

SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Yahya Afridi, CJ
Mr. Justice Naeem Akhter Afghan
Mr. Justice Muhammad Shafi Siddiqui

Civil Appeals No.1309 to 1312 of 2019

[On appeal from the judgments/orders dated 14.01.2019 of the Islamabad High Court, Islamabad passed in I.T.R. Nos.32 to 35 of 2012]

M/s Defence Housing Authority, Islamabad. ... Appellant
[in all cases]

Versus

Commissioner Inland Revenue (Zone-II), ... Respondent
Large Taxpayers Unit, Islamabad.
[in all cases]

For the Appellant: Syed Tanseer Tassaduq Bukhari, ASC.
[In all cases]

For the Respondent: Mr. Rehan Seerat, ASC.
[In all cases] Mr. Tariq Aziz, AOR.

Date of Hearing: 17.08.2026.

JUDGMENT

Muhammad Shafi Siddiqui, J. These appeals with the leave of the Court are directed against the judgment dated 14.01.2019 passed by the Islamabad High Court in different Income Tax References, whereby the appellant's claim for exemption from income tax under section 49 of the Income Tax Ordinance 2001 (hereinafter referred to as the '**Ordinance**'), was declined.

2. The controversy arises out of the claim of the appellant, Defence Housing Authority, Islamabad (hereinafter referred to as '**DHA**'), for exemption from income tax under section 49(2) of the Ordinance on the premise that it falls within the expression "local authority". DHA filed its

returns under section 49 of the Ordinance for Tax Years 2005, 2006, 2007 and 2008, claiming exemption under section 49(2) on the basis of its status as a local authority. The returns were treated as assessment orders under section 120 of the Ordinance. Subsequently, the Commissioner (Audit-II), LTU, Islamabad amended the assessments for Tax Years 2005, 2006 and 2007, while the Additional Commissioner (Audit-II) amended the assessment for Tax Year 2008 under section 122(5A) of the Ordinance, treating the assessments as erroneous and prejudicial to the interest of Revenue on the ground that DHA did not fall within the expression “local authority” and was, consequently, not entitled to the claimed exemption.

3. Aggrieved by the aforesaid orders, DHA preferred appeals before the Commissioner of Income Tax (Appeals-I), Islamabad. By orders dated 16.03.2009 in respect of Tax Years 2005, 2006 and 2007 and 15.01.2010 in respect of Tax Year 2008, the learned Commissioner (Appeals-I) accepted DHA's contention and held that it enjoyed the status of a “local authority” and was, therefore, entitled to exemption under section 49(2) of the Ordinance. The Department, being dissatisfied with the said orders, preferred further appeals before the Appellate Tribunal Inland Revenue, Headquarters Bench, Islamabad. Through its consolidated order dated 18.01.2012, the Tribunal upheld the orders of the first appellate authority. It considered, inter alia, the definitions of “local authority” contained in the General Clauses Act, 1897 and the Local Authorities Loans Act, 1914 and concluded that DHA's claim to the status of a local authority was sustainable. Consequently, the departmental appeals were dismissed. The Revenue thereafter brought the matter before the learned Islamabad High Court through income tax references. The learned High Court considered the common questions arising in the connected references, including the

question whether the entities concerned qualified as “local authorities” for purposes of exemption under section 49(1) to (3) of the Ordinance. By judgment announced on 14.01.2019, the learned High Court answered the references in the negative. Hence, these appeals.

4. Learned counsel for the appellant contended that the learned High Court erred in law in denying DHA the exemption available under section 49(2) of the Ordinance. It was submitted that DHA is a statutory authority constituted under law for the development, planning, regulation and administration of its area and, in discharge of its functions, exercises powers of a public and local character. Learned counsel maintained that the expression “local authority” in section 49 could not be construed narrowly. Reliance was also placed upon the case law cited in support of the above submissions. The findings of the Commissioner (Appeals) and the Tribunal were, therefore, said to represent the correct legal position.

5. Learned counsel for the respondent, on the other hand, contended that DHA did not fall within the expression “local authority” for the purposes of section 49 of the Ordinance and supported the judgment of the learned Islamabad High Court. It was submitted that the mere fact that DHA exercised powers within a defined area or performed public functions did not, by itself, confer upon it the status of a local authority. According to learned counsel, the essential attributes contemplated by the relevant statutory provisions were not present in the case of DHA. Reliance was also placed upon the case law considered by the learned High Court in support of its conclusion.

6. We have heard the learned counsel for the parties and perused the material available on record.

7. The controversy before us concerns the meaning and scope of the expression “local authority” occurring in section 49(2) of the Ordinance and, in particular, whether DHA falls within that expression so as to qualify for exemption from income tax. The question is not merely whether DHA performs functions of a public or municipal character or exercises its powers within a defined territorial area, but whether the nature and extent of the powers conferred upon it by law satisfy the legal attributes of a “local authority” contemplated by section 49(2) of the Ordinance.

8. Since the claim of exemption in the present case is founded upon section 49 of the Ordinance, it would be appropriate, at the outset, to reproduce the relevant provision as it stood during the period relevant to the present controversy. Section 49 of the Ordinance reads as follows:

“49. Federal and Provincial Government, and local authority income.— (1) The income of the Federal Government shall be exempt from tax under this Ordinance.

(2) The income of a Provincial Government or a local authority in Pakistan shall be exempt from tax under this Ordinance, other than income chargeable under the head “Income from Business” derived by a Provincial Government or local authority from a business carried on outside its jurisdictional area.

(3) Subject to sub-section (2), any payment received by the Federal Government, a Provincial Government or a local authority shall not be liable to any collection or deduction of advance tax.”

9. The appellant has also relied upon section 3(28) of the General Clauses Act, 1897 which defines “local authority” in the following terms:

“Local authority shall mean a municipal committee, district board, body of port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund.”

The definition, therefore, does not extend to every statutory authority exercising powers within a particular locality or performing functions of a public or civic nature. While the opening part identifies municipal committees, district boards and bodies of port commissioners, the expression “other authority” is itself subject to the requirement that such authority be

legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund. The statutory definition thus makes the legal entitlement to, or entrustment with, the control or management of such a fund a material constituent of the expression “local authority”.

10. Reliance was also placed by the appellant upon section 2 of the Local Authorities Loans Act, 1914 wherein “local authority” is defined as meaning:

“Any person legally entitled to the control or management of any local or municipal fund, or legally entitled to impose any cess, rate, duty or tax within any local area.”

This definition identifies two alternative statutory attributes of a local authority, namely, legal entitlement to the control or management of a local or municipal fund, or legal entitlement to impose a cess, rate, duty or tax within a local area. The nature of statutory fund being discussed is alien to the scheme of statute where under it was created. The mere existence of a statutory fund, or the authority to collect charges in the course of carrying out its functions, cannot by itself establish the status claimed; what is material is the existence of the legal entitlement contemplated by the definition.

11. The expression “local authority” came up for consideration before this Court in *The Deputy Managing Director, National Bank of Pakistan, Principal Office, Jinnah Avenue, Dacca*¹. This Court observed that the expression “local authority”, as used in statutory phraseology in the Indian sub-continent, is understood to mean an authority entrusted with the administration of a local fund. It was further observed that local authorities are bodies exercising, within limited territories included in a Province, powers belonging to the

¹ Deputy Managing Director, National Bank of Pakistan v. Ataul Huq (PLD 1965 Supreme Court 201).

Province but delegated to them by statute and are ordinarily charged with functions of self-Government, including the power to make bye-laws, impose taxation and maintain and administer a local fund. The Court, while examining the status of the National Bank of Pakistan, held that the Bank bore no resemblance to the recognised conception of a local authority, its functions being concerned with affairs appertaining to the Centre. The fact that the Bank was constituted as a body corporate and that the Central Government exercised powers of appointment in relation to its management did not alter the nature of its functions.

12. The question was again considered by this Court in *Commissioner of Income Tax, Lahore*², where, while examining the status of the Thal Development Authority under the West Pakistan Thal Development Act, 1949, the Court upheld its character as a “local authority”. The Court observed that the Authority had been conferred powers which were at least as wide as those conferred on any local authority, including the power to levy taxes, and held that it was, therefore, a local authority and not liable to income tax. The conclusion was thus founded upon the nature and extent of the powers vested in the Authority by its governing statute. The Court also rejected the argument that the statutory provision deeming the Authority to be a local authority for purposes of the Local Authorities Loans Act 1914, indicated that it was otherwise not a local authority, holding that the Authority’s substantive statutory powers themselves were sufficient to establish its status.

13. The foregoing principles were subsequently considered and summarised by this Court in *Province of Punjab through District Coordination*

² Commissioner of Income Tax v. Chief Secretary, Government of the Punjab (1981 PTD 66).

*Officer, Okara and others*³. After reviewing the earlier authorities, this Court identified the characteristics relevant to determining whether a body or institution is a “local authority”, including a juristic personality distinct from its members, perpetual succession and a common seal, with the capacity to sue and be sued in its corporate name; the exercise of authority and performance of functions within a defined territory; the entrustment of functions of self-government and the power to make bye-laws; and the empowerment to impose fees and taxes and to raise, maintain and administer a fund of its own. The Court further held that it is when these characteristics are predominantly and substantially possessed by a body or institution that it qualifies as a “local authority” in law.

14. Tested against the statutory definitions referred to above, the case of the appellant does not advance beyond its assertion that it operates within a defined area and performs functions relating to the development, planning, regulation and administration of that area. These circumstances, by themselves, do not establish either of the statutory attributes contemplated by section 3(28) of the General Clauses Act, 1897 or section 2 of the Local Authorities Loans Act, 1914. In particular, the material placed before us does not demonstrate that the appellant is legally entitled to, or entrusted with, the control or management of a municipal or local fund, nor does it establish the alternative attribute contemplated by section 2 of the Local Authorities Loans Act 1914, namely, a legal entitlement to impose a cess, rate, duty or tax within a local area. The mere receipt or collection of amounts in connection with the functions performed by an authority cannot, without establishing the legal character of such receipts and the authority under

³ Province of Punjab v. Market Committee (2011 SCMR 1856).

which they are imposed or administered, be equated with the statutory attributes of a local authority.

15. The principle emerging from *Ataul Huq* also assumes significance in the present case. The fact that an authority is created for the discharge of functions having a public or local character, or that it operates within a defined territorial sphere, does not by itself determine its legal character. What distinguishes a local authority is the nature of the authority entrusted to it and the powers accompanying that entrustment. The appellant's case, as advanced before us, establishes no more than that its activities are confined to a particular area and that it performs functions connected with the development, planning, regulation and administration of that area. Such localisation of functions is not equivalent to the entrustment of a sphere of local self-government. As this Court made clear in *Ataul Huq*, even corporate existence and governmental involvement in the management of a body do not determine its status; the character of the functions and powers actually entrusted to it remains the relevant consideration.

16. The decision in *Commissioner of Income Tax (supra)* reinforces the same approach. The Thal Development Authority was held to be a local authority not merely because it operated within a particular area, but because the law had vested it with powers of considerable breadth, including the power to levy taxes and to maintain an authority fund, together with extensive powers relating to the development of towns, mandis, market places, villages and roads. Likewise, in *Market Committee (supra)* the Court identified a combination of characteristics which, when predominantly and substantially possessed by a body, establish its character as a local authority. The significance of these decisions lies not in the presence of any particular label

or isolated feature, but in the substantive nature and extent of the authority vested in the body. In the present case, the appellant has not placed before us material demonstrating a comparable breadth of powers or the predominant and substantial possession of the characteristics identified in the said authorities. Its reliance upon its territorial sphere and the public nature of the functions which it performs, without establishing the wider attributes of authority which informed the decisions in those cases, is insufficient to bring it within the expression “local authority”.

17. The distinction, therefore, is between an authority whose activities happen to be confined to a locality and an authority upon which the law has conferred the legal character and attributes of a local authority. The former does not become the latter merely because its functions concern the affairs of persons residing within a defined area. In the present case, the appellant has not demonstrated, on the material placed before us, that it has been entrusted with the control or management of a municipal or local fund, or otherwise possesses the substantive attributes which this Court has regarded as characteristic of a local authority. Nor is there material before us establishing the breadth of powers which, in *Chief Secretary and Market Committee*, supported the conclusion that the respective bodies possessed that character. The appellant’s status, territorial operation and the nature of its functions may establish that it performs public functions within a particular locality, but they do not, without the requisite legal and substantive attributes, establish that it is a “local authority” within the meaning of section 49(2) of the Ordinance.

18. We are, therefore, unable to accept the appellant’s contention that it falls within the expression “local authority” occurring in section 49(2) of the

Ordinance. Consequently, the exemption claimed thereunder is not available to the appellant. Therefore, these appeals are dismissed.

Chief Justice

Judge

Judge

Islamabad:
17.08.2026

Approved for Reporting
[Simra Sohail, L.C]