

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE UMAR ATA BANDIAL, CJ
MR. JUSTICE ATHAR MINALLAH

**C.P.3282-L, 3401-L TO 3403-L, 3449-L, 3450-L, 3504-L TO
3516-L, 3535-L TO 3537-L, 3521-L, 3534-L, 3538-L, 3573-L
OF 2022 AND 9-L OF 2023**

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| 1. | C.P.3282-L/2022
(Against the order dated 29.09.2022 passed by Lahore High Court, Lahore in WP No. 58672/2022) | The Commissioner Inland Revenue, Lahore v. Service Industries Limited, Lahore, etc |
| 2. | C.P.3401-L/2022
(Against the order dated 29.09.2022 passed by Lahore High Court, Lahore in WP No. 59133/2022) | Commissioner Inland Revenue, Lahore v. Highnoon Laboratories Limited, Lahore, etc |
| 3 | C.P.3402-L/2022
(Against the order dated 29.09.2022 passed by Lahore High Court, Lahore in WP No. 59245/2022) | Commissioner Inland Revenue, Lahore v. Ibrahim Holding (Private) Limited, Lahore, etc |
| 4 | C.P.3403-L/2022
(Against the order dated 29.09.2022 passed by Lahore High Court, Lahore in WP No. 59251/2022) | Commissioner Inland Revenue, Lahore v. Ibrahim Fibers Limited, Lahore, etc |
| 5 | C.P.3449-L/2022
(Against the order dated 28.09.2022 passed by Lahore High Court, Lahore in WP No. 56758/2022) | Commissioner Inland Revenue, Lahore v. Lotte Akhtar Beverages (Private) Limited, Lahore, etc |
| 6 | C.P.3450-L/2022
(Against the order dated 28.09.2022 passed by Lahore High Court, Lahore in WP No. 58689/2022) | Chief Commissioner Inland Revenue, Lahore v. Total Parco Pakistan Limited, Lahore, etc |
| 7 | C.P.3504-L/2022
(Against the order dated 31.10.2022 passed by Lahore High Court, Lahore in WP No. 67867/2022) | Commissioner Inland Revenue, Lahore v. Bata Pakistan Limited, Lahore, etc |
| 8 | C.P.3505-L/2022
(Against the order dated 28.11.2022 passed by Lahore High Court, Lahore in WP No. 75186/2022) | Commissioner Inland Revenue, Lahore v. CHT Pakistan (Pvt) Limited, etc |
| 9 | C.P.3506-L/2022
(Against the order dated 05.10.2022 passed by Lahore High Court, Lahore in WP No. 59911/2022) | Commissioner Inland Revenue, Lahore v. Tetra Pak Pakistan Limited, etc |
| 10 | C.P.3507-L/2022
(Against the order dated 18.10.2022 passed by Lahore High Court, Lahore in WP No. 64130/2022) | Commissioner Inland Revenue, Lahore v. AKZO Nobel Pakistan Limited, Lahore, etc |

- 11 C.P.3508-L/2022
(Against the order dated 31.10.2022 passed by Lahore High Court, Lahore in WP No. 67781/2022) Commissioner Inland Revenue, Lahore v. M/s Tandlianwala Sugar Mills Limited, etc
- 12 C.P.3509-L/2022
(Against the order dated 27.10.2022 passed by Lahore High Court, Lahore in WP No. 66883/2022) Commissioner Inland Revenue, (Enforcement), Lahore v. M/s. Platform Turizm Tasimacilik Gida Insaat Temizlik Hizmetleri Sanayi Ve Ricaret A.S, etc
- 13 C.P.3510-L/2022
(Against the order dated 04.10.2022 passed by Lahore High Court, Lahore in WP No. 60340/2022) Commissioner Inland Revenue, Lahore v. Coca Cola Beverages Pakistan Limited, etc
- 14 C.P.3511-L/2022
(Against the order dated 02.11.2022 passed by Lahore High Court, Lahore in WP No. 68017/2022) Commissioner Inland Revenue, Lahore v. Daewoo Pakistan Express Bus Service Limited, etc
- 15 C.P.3512-L/2022
(Against the order dated 18.10.2022 passed by Lahore High Court, Lahore in WP No. 64237/2022) Commissioner Inland Revenue, Lahore v. M/s Chiesi Pharmaceutical Pvt Ltd, Lahore, etc
- 16 C.P.3513-L/2022
(Against the order dated 04.10.2022 passed by Lahore High Court, Lahore in WP No. 60348/2022) Commissioner Inland Revenue, Lahore v. M/s Nimir Chemicals Pakistan Ltd, etc
- 17 C.P.3514-L/2022
(Against the order dated 01.11.2022 passed by Lahore High Court, Lahore in WP No. 67979/2022) Commissioner Inland Revenue, Lahore v. Cheikhoo Sugar Mills Limited, etc
- 18 C.P.3515-L/2022
(Against the order dated 02.11.2022 passed by Lahore High Court, Lahore in WP No. 68023/2022) Commissioner Inland Revenue, Lahore v. Daewoo Pakistan Express Bus Service Limited, etc
- 19 C.P.3516-L/2022
(Against the order dated 28.10.2022 passed by Lahore High Court, Lahore in WP No. 67221/2022) Commissioner Inland Revenue, Lahore v. Packages Real Estate (Private) Limited, etc
- 20 C.P.3535-L/2022
(Against the order dated 27.10.2022 passed by Lahore High Court, Lahore in WP No. 66947/2022) Commissioner Inland Revenue, Lahore v. Ashraf Sugar Mills (Pvt) Limited, etc
- 21 C.P.3536-L/2022
(Against the order dated 28.10.2022 passed by Lahore High Court, Lahore in WP No. 66898/2022) Commissioner Inland Revenue, Lahore v. M/s Corteva Agriscience Pakistan (Pvt) Limited, etc
- 22 C.P.3537-L/2022
(Against the order dated 04.10.2022 passed by Lahore High Court, Lahore in WP No. 60425/2022) Chief Commissioner Inland Revenue, Lahore v. Almoiz Industries Limited, etc
- 23 C.P.3521-L/2022
(Against the order dated Commissioner Inland Revenue, Lahore v. M/s Shahtaj Sugar

- 31.10.2022 passed by Lahore Mills Ltd, etc
High Court, Lahore in WP No.
67937/2022)
- 24 C.P.3534-L/2022 Commissioner Inland Revenue,
(Against the order dated Lahore v. Mobiserve Pakistan
27.10.2022 passed by Lahore (Pvt) Limited, Islamabad, etc
High Court, Lahore in WP No.
67096/2022)
- 25 C.P.3538-L/2022 Commissioner Inland Revenue,
(Against the order dated Lahore v. Fatima Sugar Mills
31.10.2022 passed by Lahore Limited, Lahore-Cantt, etc
High Court, Lahore in WP No.
68129/2022)
- 26 C.P.3573-L/2022 Commissioner Inland Revenue,
(Against the order dated Lahore v. M/s Etihad Sugar Mills
25.10.2022 passed by Lahore Limited, Lahore, etc
High Court, Lahore in WP No.
66055/2022)
- 27 C.P.9-L/2023 The Commissioner Inland
(Against the order dated Revenue, Lahore v. Service Global
29.09.2022 passed by Lahore Footwear Limited, Lahore, etc
High Court, Lahore in WP No.
58683/2022)

For the Petitioner(s) : Mrs. Asma Hamid, ASC
Mr. Aamir Yasir, DC
Mr. Badshah Chief Commissioner video
link from Lahore

For the Respondent(s) : Mr. Salman Akram Raja, ASC in CP
No.3282-L, 3449-L, 3516-L)
Syed Rifaqat Hussain Shah, AOR
Mr. Shazib Masud, ASC video link from
Lahore in C.P.3401-L/2022
Mr. Mansoor Usman Awan, ASC video
link from Lahore in CP No.3402-L,
3403-L, 3450-L, 3506-L)
Mr. Shahbaz Butt, ASC video link from
Lahore in CP No.3405-L, 3511-L, 3514-
L, 3515-L)
Mr. Muhammad Shoaib Rashid, ASC in
CP No.3510-L
Mr. Muhammad Ajmal Khan, ASC video
link from Lahore in CP No.3534-L

Date of Hearing : 06.02.2023

ORDER

UMAR ATA BANDIAL, CJ: These petitions are filed
against interim orders passed in different writ petitions by a
learned Single Judge of the Lahore High Court whereby recovery of
tax levied under Section 4C of the Income Tax Ordinance, 2001
("Ordinance") from the respondents-companies has been

restrained against the security of post-dated cheques. Our order dated 02.02.2023 summarises the petitioner's challenge to the impugned interim orders in the following terms:

*“Learned counsel for the petitioner submits that recovery of tax under Section 4C of the Income Tax Ordinance, 2001 (“**Ordinance**”) has been challenged by the respondents through writ petitions filed before the High Court. The High Court has passed interim orders restraining recovery of the tax against the security of the post-dated cheques. She submits that in the first place the respondents have not challenged the vires of Section 4C *ibid*. For bypassing statutory remedies and failing jurisdictional tests for maintainability, these petitions cannot proceed before the High Court. In case the petitioner's challenge is construed to be an attack on the vires of the law, the impugned stay order by the High Court is without jurisdiction for suspending a statute as laid down by this Court in **Federation of Pakistan Vs. Aitzaz Ahsan and another** (PLD 1989 SC 61). In any event, a crucial aspect for the grant of interim relief, namely, balance of convenience ought to have been examined by the learned High Court but that factor has been completely overlooked whilst granting the interim relief on terms that have choked crucial revenue for the Exchequer.*

2. We note that the impugned orders dated 28.9.2022 and 29.9.2022 do not consider the points raised before us. Also that post-dated cheques are mere solace; providing neither tangible security nor adequate comfort. We would like to examine the points urged by the learned counsel for the petitioner.”

2. Today, we have heard the learned counsel for the parties. A consensus has emerged among the parties that the controversy regarding the matter should in the first place be

decided finally by the High Court. With respect to the grant of interim relief, there is also consensus that the challenge made by the respondents is to the *vires* of law and that the operation of Subsection 3 & 4 of Section 4C of the Ordinance have virtually been suspended on account of the impugned interim orders that are presently assailed before us. It is also plain that whilst considering the grant of interim relief, the High Court has failed to advert its mind to the crucial factor of the balance of convenience. In view of the above, the respondents have consented to deposit under protest with the tax authorities 50% of the liability claimed against them under the impugned provisions of Ordinance. However, the amount of such deposit shall be reduced by the amount of any refund that has been determined by the tax authorities in favour of the respondents. Needful to be done within one week from the date of this order.

2. With the foregoing observations, these matters are disposed of.

Chief Justice

Judge

Islamabad
06.02.2023
*Rashid/**
Not approved for reporting