

ORDER SHEET

**IN THE LAHORE HIGH COURT
MULTAN BENCH MULTAN
JUDICIAL DEPARTMENT**

Case W.P. No.296/2014.

District Headmasters/ Principals Association, Multan through its President Syed Mehmood Nabi. **VS** **Federation of Pakistan, etc.**

S.No. of order/ Proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of parties or counsel, where necessary
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14.01.2015 Raja Naveed Azam, Advocate for the petitioner.
Agha. Muhammad Akmal Khan, advocate for the respondents.

The petitioner through this writ petition has challenged a clarification circulated by the Central Board of Revenue/FBR Income Tax Department dated 18.5.2005, whereby the tax rebate/reduction granted to the full time teachers or researchers employed in a non-profit education or research institution recognized by the Higher Education Commission, has withdrawn on the ground, that the teachers who are performing any administrative or managerial job e.g. principals, headmasters, doctors vice chancellors etc. are not entitled to the aforesaid rebate.

2. The record annexed with this petition was examined and scrutinized with assistance of the learned counsel for the parties.

3. It is found from the record, that the respondent department i.e. Income Tax Department through a Circular No.3 of 2006 dated 11.7.2006 extended a favour to the members of the

teaching faculty by giving 50% to 75% tax rebate on his income from salary. The relevant part of the aforesaid circular is reproduced as under:-

“GOVERNMENT OF THE PAKISTAN
(REVENUE DIVISION)
CENTRAL BOARD OF REVENUE

C.No.4(5)ITR/06

Islamabad, July 11, 2006

Circular No.03 of 2006
(Income Tax)

Subject. COMPUTATION OF INCOME TAX PAYABLE BY THE SALARIES TAXPAYERS FOR TAX YEAR 2007 AND DEDUCTION OF ADVANCE TAX FROM SALARY FOR THE TAX YEAR COMMENCING 1ST JULY 2006

Tax in the case of a salaried taxpayer shall be computed in accordance with sections 12, 13 and 14 of Income Tax Ordinance 2001, read with rules 2 to 7 of income Tax Rules 2002. A salaried taxpayer means where salary constitutes more than 50% of the total income. All perquisites, allowances or benefits, [excepting those covered under Part-I of the Second Schedule to the Ordinance], are to be included in the salary and rate of tax prescribed in Part-I of the First Schedule shall be applied for the tax year 2007 on the gross figure. The taxation of salaried taxpayer is explained as under:

2. REBATE FOR TEACHERS AND RESEARCHERS POSTED IN GOVERNMENT INSTITUTIONS

A full time teacher or a researcher, employed in a non-profit education or research institution recognized by Higher Education Commission (HEC), a Board of Education or a University was entitled to a benefit, under Part III of Second Schedule to the Income Tax Ordinance 2001 and his tax liability stood reduced by an amount equal to 75% of tax payable on his income from salary.

This concession has now been extended to full time teachers and researchers employed in government training and research institutions also.”

4. The petitioner who are full time teachers, welcomed the favour extended by the respondent department and feel comfortable but all of a sudden the respondent department through circular No.6 of 2013 dated 19.7.2013 made amendment in second schedule of the income tax and reduced the rebate from 75% to 40% and also excluded the teaching staff performing any administrative or

managerial job. It is necessary to reproduce the same:-

“GOVERNMENT OF THE PAKISTAN
(REVENUE DIVISION)
FEDERAL BOARD OF REVENUE

C.No.4(36)ITP/2013

Islamabad, the 19 July, 2013

Circular No.6 of 2013
Income Tax

Subject. FINANCE ACT, 2013 – EXPLANATION REGARDING IMPORTANT AMENDMENTS MADE IN THE INCOME TAX ORDINANCE, 2001

Salient features of the amendments made in the Income Tax Ordinance, 2001 through Finance Act, 2013 are explained as under:-

1. ...
2. ...
3. ...

43. AMENDMENTS IN SECOND SCHEDULE

In Second Schedule to the Income Tax Ordinance, 2001 some of the amendments made are as follows:

(a)...

(b)...

(c)...

(d) *In Part-III in clause (2) reduction in tax liability of the tax payable on income from salary equal to 75% has been reduced to 40% in the case of:*

- (i) *a full time teacher employed in a non profit educational institution duly recognized by Higher Education Commission, a Board of Education or a University recognized by the Higher Education Commission, including government training institutions.*
- (ii) *a full time researcher employed in a research institution duly recognized by Higher Education Commission, a Board of Education or a university recognized by the Higher Education Commission, including government research institution.*
- (iii) *It is further clarified that a full time teacher means a person employed purely for teaching and not performing any administrative or managerial jobs e.g. principals, headmasters, directors, vice-chancellors, chairmen, controllers etc. similarly a full time researcher means a person purely employed for research job only in a research institution and such institution is purely performing research activities.”*

5. The respondent department did not restrain itself to this extend but also issued a clarification

of additional 50% tax reduction in the case of full time teachers, which is reproduced as under:-

*“GOVERNMENT OF THE PAKISTAN
CENTRAL BOARD OF REVENUE
INCOME TAX DEPARTMENT*

....

*MTU/2005/
May 18, 2005*

*District Accounts Officer
Sherikhupura*

Subject. Clarification of additional 50% tax reduction in the case of full time teachers.

*Reference Several applications No(s). Nil Dated May 18, 2005
by the District Sheikhpura
Head Masters.*

It is to clarify that according to clause (2) part III of second schedule of income tax ordinance 2001, is reproduced as under:

“In addition to the reduction specified in sub-clause (i), the tax payable by a full time teacher or a researcher, employed in a non profit education or research institution including government training and research institution duly recognized by a Board of Education or a university or the University grants commission, shall be further reduced by an amount equal to 50% of the tax payable after the aforesaid reduction”

In order to qualify for tax reduction under the above noted provision, the following conditions have to be fulfilled:

1. A full time teacher which means

- *A regular employee (full time faculty member);*
- *Not a part time teacher (visiting faculty-member);*

According to code of action “Dastoor-ul-Amaal” issued by Education Department of Punjab.”

2. Non profit education institution which means

- *An institution which has been established not to earn profit.*

Since both of these conditions are met with in their cases. Hence, Head Masters are eligible for this additional 50% tax reduction.

*(Ashraf Ahmed Ali)
Commissioner Income Tax ”*

6. Learned counsel for the petitioner submits that the concession given by the respondent department in payment of income tax on salary has already been acted upon and the petitioner and others are practicing the same, therefore, the respondents under the principal of *locus poenitentiae*, cannot withdraw the same by any

clarification and without giving any right of hearing to the petitioner/beneficiaries.

7. In this case, the respondents department in fact, in a very clandestine manner, excluded the persons who although are teachers, teaching in an educational institution i.e. school, college or university but also performing administrative or managerial job. The respondent department in fact has clarified the relevant provision in a manner so that the persons who although are teachers but performing managerial job too have been excluded which in any case cannot be the intention of the law maker at the time of granting this benefit to the petitioner.

8. Now it is to be seen, whether a teacher i.e. headmaster, principal etc., can be excluded from the beneficiaries of the afore-referred notification on the ground they are also performing the managerial duty. In many educational institutions, the headmaster or the principal also teach the students and further if a teacher after some time promoted as headmaster and as the case may be, a lecturer as principal, cannot be excluded from the definition of a teacher. In fact the respondent department has made a novel clarification or interpretation, which in any case is against the principal of interpretation.

9. The benefit and concession granted by the respondent department in the shape of rebate in payment of income tax on the salary, as admitted by the respondent has already been acted upon, therefore, the right accrued in favour of the

petitioner by way of the aforesaid circular can in any manner not be taken away or withdrawn. Reliance is placed upon Arif Hussain Dar v. Board of Revenue through Secretary, Muzaffarabad and 5 others (PLD 2002 Azad J&K 14), Aziz Ahmad v. Provincial Police Officer (I.-G.P.) Punjab Lahore and 6 others (PLD 2005 Lahore 185) and Muhammad Nadeem Arif and others v. Inspector-General of Police, Punjab, Lahore and others (2011 SCMR 408). In PLD 2002 Azad J&K 14 (Supra), it was held that “*the Policy or the Notification cannot override the Statutory Rules framed by the Government under a Statute.*” In PLD 2005 Lahore 185 (Supra) it was held that “*The Departmental circular is not more than a departmental instructions. The Departmental circular/instruction even cannot be called a rule. The Departmental circular are good enough for the internal management and control but they cannot confer a right or deprive a person of a right, which is only possible on the basis of a statutory provisions or a rule made by a competent authority under the concept of delegated legislation, as held in Sub. Muhammad Asghar v. Safia Begum and others PLD 1976 SC 435.*” In 2011 SCMR 408, the Hon’ble Supreme Court of Pakistan held that “*The learned High Court in the impugned judgment after quoting all the relevant rules and provisions of Police Act had given findings of fact that Office Order dated 23-2-2002/8-11-2002 was issued by the Inspector-General of Police without approval of the Government of the Punjab, therefore, the same has no legal sanctity. Section 12 of the Police Act confers power upon the Inspector-General of Police to frame rules after securing approval from the Government of the Punjab.*”

Even otherwise, the learned counsel for the respondent could not refer any plausible

explanation or rebuttal to the contention or claim agitated by the petitioner.

10. In view of the above, the impugned notification is not sustain in law, resultantly, this petition is allowed. No order as to cost.

(Ali Akbar Qureshi)
Judge

**Jamshed **

Approved for reporting

Judge