

ORDER SHEET
THE HIGH COURT OF SINDH AT KARACHI

CP No.D-4669 of 2022

CPs No.D-3250, 2272, 3501, 3508, 3512, 3513, 3514, 3775, 4011, 4012, 4042, 4063, 4112, 4186, 4187, 4205, 4206, 4207, 4255, 4275, 4284, 4289, 4318, 4343, 4345, 4375, 443, 444, 445, 4538, 4539, 4540, 4541, 4542, 4543, 4544, 4597, 4598, 4654, 4704, 4949, 5043, 5535, 6022, 6239, 7003, 7033, 7898 & 8164 of 2022

DATE	ORDER WITH SIGNATURE OF JUDGE(S)

1. For orders on CMA No.19798/2022.
2. For hearing of main case.

07.02.2023

Advocates for the Petitioner

Messrs. Arshad Hussain Lodhi, Tajjamul Hussai Lodhi, Jam Zeeshan Ali, Furqan Mushtaq, Sami-ur-Rehman Khan, Qazi Umair Ali, M. Inziman Sharif, Saleem Mangrio, Rabia Khan, Rafy Shaikh, Raghbir Ibrahim Junejo, Ajeet Kumar, Nadir Hussain Abro, Muhammad Aleem, Farrukh Usman, Raffy Zeeshan Javed Altaf, Naeem Suleman, Arshad Hussain Shehzad, Kashan Ahmed, Asghar Bangash, Nasir Latif Khan

Advocate for the Respondents

M/s. Shahid Ali Qureshi, Qazi Ayazuddin Qureshi, Barrister S. Ahsan Ali Shah, Mohsin Ali Shah, Barkat Ali Metlo, Muhammad Aqeel Qureshi, Ameer Bux Metlo, Qaim Ali Memon, Syed Ali Ahmed Zaidi, Ayaz Sarwar Jamali, Sajjad Ali Solangi, Afsheen Aman, Zubair Hashmi, Muhammad Ishaque, Salman Ahmed, Ghulam Ali Khan, Ameer Noshewan Adil, Asad Aftab Solangi, Fawad Syed, Imtiaz Ali Solangi

Mr. G.M. Bhutto, Assistant Attorney General
Mr. Kafeel Ahmed Abbasi, Additional Advocate General Sindh
Manzoor-ul-Haq / Alam Zaib Law Officers, SBP.

We have heard the learned counsel for the petitioners as well as for the respondents. The crux of the matter is that the Petitioners claiming to be Recognized Provident Funds; Approved Superannuation Funds and Approved Gratuity Funds (See Clause 47B of Part-IV of the 2nd Schedule and the 6th Schedule to the Income Tax Ordinance, 2001) have been denied respective Exemption Certificates, making them liable for tax deductions on various transactions, including but not limited to, profit on debts; dividends; advance payments on brokerage and commission; capital gains; etc. etc. This has, perhaps resulted due to a letter dated 30.7.2021 issued by FBR to all Commissioners being some direction on the issue of Trust Laws and Specialized Trusts related to Pensions, Gratuity and Superannuation Fund. It also discloses holding of some meeting in FBR with provincial authorities and the precise reason as stated is that pursuant to Provincial Legislation in respect of Trusts by way of independent Acts; including the Sindh Trust Act, 2020, the petitioners are liable for compulsory registration and in absence of such registration, are not entitled for any Exemption Certificate.

In our considered view, such finding and direction of FBR to all Commissioner(s) asking the petitioners to obtain Registration under respective Trust Acts is ill-founded and does not appear to be a correct approach inasmuch as there is no corresponding amendment in the Income Tax Ordinance, 2001 after promulgation of the said Acts, and therefore, the objection, if any, to this effect cannot be sustained. Insofar as the Ordinance, 2001, is concerned, the position remains the same, whereas, the Petitioners before us are already approved by the Respondents and were being issued Exemption Certificates since long including up to 2022.

Prima facie, the contention of the Petitioners appears to be just, fair and correct, whereas, the objection of the Respondents appears to be frivolous, and therefore, this is a case, wherein, in our considered view, cost should be imposed upon the Respondents / FBR as numerous petitions have come before this Court, resulting in sheer wastage of precious time of the Court. It may also be noted with concern that all petitioners are managing funds pertaining to employees and their welfare (post retirement) and insofar as the entitlement to exemption is concerned, there appears to be no dispute, except issuance of an exemption certificate, which otherwise is mere procedural.

Before any order for imposition of costs could be passed, we have confronted Respondents Counsel and Mr. Shahid Ali Qureshi, learned Counsel appearing on behalf of some of the Respondents / FBR requests for time seek instructions. At his request and as an indulgence time is allowed.

To come-up on 21.02.2023 at 11:00 AM. Interim orders passed earlier to continue till the next date of hearing. Office to place copy of this order in the connected matters as mentioned above. On the next date office shall sent all the connected files as well.