefore requires examination of the alleged constitutional defect in that obligation, rather than an assumption that a refund arises from parity with a manufacturing company. The concession pleaded under clause (24A) of Part II of the Second Schedule likewise concerns a particular rate for the category specified therein; its application, where established, does not by itself alter the character of tax

FOR READING ONLY

prescribed by Section 153(3). Similarly, the enhancement under Rule 1 of the Tenth Schedule, read with Section 100BA, turns upon absence from the Active Taxpayers' List and presents a distinction separate from the manufacturing-company exclusion. Its constitutional assessment cannot be concluded merely through the companies-versus-Associations-of-Persons comparison. Each provision operates upon its own statutory basis and requires consideration of the particular ground advanced against it. As regards clause (a) of the proviso to Section 153(3), the availability of the exclusion to specified companies does not establish an automatic entitlement to its extension to every commercially comparable undertaking. Its boundaries remain answerable to Article 25, but their enlargement through interpretation cannot substitute for examination of the classification actually enacted. The legal and regulatory characteristics relied upon by the respondents bear a rational relationship with the objectives of incorporation, documentation and administration of tax liability. The petitioner's manufacture of comparable goods, regular compliance and asserted financial disadvantage do not, without more, establish that those characteristics are irrelevant or that the resulting distinction is constitutionally impermissible.

12. The principles governing reasonable classification in fiscal legislation were explained by the Hon'ble Supreme Court in *Messrs Elahi Cotton Mills Ltd. and others v. Federation of Pakistan and others* (PLD 1997 SC 582; 1997 PTD 1555). The relevant paragraphs are reproduced below: -

> *"46. Adverting to the second reason, namely, that they are not based on reasonable classification as they purport to treat unequal as equal, it may be observed that reasonable classification does not imply that every person should be taxed equally. It may be pointed out that reasonable classification is permissible provided it is based on an intelligible differentia which distinguishes persons or things that are grouped together from those who have been left out and that the differentia must have rational nexus to the object to be achieved by such classification. It may further be pointed out that different laws can be validly enacted for different sexes, persons in different age-groups, persons having different financial standings and that no standard of universal application to test reasonableness of a classification can be laid down as what may be reasonable classification in a particular set of circumstances, may be*

FOR READING ONLY

unreasonable in the other set of circumstances. The requirement of reasonable classification is fulfilled if in a taxing statute the Legislature has classified persons or properties into different categories which are subject to different rates of taxation with reference to income or property and such classification would not be open to attack on the ground of inequality or for the reason that the total burden resulting from such a classification is unequal. The question, as to whether a particular classification is valid or not, cannot be decided on the basis of advantages and disadvantages to individual assessees which are accidental and inevitable and are inherent in every taxing statute as it has to draw a line somewhere and some cases necessarily may fall on the other side of the line.

It may be pertinent to refer again to the case of R.K. Garg v. Union of India and others (supra), referred to hereinafter in para. 28(xiv), in which the provisions of the Special Bearer Bonds (Immunities and Exemptions) Ordinance, 1981, were challenged on the ground that the same were violative of the equality clause of Article 14 of the Indian Constitution. It was urged that the Ordinance had put a premium on dishonesty by providing income-tax concession to the tax-evaders and that the honest taxpayers were made to pay tax at a higher rate. The Indian Supreme Court repelled the above contention and held that the laws relating to economic activities should be viewed with greater latitude than the laws touching civil rights such as freedom of speech, religion etc.

The second case to which attention may again be invited is the case of Avinder Singh and others v. State of Punjab and others (supra), referred to hereinabove in para. 28(xii), in which a licensee engaged in the business of liquor filed an appeal in the Indian Supreme Court against the judgment of the High Court, in which he challenged levy of Re.1 per bottle on the sale of foreign liquor at a flat rate on the ground that the same is discriminatory and not founded on reasonable classification as Re.1 per bottle of liquor is payable be it brandy or be it other stronger beverage or be it may cost Rs.50 or Rs.500 per bottle. The Indian Supreme Court while dismissing the above appeal inter alia held that in fiscal matters large liberality must be extended to the Government having regard to the plurality of criteria which have to go into the fiscal success of the measure. It was further held that the above levy was neither discriminatory nor violative of equality clause of the Constitution.

We may observe that once the Court finds that a fiscal statute does not suffer from any Constitutional infirmity, it is not supposed to entangle itself with the technical questions as to the scope and modality of its

FOR READING ONLY

working etc. The above questions pre-eminently deserve to be decided by the Government, which possesses experts' services and the relevant information which necessitated imposition of the tax involved unless the same suffers from any legal infirmity which may warrant interference by the Court.

Additionally, while examining a fiscal statute the Court should not be carried away with the fact that the same may be disadvantageous to some of the taxpayers. If such a fiscal statute is beneficial to the country on the whole, the individuals' interest should yield to the national interest.

The impugned provisions of the Ordinance are based on reasonable classification as they are founded on an intelligible differentia which distinguishes persons covered thereunder with the other taxpayers. It has also rational nexus to the object sought to be achieved by such classification i.e., to broadening the tax base and to recover the minimum tax.

Reverting to the third reason, namely, that the same are discriminatory, it may be observed that the learned counsel for the appellants have referred to Rule 9 of the Second Schedule (Part IV) to the Ordinance, which provides that the provisions of section 80-C in so far as they relate to payments on account of supply of goods on which tax is deductible under subsection (4) of section 50, shall not apply in respect of any person being a manufacturer of such goods unless he opts for the presumptive tax. According to them, such an option should have been also extended to other assessees and, therefore, there has been violation of Article 25 of the Constitution, which enjoins that all citizens are equal before law and are entitled to equal protection and that there shall be no discrimination on the basis of sex alone etc.

In our view, there has not been any discrimination in the case in hand. The impugned three sections are very clear as to the class of persons covered under them. Rule 9 gives option to a manufacturer who is subject to tax and deduction under subsection (4) of section 50 to opt for the presumptive tax under section 80-C for final discharge of his tax liability. He is not otherwise covered by the impugned section 80-C. The appellants are covered by the impugned provisions and, therefore, they cannot equate themselves with a person who is not covered by the above provision."

13. The principles governing fiscal classification place the initial burden upon the challenger to demonstrate that the distinction is unreasonable, arbitrary, artificial or evasive. That burden is not discharged merely by identifying a

FOR READING ONLY

category which receives more favourable treatment. The petitioner's comparison establishes that a manufacturing company falls within clause (a)(i) of the proviso to Section 153(3), whereas a manufacturing Association of Persons does not. It also identifies the financial consequence of that distinction: the relevant company's receipts are excluded from minimum-tax treatment while the petitioner's receipts remain subject to it. Those features describe the operation of the provision, but the constitutional objection requires a further explanation of why the distinction lacks a rational fiscal basis. The respondents have connected the exclusion with the corporate regulatory framework and the encouragement of incorporation and documentation. The petitioner's regular filing of returns and payment of advance tax demonstrate the compliance it claims for itself; they do not establish that the institutional framework governing its affairs is equivalent to that of the corporate category. Nor does the petitioner's individual compliance negate the legislature's authority to adopt a classification by reference to the broader characteristics of the taxpayers concerned. The presumption of constitutionality remains relevant where the asserted disparity is demonstrated, but its alleged constitutional infirmity is not substantiated.

14. The latitude afforded to the legislature in fiscal matters also explains why the validity of a classification does not depend upon scientific precision or the absence of hardship in every individual case. Economic legislation operates across undertakings with differing financial circumstances and necessarily draws boundaries which may place commercially comparable taxpayers on different sides of a statutory distinction. An Association of Persons with comprehensive records may consequently remain within a minimum-tax regime while a manufacturing company falls outside it. That consequence does not independently establish that the distinction is arbitrary. The inquiry concerns whether the boundary rests upon a discernible principle connected with the legislative objective, rather than whether a more individualized arrangement could produce a fairer result for a particular taxpayer. The regulatory and documentation considerations advanced here relate to the organization of the taxable undertaking and the administration of its liability. Their rational

FOR READING ONLY

connection with the fiscal scheme is not displaced merely because the petitioner considers its own circumstances deserving of the same treatment. Judicial examination of that connection remains distinct from a reconsideration of the relative economic merits of minimum taxation, ordinary assessment or an alternative incentive for incorporation. The petitioner's allegation of competitive disadvantage and its demand for adjustment or refund require the same distinction between an adverse fiscal consequence and an established constitutional infringement. A higher deduction or the retention of tax as a minimum liability may affect the financial position of the undertaking, but Article 25 does not guarantee an identical effective burden for every business operating in the same market. The rate prescribed in Division III of Part III of the First Schedule and the character assigned to the deduction by Section 153(3) perform separate functions within the scheme; their combined effect cannot be assessed solely by isolating the benefit available to a manufacturing company. The proviso does not exempt that company from income taxation or assure it a refund in every case. Any adjustment or refund arises within the applicable statutory computation of its liability. Equally, the Constitution confers no vested right to the continuation of a particular rate or method of taxation. The petitioner's preference for the treatment available to another category therefore does not create an entitlement to that treatment. Its constitutional claim depends upon demonstrating that the statutory distinction, rather than merely its financial consequence, transgresses the guarantee invoked.

15. The petitioner's reference to Article 38 likewise does not establish a constitutional requirement of undifferentiated fiscal treatment. The constitutional objective of social and economic well-being accommodates legislative differentiation responding to relevant economic circumstances. It does not dispense with the requirements of Article 25, but it illustrates why differentiation is not inherently inconsistent with the constitutional scheme. The distinction between review of constitutional validity and reconsideration of legislative policy is particularly material in this context. The Court examines whether the classification has an intelligible basis and a rational connection with its purpose;

FOR READING ONLY

it does not determine which of several constitutionally permissible fiscal arrangements offers the most desirable economic outcome. The petitioner's emphasis upon identical goods, individual compliance and comparative financial disadvantage does not, without more, establish that the corporate and regulatory characteristics relied upon by the respondents are irrelevant to the exclusion under Section 153(3). The reasoning applied to fiscal classification therefore answers the premise that commercial similarity alone renders the different treatment unconstitutional. These principles have been well explained by the Federal Constitutional Court in *D.G. Khan Cement Company Limited v. Federation of Pakistan* (2026 PTD 625). Although the decision concerned super tax, paragraphs 68 and 69 of the detailed majority reasons explain the governing standards for examination of a fiscal classification under Article 25. The relevant paragraphs are reproduced below: -

> *"68. Article 25 guarantees equality before law and equal protection of law. It does not require mathematical precision in legislative classification, nor does it forbid classification as such. What it requires is that a classification, if made, rest on an intelligible differentia and bear a rational nexus to the object sought to be achieved. The leading exposition is I.A. Sherwani v. Government of Pakistan 1991 SCMR 1041, where this Court held that absolute equality is neither attainable nor constitutionally mandated, provided the classification rests on a discernible principle related to the purpose of the law. In the fiscal domain the margin afforded to the legislature is wider still: as held in Elahi Cotton Mills Ltd. v. Federation of Pakistan PLD 1997 SC 582, economic legislation is entitled to a wider margin of appreciation, and the legislature must be allowed 'some play in the joints' when dealing with complex economic questions. The Court cautioned against striking down such legislation merely because it lacks scientific precision or results in some measure of inequality. The principles enunciated in Elahi Cotton Mills case, I.A. Sherwani case, and the line of authority that flows from them, may be synthesized as follows:*
>
> *69. In adjudicating upon a challenge under Article 25 to the classificatory scheme of a fiscal statute, the following propositions, drawn from the decisions of Supreme Court and of the Indian Supreme Court on parallel provisions, inform our approach:*

FOR READING ONLY

a) The legislature need not tax everything in order to tax something; a tax provision is not open to challenge merely because it has no application to persons or things outside its classification.

b) A competent legislature enjoys a wide latitude — particularly in fiscal matters — to select classes of persons or things to be put to tax, having regard, inter alia, to brackets of income, capacity to pay, and sectoral profitability.

c) The onus to establish that a classification is unreasonable, arbitrary, artificial, or evasive lies on the party challenging it; in the absence of material satisfying that onus, there is a presumption in favour of the constitutionality of the provision.

d) A court, in adjudicating upon a fiscal provision, must presume that the legislature understands and correctly appreciates the needs of its people, that its enactments are directed to problems made manifest by experience, and that any classification drawn is grounded on adequate material.

e) A challenger who pleads that it is 'similarly placed' with an excluded sector cannot discharge that burden by reference to income alone. Two sectors generating comparable income may nevertheless be subject to materially different government policies, tax burdens, and market conditions — any of which may constitute a principled basis for differential treatment.

f) Legislative classification need not be scientific, mathematically exact, or exhaustive; courts must not insist on delusive exactment, nor apply straitjacket or doctrinaire tests for determining its validity.

g) Complicated economic legislation is inherently empirical; it proceeds by trial and error, and some crudity or inequity is consequential to the process of classification. A fiscal provision may not be struck down on that ground alone.

h) The reasonableness and rationality of a legislative policy lie beyond the pale of judicial review, involving as they do the weighing of factors peculiarly within the legislative domain and beyond the competence of the Courts.

i) The legislature must be allowed 'a little play in its joints,' failing which the machinery of government would not work, and the

FOR READING ONLY

complex everyday problems that cannot be resolved through conventional solutions would not be addressed.

j) Hardship or inequity of burden on individual assesses is not, without more, a ground for striking down a fiscal provision; such hardship is the inevitable consequence of any classification.

k) Article 38 of the Constitution affirmatively enjoins the legislature to enact different laws for persons of different economic standing, in the interest of their social and economic well-being; and

l) No fundamental right under the Constitution guarantees a vested right in any particular rate of tax."

16. A useful comparative illustration appears in *Flint v. Stone Tracy Co.*, 220 U.S. 107 (1911), at pages 172–173. The United States Supreme Court rejected the proposition that similarity of business transactions necessarily eliminated the distinction between corporations and partnerships for taxation. Its reasoning identified continuity of corporate existence, transferability of interests, corporate management and the general absence of individual liability as characteristics differentiating corporate business from business conducted by individuals or partnerships. The tax in that case was an excise upon corporate business, and the decision does not determine the validity of the exclusion challenged here. Its relevance is narrower: organizational form may possess substantive fiscal significance even where the underlying commercial transactions are alike. The constitutional comparison consequently extends beyond the goods supplied to the legal characteristics bearing upon the particular legislative measure. In examining an excise imposed upon the conduct of corporate business, the Court distinguished corporations from private firms and individuals by reference to the substantive characteristics of corporate capacity. The following passage provides a comparative illustration of that distinction: -

"In the case at bar we have already discussed the limitations which the Constitution imposes upon the right to levy excise taxes, and it could not be said, even if the principles of the 14th Amendment were applicable to the present case, that there is no substantial difference between the carrying on of business by the corporations taxed, and the same business

FOR READING ONLY

when conducted by a private firm or individual. The thing taxed is not the mere dealing in merchandise, in which the actual transactions may be the same, whether conducted by individuals or corporations, but the tax is laid upon the privileges which exist in conducting business with the advantages which inhere in the corporate capacity of those taxed, and which are not enjoyed by private firms or individuals. These advantages are obvious, and have led to the formation of such companies in nearly all branches of trade. The continuity of the business, without interruption by death or dissolution, the transfer of property interests by the disposition of shares of stock, the advantages of business controlled and managed by corporate directors, the general absence of individual liability, these and other things inhere in the advantages of business thus conducted, which do not exist when the same business is conducted by private individuals or partnerships. It is this distinctive privilege which is the subject of taxation, not the mere buying or selling or handling of goods, which may be the same, whether done by corporations or individuals."

17. The administrative basis of fiscal differentiation is illustrated by *Madden v. Kentucky*, 309 U.S. 83 (1940), at pages 88–90. The United States Supreme Court sustained different treatment of deposits held within and outside the State, taking account of the differences in collection arrangements and the difficulties and expense of enforcement. The decision demonstrates that fiscal classification may respond to the practical means through which liability is identified and recovered, rather than exclusively to the apparent similarity of the taxable asset or receipt. The relevance of collection arrangements to fiscal classification is illustrated by *Madden v. Kentucky*, 309 U.S. 83 (1940), at pages 88–90. The United States Supreme Court sustained differentiated taxation of deposits maintained within and outside the State. Collection through local banks rendered the tax on local deposits substantially self-enforcing, whereas recovery in respect of deposits outside the State depended upon disclosure by the taxpayer or detection by the assessing authorities. The distinction consequently possessed an administrative explanation despite the similarity of the assets taxed. The Court observed that <u>the treatment accorded the two kinds of deposits … may have resulted from the differences in the difficulties and expenses of tax collection.</u> The decision provides comparative support for the proposition that the practical identification and recovery of liability may constitute a relevant consideration in

FOR READING ONLY

fiscal differentiation. Its application here remains confined to that principle: the respondents' explanation concerning documentation and regulatory supervision is examined for its connection with the treatment prescribed by Section 153(3), rather than displaced merely by the similarity of the goods manufactured. As comparative reasoning, it supports consideration of documentation and administrative enforceability alongside the commercial similarities emphasized by the petitioner, while leaving the validity of the present distinction to examination under Article 25.

18. The foregoing discussion places the petitioner's claim of parity in its proper constitutional perspective. Similarity of manufacturing activity does not, by itself, establish equivalence for every fiscal purpose, particularly where the statutory distinction reflects differences in legal organization, regulatory supervision and financial documentation. The comparison under Article 25 therefore extends beyond the products supplied and the immediate burden of withholding to the characteristics of the respective taxpayers and their relationship with the legislative objective. Likewise, adjustment or refund available within one tax regime does not establish a corresponding entitlement under another, and an asserted financial disadvantage does not alone demonstrate unconstitutional deprivation of property. The material consideration emerging from the discussion is whether the petitioner has substantiated a constitutional defect in the classification, beyond identifying the more favorable treatment available to specified companies. The petitioner has not discharged that burden. Its reliance upon similarity of manufacturing activity, regular tax compliance and comparatively less favorable fiscal treatment does not establish that the distinction in clause (a) of the proviso to Section 153(3) is arbitrary or unrelated to its legislative purpose. The differences in legal organization, regulatory supervision and financial documentation provide an intelligible basis for the classification and bear a rational nexus with the objectives of incorporation and documentation of economic activity. The asserted disparity therefore does not establish a violation of Article 25 of the Constitution.

FOR READING ONLY

Judicial Review of Fiscal Legislation

19. Every controversy about a tax begins, whether the parties say so or not, with a quiet question about authority: who, in a constitutional democracy, is entitled to decide? The question is older than any of the provisions before us. It was asked when the first assemblies refused to let the Crown take money without consent, and it was answered in the settled principle that the burden of taxation may be imposed only by those who answer to the people who must bear it. Our Apex Court has restated that principle in modern terms. In *Messrs Mustafa Impex v. Government of Pakistan* (PLD 2016 SC 808), the Court examined the power to levy tax and held that it belongs to the legislature, and that it may be exercised by others only within limits the legislature itself has laid down and the Constitution permits. The case is cited here for a simple reason. It reminds us that the choice of what to tax and how is not a technical matter that can be handed to any competent body. It is a choice of the political community, made through its elected representatives, and it carries the authority of that origin.

20. The choices involved are many, and they are not minor. Parliament must decide which transactions, incomes or properties will bear a charge and which will not. It must decide upon whom the liability will fall, and whether it will fall on the person who earns, the person who pays, or the person who stands between the two and is required to collect on behalf of the State. It must fix the rate, knowing that a rate set too high will drive activity away and a rate set too low will starve the treasury. It must decide whether, and on what conditions, some persons or transactions will be given relief, because every concession is a judgment that the public interest is better served by forgoing a particular sum than by collecting it. And it must provide the machinery, whether assessment, deduction at source, adjustment or refund, by which the whole system will actually operate across millions of taxpayers and a revenue authority of finite capacity. None of these decisions has a single correct answer. Each is a compromise among competing aims: the need of the State for revenue, the capacity of officials to administer the law, the incentives the economy needs in

FOR READING ONLY

order to grow, and the fairness with which the burden is spread. That compromise is the substance of what we call fiscal policy, and the Constitution has placed it with the legislature for good reason. A legislature can hear every interest affected by a tax. It can call for figures from the revenue authorities, ask the business community what it will bear, and revise its choices every year as conditions change. It can experiment, observe the result and correct itself in the next Finance Act. A court can do none of this. It sees one dispute at a time, on a record that the parties have chosen to put before it, and its judgment, once pronounced, is not easily revised. The Supreme Court of India captured the difficulty in *R.K. Garg v. Union of India* ((1981) 4 SCC 675), where Bhagwati J. explained that laws relating to economic activity, and in particular fiscal and regulatory measures, must be viewed with greater latitude than laws that restrict civil liberties, because the legislature must be allowed to experiment, and because courts do not have the expertise, or the information, to judge whether an economic measure will succeed. The Indian Court returned to the theme in *Government of Andhra Pradesh v. P. Laxmi Devi* ((2008) 4 SCC 720), warning that judges who set aside a fiscal provision because they think they can improve on it step outside their proper role. The earlier decision in *Khandige Sham Bhat v. Agricultural Income Tax Officer* (AIR 1963 SC 591) reflects the same understanding: that the validity of a taxing provision is a question of competence and constitutional limit, and not of whether the legislature has selected the wisest course. From this it follows, with almost mathematical clarity, that the Court's role begins where the legislature's discretion ends and not before. The Constitution does not authorize us to ask whether a tax is wise. It authorizes us to ask two things. The first is whether the legislature had the competence to enact the provision, which is a question about the legislative lists and the division of powers. The second is whether, having that competence, it exercised it in a way that the Constitution forbids, whether by discriminating where equality is guaranteed, by infringing a fundamental right, or by transgressing some other express limit. Everything else, the choice between one rate and another, between a general rule and an exception, between collection at source and collection on

FOR READING ONLY

assessment, belongs to Parliament, and the Court honors the Constitution by leaving it there.

21. It is easy to say this and easy to forget it in the particular case, because the particular case is always presented with a human face. A petitioner comes before the Court and shows that under the impugned provision he pays more than another person in a similar line of work, or that he is made to wait for a refund that a differently placed taxpayer receives at once. The grievance is real. The Court does not doubt it. But a grievance about the fairness of an outcome is not a constitutional ground of challenge unless it is traced to a specific constitutional guarantee that the legislation has breached. A tax provision is not unconstitutional because another arrangement seems more equitable to the person who pays under this one. It is not unconstitutional because a different rate seems more appropriate to the Court, and it is not unconstitutional because an alternative method of collection seems preferable to a judge who has never had to collect a rupee. If those were grounds for striking down legislation, there would be no taxing statute that could survive scrutiny, because for every provision there is always an arrangement that someone considers fairer. The English rule that a taxing statute is to be read for what it clearly says, and that there is no equity in a tax (*Cape Brandy Syndicate v. Inland Revenue Commissioners* [1921] 1 KB 64), is the interpretive form of the same truth. It teaches that the answer to a taxpayer's sense of unfairness must be sought in the text and in the Constitution, not in the Court's private view of what would be just. In *Cape Brandy Syndicate v. Inland Revenue Commissioners* [1921] 1 KB 64, Rowlatt J., at page 71, observed:

> *"It is urged by Sir William Finlay that in a taxing Act clear words are necessary in order to tax the subject. Too wide and fanciful a construction is often sought to be given to that maxim, which does not mean that words are to be unduly restricted against the Crown, or that there is to be any discrimination against the Crown in those Acts. It simply means that in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity*

FOR READING ONLY

> *about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used."*

The immediately following paragraph states:

> *"Applying those principles to this case I find it quite impossible to hold that this tax has been imposed by the Finance (No. 2) Act, 1915, upon a person who had no pre-war trade or business."*

22. The point is not that fiscal laws are exempt from the Constitution. It is that the Constitution is the only thing against which they are measured. Judicial intervention rests upon a demonstrated constitutional infirmity: a defect that can be named, located in a particular provision of the Constitution, and shown to exist in the operation of the particular statute. It does not rest on disagreement with the fiscal choice. A court that intervenes on the second footing has ceased to adjudicate and begun to govern. A court that refuses to intervene on the first has ceased to be a guardian of the Constitution and has become a spectator. The task of this Court, in the present petition as in every challenge to taxing legislation, is to stand between those two errors, and the remainder of this judgment explains how that is done. The latitude that the Constitution allows to fiscal legislation is not a favor extended to the State. It is a consequence of the nature of the subject itself. A tax law does not operate on a single class of person in a single set of circumstances. It acts on salaried employees and traders, on companies and partnerships, on landowners and tenants, on those who earn from labour and those who earn from capital, and it must act on all of them through rules that are simple enough to be administered. The legislature therefore classifies. It places like cases together, it separates those that appear to it to differ, and it applies to each group the treatment that it considers suitable. Such classification is the only technique available for the regulation of a diverse population, and the law has never required that it be perfect. Circumstances that cannot be made identical cannot be treated identically, and a measure does not become unconstitutional because, in some corner of its operation, it reaches a person for whom it causes a hardship that the legislature did not foresee, or leaves outside its scope a person for whom the exclusion appears hard. This is why the validity of a fiscal measure

FOR READING ONLY

does not depend on mathematical precision, on complete uniformity of financial consequence or on freedom from every incidental hardship. In case *Vasavi Engineering College Parents Association and Ors. Vs. State of Telangana and Ors* [AIR 2019 SC 4731], Indian Supreme Court held that: -

> *"18. Judicial restraint in exercise of Judicial review was considered in the State of (NCT) of Delhi v. Sanjeev, MANU/SC/0257/2005 : (2005) 5 SCC 181 as follows:*
>
> > *16. ...One can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground is "illegality", the second "irrationality", and the third "procedural impropriety". These principles were highlighted by Lord Diplock in Council of Civil Service Unions v. Minister for the Civil Service (commonly known as CCSU case). If the power has been exercised on a non-consideration or non-application of mind to relevant factors, the exercise of power will be regarded as manifestly erroneous. If a power (whether legislative or administrative) is exercised on the basis of facts which do not exist and which are patently erroneous, such exercise of power will stand vitiated.*
>
> *19. It needs no emphasis that complex executive decisions in economic matters are necessarily empiric and based on experimentation. Its validity cannot be tested on any rigid principles or the application of any straitjacket formula. The court while adjudging the validity of an executive decision in economic matters must grant a certain measure of freedom or play in the joints to the executive. Not mere errors, but only palpably arbitrary decisions alone can be interfered with in judicial review. The recommendation made by a statutory body consisting of domain experts not being to the satisfaction of the State Government is an entirely different matter with which we were not concerned in the present discussion. The court should therefore be loath to interfere with such recommendation of an expert body, and accepted by the government, unless it suffers from the vice of arbitrariness, irrationality, perversity or violates any provisions of the law under which it is constituted. The court cannot sit as an appellate authority, entering the arena of disputed facts and figures to opine with regard to manner in which the TAFRC ought to have proceeded without any finding of any violation of Rules or procedure. If a statutory body has not exercised jurisdiction properly the only option is to remand the matter for fresh consideration and not to usurp the powers of the authority. In Peerless General Finance and*

FOR READING ONLY

Investment Co. Ltd. v. Reserve Bank of India, MANU/SC/0685/1992 : (1992) 2 SCC 343, it was observed:

> *31. The function of the court is to see that lawful authority is not abused but not to appropriate to itself the task entrusted to that authority. It is well settled that a public body invested with statutory powers must take care not to exceed or abuse its power. It must keep within the limits of the authority committed to it. It must act in good faith and it must act reasonably. Courts are not to interfere with economic policy which is the function of experts. It is not the function of the courts to sit in judgment over matters of economic policy and it must necessarily be left to the expert bodies. In such matters even experts can seriously and doubtlessly differ. Courts cannot be expected to decide them without even the aid of experts.*
>
> *20. In the context of Indian jurisprudence, the Constitution is the supreme law. All executive or legislative actions have to be tested on the anvil of the same. Such actions will have to draw their sustenance as also their boundaries under the same. Any action falling foul of the constitutional guarantees will call for corrective action in judicial review to ensure adherence to the constitutional ethos. But so long as the fabric of the constitutional ethos is not set asunder, the court will have to exercise restraint, more particularly in matters concerning domain experts, else the risk of justice being based on individual perceptions which may render myths as realities inconsistent with the constitutional ethos. Courts often adjudicate disputes that raise the question of how strictly should they scrutinise executive or legislative action. Therefore, courts have identified certain questions as being inappropriate for judicial resolution or have refused on competency grounds to substitute their judgment for that of another person on a particular matter"*

23. Nowhere is the line between reviewing fiscal policy and reviewing constitutional validity drawn more finely than when a taxing provision is challenged under Article 25. The petitioner invokes that Article, and so it is worth recalling at the outset what the Article promises and what it does not. It declares that all citizens are equal before law and are entitled to equal protection of law. It is among the oldest and most potent of the fundamental rights, and it is invoked so often in revenue matters that there is a risk of forgetting what its

FOR READING ONLY

words mean. Equality before law is not a command that the State must treat every person in the same manner. If it were, there could be no graduated income tax, no relief for the poor, no distinction between a company and an individual, and no rule applying to a trade that did not apply to every other. The guarantee demands something more modest and more precise: that persons who are alike in the respects that matter to the law be treated alike, and that the State not single out persons for adverse or favourable treatment on a ground that has no reasonable connection with the object it is pursuing. The Superior courts have expressed the principle in the same way for half a century. In *Progress of Pakistan Vs. Registrar, Joint Stock Companies Karachi* (PLD 1958 Lah 887) the Court explained that the equal protection of the law does not forbid classification, and that a classification is valid if it is founded on an intelligible differentia, a distinction that sets those included in the class apart from those left out, and if that differentia has a reasonable relation to the object which the legislation seeks to achieve.

> *"According to Article 5, all persons are equal before like law and are entitled to the equal protection of law Equal protection of law has been interpreted as meaning that then, shall be no arbitrary discrimination, that classification shall be reasonable and that to similar circumstances the same law will apply. This appears to be the accepted meaning of this phrase which means that two sets of circumstances shall not have different legal effects unless the difference of circumstance between the two sets is sufficient, in reason, to justify the difference in effect, or that if a law applies to one set of circumstances and does not apply to another, the difference between the two sets should be material enough to support the discrimination. All law implies classification for when it applies to a set of circumstances, it creates thereby a class, and equal protection means that this classification should be reasonable.*
>
> *The Undesirable Companies Act (X of 1958), passed by Parliament, applied within the legislative sphere of Parliament, that is to say, to undesirable companies with objects not confined to a Province. It was objected that the Act being discriminatory violated Art. 5-of the Constitution.*
>
> *Held, that no law could be held invalid under Article 5 on the ground that two persons similarly situated the same law was not applicable if it be not*

FOR READING ONLY

within the competence of the legis lature enacting that law to legislate in respect of all those persons. It was true that there was no reason why companies with objects not confined to one Province should be treated differently from those with objects confined to one Province; but Parliament having no authority to legislate in respect of the second class of companies, there was no violation of Article 5.

Nor was the Act invalid for having been applied to associations and not to individuals so far as its application within the Federal Capital was concerned, for that may be a very good basis of classification. The legislature is not bound to go farther than would be sufficient for attaining its object. The legislature may have found that it is on account of the association of persons that the evil has prospered and if persons are not allowed to associate for the running of Imdadi Schemes the evil will disappear. If, on the other hand, the object of the legislation be to penalize not the association but the act of running the scheme, there would be no good ground for a discrimination between individuals and associations.

It cannot be accepted as a general proposition that the mere fact that an event of a particular class is not proved to have occurred when the law was enacted prevents the Court from taking it into consideration at all in deciding whether a law is discriminatory."

24. The Court returned to the subject in *I.A. Sharwani v. Government of Pakistan* (1991 SCMR 1041), stating that equality means equal treatment of persons similarly placed, that there is no absolute equality in a society of unequal circumstances, and that the legislature may treat different classes in different ways so long as the distinction rests upon a rational basis. The doctrine did not originate with us, and it would be wrong to pretend that it did. It was worked out in the first decade of the Indian Republic, in *State of West Bengal v. Anwar Ali Sarkar* (AIR 1952 SC 75), and put into the form in which we now recall it in *Budhan Choudhry v. State of Bihar* (AIR 1955 SC 191), where the Constitution Bench laid down that a classification is permissible if it satisfies two conditions: first, that it is founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and second, that the differentia has a rational relation to the object sought to be achieved by the statute. Both courts, in their respective constitutional settings, have declared the same law, and the repetition across the border gives it a certainty that no

FOR READING ONLY

single decision could. There is a subtlety in applying these requirements to fiscal laws, and the decisions of both Courts have been careful about it. In taxation the range of permissible classification is wider than in any other field, because the objects that taxation serves are themselves multiple. A tax may be meant to raise revenue, to encourage an activity, to discourage another, to simplify collection, to prevent evasion, or to do several of these things at once, and a classification that appears arbitrary when measured against one of those objects may appear perfectly sensible when measured against another. The Indian Court acknowledged this in *East India Tobacco Co. v. State of Andhra Pradesh*, where it held that the legislature may classify taxpayers by commodity, by trade or by the nature of the transaction, and that it is not for the Court to require that the legislature tax every similar subject at the same time or in the same manner. The legislature is permitted to proceed step by step, to attack the evil where it is most felt, and to leave other cases to later legislation. The consequence is that a taxpayer who says that others in a comparable position have been left out of the charge, or have been given a concession, does not by that fact alone establishes a violation of Article 25. He must show that the line is not explicable by any rational purpose. In AIR 1962SC 1733, the Supreme Court of India held that:-

> *"9. It should, in this connection, be remembered that under the law it is for the person who assail a legislation a discriminatory to established that it is not based on a valid classification and it is well settled that this burden is all the heavier when the legislation under attack is a taxing status. "In taxation even more than in other fields" it was observed by the Supreme Court of United States in Madden v. Kentucky (1940) 309 US 83; 84 L.Ed. 590 "Legislatures possess the greatest freedom in classification. The burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it". How wide the powers of the Legislature are in classifying objects for purposes of taxation will be seen from the following resume of the law given by Rottschaefer, in his "Constitutional Law" p. 668 :-*
>
> > *"The Federal Supreme Court has seldom any classification made in connection with the levying of property taxes. It has sustained the levy of a heavier burden of taxation upon motor vehicles using the public high ways than that levied upon other forms of property, and the imposition of a heavier tax upon oil than upon other*

FOR READING ONLY

property. The equal protection clause does not prohibit the levy of a tax on ores which is not imposed upon similar interests in quarries, forests and other forms of wasting asset, nor even the imposition of a tax upon anthracite that is not levied upon bituminous coal. A statute providing for the assessment of one type of intangible at its actual value while other intangibles are assessed at their face value does not deny equal protection even when both are subject to the same rate of tax. The decision of the Supreme Court in this field have permitted a State legislature to exercise an extremely wide discretion in classifying property for tax purposes so long as it refrained from clear and hostile discrimination against a particular persons or classes."

25. The Court, in conducting this inquiry, is careful about what it does not do. It does not weigh the competing economic advantages of every possible classification, because that is a question of policy on which the Court has no special competence, and which the legislature, with the data and the advice available to it, is better placed to answer. It does not determine whether the legislature selected the most effective incentive, since the effectiveness of an incentive is something that time and the revenue returns will reveal, and on which a court sitting on a petition can have no secure view. It does not ask whether a different classification would have been fairer, or more efficient, or more consistent with its own notions of economic justice. It asks the narrow question which the Constitution puts: do the categories possess an intelligible basis, and does the distinction bear a rational connection with the object of the measure? That is a real inquiry. It can be answered in the negative, and has been, in cases where the Courts found that the line drawn by the legislature could not be explained by anything connected with its purpose. But it is an inquiry into rationality and not into optimality, and that is the difference between a court that enforces equality and a court that sets fiscal policy.

26. The foregoing discussion and authoritative pronouncements establish that judicial review of fiscal legislation must be exercised with due restraint and respect for the constitutional allocation of legislative power. Parliament enjoys broad discretion in framing fiscal policy, selecting the subjects of taxation and prescribing classifications and methods of collection. The Court must therefore

FOR READING ONLY

refrain from substituting its own views of economic wisdom or fairness for legislative judgment. Judicial interference requires an established constitutional infirmity, including want of legislative competence or infringement of a constitutional guarantee. Mere hardship, unequal financial consequences or the availability of a seemingly preferable arrangement does not, by itself, justify invalidating a taxing provision. Judicial restraint thus preserves Parliament's legitimate fiscal discretion while ensuring that its exercise remains within constitutional limits.

Alternative Remedy in Fiscal Matters

27. Now, adverting to the respondents' objection regarding the availability of an adequate alternative remedy, it is necessary to examine the nature of the grievance and the relief sought. The jurisdiction conferred by Article 199 is extraordinary and is not intended to provide an additional appellate forum whenever a taxpayer disputes the interpretation or application of a fiscal provision. Where the controversy can effectively be resolved through the machinery established by the Income Tax Ordinance, 2001, the statutory process must ordinarily be allowed to operate. Direct recourse to constitutional jurisdiction requires a sufficient justification for departing from that process; the taxpayer's preference for adjudication by this Court cannot, by itself, supply such justification.

28. The statutory authorities examine the relevant returns, accounts, transactions and supporting documents, determine the applicable provisions and record findings upon which appellate scrutiny can proceed. This sequence enables the controversy to reach the appropriate judicial forum with an identified factual foundation and clearly formulated questions of law. Bypassing those stages may require the Constitutional Court to undertake the functions of an assessing or appellate authority upon a record that has not undergone the examination contemplated by the statute. The extraordinary jurisdiction must therefore be exercised with due regard to the respective functions assigned to the revenue authorities, appellate forums and this Court.

FOR READING ONLY

29. An alternative remedy is not rendered inadequate merely because its pursuit involves procedural steps, requires time, or may result in a decision adverse to the taxpayer. Its adequacy depends upon its capacity to address the grievance and provide effective relief. Equally, dissatisfaction with an order passed at one stage does not establish that the remaining statutory remedies are ineffective. Where a litigant has already invoked the statutory process, departure from that process must rest upon a compelling and justifiable reason rather than a desire to obtain a different forum. The principle reflected in the authorities reproduced above is that constitutional jurisdiction cannot ordinarily be invoked to interrupt or replace an available statutory course without demonstrating why that course is inadequate in the particular circumstances. In this regard, the Hon'ble Supreme Court, in *Commissioner of Income Tax v. Hamdard Dawakhana (Waqf)* (PLD 1992 SC 847), observed as follows: -

> *"12. Before parting with the judgment we may observe that in cases where any party resorts to a statutory remedy against an order he cannot abandon or bypass it without any valid and reasonable cause and file Constitution petition challenging the same order. Such practice, in cases where statute provides alternate and efficacious remedy upto High Court, cannot be approved or encouraged. In a recent judgment of this Court in C.A. No. 79-K of 1991, one of us (Ajmal Mian, J.) in similar situation observed as follows:*
>
> > *"We may now revert to the question, whether the appellant was justified to file above Constitution petition against the order of the Tribunal instead of invoking section 136 of the Ordinance for making a reference to the High Court. According to Mr. Rehan Naqvi, a reference under the above provision would not have been adequate and efficacious remedy as it would have taken years before it could have been heard. The same could be true for a Constitution Petition. The tendency to bypass the remedy provided under the relevant statute and to press into service Constitutional jurisdiction of the High Court has developed lately, which is to be discouraged. However, in certain cases invoking of Constitutional jurisdiction of the High Court instead of availing of remedy provided for under the relevant statute may be justified, for example when the impugned order/action is palpably without jurisdiction and/or mala fide. To force an aggrieved person in*

FOR READING ONLY

> *such a case to approach the forum provided under the relevant statute may not be just and proper.*
>
> *In the present case, the appellant had opted to avail of the hierarchy of forums provided for under the Ordinance upto the stage of filing of appeal before the Tribunal and, therefore, it would have been proper on the part of the appellant to have invoked section 136 of the Ordinance for making a reference to the High Court instead of filing a Constitutional petition. In our view, once a party opts to invoke the remedies provided for under the relevant statute, he cannot at his sweet will switch over to Constitutional jurisdiction of the High Court in the mid of the proceeding in the absence of any compelling and justifiable reason."*

30. Nevertheless, the respondents' objection must be considered with an equally necessary qualification. A challenge to the constitutional validity of a statutory provision stands on a different footing from an allegation that the revenue authorities have misconstrued or misapplied it. A statutory tax forum cannot ordinarily grant the same relief as a constitutional Court where the relief sought is the invalidation of the governing legislation itself. Accordingly, the existence of an appellate hierarchy cannot, without examining the substance of the challenge, be treated as a complete answer to a properly raised question of legislative competence or infringement of a constitutional guarantee.

31. Conversely, the mere use of the expressions "unconstitutional", "discriminatory" or "without lawful authority" does not transform an ordinary tax dispute into a substantive constitutional controversy. The Court must examine whether the petitioner identifies a defect in the legislation itself or principally contests the manner in which a valid provision has been applied to its transactions. In the present context, the distinction between the petitioner's objection to the fiscal classification and any grievance concerning the computation, collection, adjustment or refund of tax is material. The constitutional objection requires examination against the relevant constitutional guarantee, whereas disputes concerning individual entitlement and the application of the statutory machinery must ordinarily be pursued before the forums competent to determine them. The same distinction applies to an allegation of absence of jurisdiction. An authority acting beyond the power

FOR READING ONLY

conferred upon it presents a different question from an authority alleged to have reached an erroneous conclusion while exercising a power that it possesses. Every disputed assessment, demand or notice cannot be characterized as a jurisdictional nullity merely because the taxpayer denies liability. Otherwise, the exception would displace the ordinary rule and the statutory remedies would become dependent upon the terminology employed in the petition. The Court must therefore examine the asserted defect and the adequacy of the available remedy rather than accept the characterization of the impugned action at its face value. The distinction between a disputed exercise of statutory power and an action without jurisdiction is further illustrated by the judgment of the Hon'ble Supreme Court in *M/s Payoneer Inc. v. Federation of Pakistan*, wherein it observed: -

> *"The High Court dealt with the issue of the impugned notice/show-cause notice very aptly. The registration alone under the ITO or the issuance of National Tax Number does not qualify as a coercive action against any entity, hence the contention of the petitioner that there should have been a prior notice before registration would not make any difference. The primary grievance of the petitioner, however, remained that the notice under section 114 of the ITO was issued, which may affect petitioner's right, as the laws in respect of non-resident entity is well settled. The questions however remain if a better and statutory recourse is not available to avail the alternate writ jurisdiction. The simple answer is that such statutory recourse is available under ITO which has provided forums to resolve the raised questions. Mr. Awan has not been able to show if those forums are not efficacious.....*
>
> *This Court in Geofizyka dealt with those issues once the tax reference was decided by the Islamabad High Court in Tax Reference No. 16 of 2005. Thus issuance of a show-cause notice cannot be equated to be one without jurisdiction hence the High Court was right in not exercising writ jurisdiction and left it to the petitioner to exhaust its remedy under the hierarchy of ITO.)"*

32. Nor can a statutory provision restricting proceedings against orders passed under the Ordinance be understood as extinguishing jurisdiction conferred by the Constitution. Such a provision supports adherence to the prescribed statutory remedies, but the scope of constitutional jurisdiction remains governed by the

FOR READING ONLY

Constitution itself. Likewise, the existence of factual controversy warrants restraint where its resolution requires examination of accounts, evidence or competing factual assertions; it does not automatically prevent consideration of a distinct constitutional question capable of determination upon admitted facts.

33. The governing approach is thus one of disciplined judicial restraint. Fiscal disputes must ordinarily proceed through the remedies established by law, while a substantive constitutional challenge must be examined within the limits of Article 199. The Court's task is to preserve the statutory process without surrendering its constitutional responsibility, and to exercise extraordinary jurisdiction upon an established legal basis rather than as a substitute for the ordinary determination of tax liability. In case The State of Maharashtra and Ors. Vs. Greatship (India) Limited, reported as AIR 2022 SC 4408, the Indian Supreme Court held that: -

> *"At the outset, it is required to be noted that against the assessment order passed by the Assessing Officer under the provisions of the MVAT Act and CST Act, the Assessee straightway preferred writ petition Under Article 226 of the Constitution of India. It is not in dispute that the statutes provide for the right of appeal against the assessment order passed by the Assessing Officer and against the order passed by the first appellate authority, an appeal/revision before the Tribunal. In that view of the matter, the High Court ought not to have entertained the writ petition Under Article 226 of the Constitution of India challenging the assessment order in view of the availability of statutory remedy under the Act. At this stage, the decision of this Court in the case of Satyawati Tondon (supra) in which this Court had an occasion to consider the entertainability of a writ petition Under Article 226 of the Constitution of India by bypassing the statutory remedies, is required to be referred to. After considering the earlier decisions of this Court, in paragraphs 49 to 52, it was observed and held as under:*
>
> > *49. The views expressed in Titaghur Paper Mills Co. Ltd. v. State of Orissa MANU/SC/0317/1983 : (1983) 2 SCC 433 were echoed in CCE v. Dunlop India Ltd. MANU/SC/0169/1984 : (1985) 1 SCC 260 in the following words: (SCC p. 264, para 3)*
> >
> > > *3. Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary*

FOR READING ONLY

> *situations, as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to bypass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions Under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged."*

34. The authorities discussed above establish the settled principle that, in fiscal matters, an adequate and efficacious statutory remedy must ordinarily be pursued before extraordinary constitutional jurisdiction is invoked. The machinery provided by the legislature for determining tax liability and redressing grievances cannot be bypassed merely because a taxpayer disputes the interpretation or application of the law or considers direct recourse to this Court more convenient. Departure from that course requires a compelling legal justification, such as an action palpably without jurisdiction, established mala fides, inadequacy of the statutory remedy, or a substantive challenge to the constitutional validity of the legislation. A constitutional objection must therefore be examined on its own merits, while grievances concerning assessment, computation, collection, adjustment or refund must ordinarily be addressed through the prescribed statutory process. This approach preserves both the effectiveness of the fiscal framework and the Court's responsibility to enforce constitutional limitations.

35. For the foregoing reasons, the petitioner has failed to establish any constitutional infirmity in the impugned fiscal scheme. The distinction between manufacturing companies and Associations of Persons rests upon an intelligible differentia bearing a rational nexus with the objectives of incorporation, financial documentation and administration of tax liability. Similarity of manufacturing activity, individual compliance and comparative financial disadvantage do not,

FOR READING ONLY

by themselves, render that classification violative of Article 25 of the Constitution. Nor has the petitioner established an unlawful deprivation of property under Articles 23 and 24 or an accrued entitlement to refund which would sustain its plea of unjust enrichment. The challenge to Section 153(3), particularly clause (a)(i) of its proviso, and the related provisions assailed in the petition therefore fails. Any distinct grievance concerning the computation, adjustment or refund of tax may be pursued through the statutory remedies available under the Ordinance, subject to the applicable legal requirements and the findings recorded herein. Consequently, the instant constitutional petition is **DISMISSED**. There shall be no order as to costs.

36. Before parting with this judgment, it is apposite to recall two observations which, read together, mark the boundaries within which this Court has approached the present petition. In *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 431 (1819), Chief Justice Marshall acknowledged that "the power to tax involves the power to destroy." More than a century later, Holmes J., dissenting in *Panhandle Oil Co. v. Mississippi ex rel. Knox*, 277 U.S. 218, 223 (1928), answered it in these words: "The power to tax is not the power to destroy while this Court sits." The two statements describe complementary truths. The power to tax is a grave power, entrusted to the legislature and not to the courts. The courts do not exercise it, but they remain the guardians of the constitutional limits within which it must be exercised. Where a taxing provision is shown to be arbitrary, confiscatory or discriminatory in a manner the Constitution forbids, this Court will not hesitate to say so. Where, as here, the petitioner has demonstrated a financial disadvantage but not a constitutional infirmity, the choice between one method of taxation and other remains with Parliament. Holmes J. also recognized, in *Compañía General de Tabacos de Filipinas v. Collector of Internal Revenue*, 275 U.S. 87, 100 (1927) that "Taxes are what we pay for civilized society." A taxpayer who has chosen a particular legal form for its business must accept the fiscal framework attached to that form, so long as the framework remains within constitutional bounds. The framework challenged here does.

FOR READING ONLY

(MUHAMMAD ASIF)
JUDGE

(MUHAMMAD AZAM KHAN)
JUDGE

Announced in the open Court on _____ day of October, 2026.

JUDGE **JUDGE**

Approved For Reporting

Sajid/--

FOR READING ONLY