

**08th OF 2024 KTBA ONE PAGER
CASE LAW UPDATE
(AUGUST 19, 2024)**

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Dear Members,

A brief update on a judgment by the Islamabad High Court on **“Income of a Trust exempt from tax diverted to beneficiaries due to overriding title will still be taxed in the hands of the Trust. Mere setting the funds apart is not enough to claim exemption. Outright expenditure in welfare activities is must”** is being shared with you for your knowledge. The order has been attached herewith the update.

This update is in line with the efforts undertaken by our **“CASE LAW UPDATE COMMITTEE”** to apprise our Bar members with important court decisions.

You are equally encouraged to share any important case law, which you feel that should be disseminated for the good of all members.

You may contact the Committee Convener Mr. Shams M. Ansari or at the Bar’s numbers 021-99212222, 99211792 or email at info@karachitaxbar.com & ktba01@gmail.com

(Syed Zafar Ahmed)
President

(Asim Rizwani Sheikh)
Hon. General Secretary

**08th OF 2024 KTBA ONE PAGER
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INCOME OF A TRUST EXEMPT FROM TAX DIVERTED TO BENEFICIARIES DUE TO OVERRIDING TITLE WILL STILL BE TAXED IN THE HANDS OF THE TRUST.

MERE SETTING THE FUNDS APART IS NOT ENOUGH TO CLAIM EXEMPTION. OUTRIGHT EXPENDITURE IN WELFARE ACTIVITIES IS MUST.

Appellate Authority: Islamabad High Court

Petitioner: Army Welfare Trust (AWT)

Sections: 2(29),9,10,11, Clause (58)(2)(1) – Part-I of 2nd Schedule to the Income Tax Ordinance, 2001

AND

2(24),11,15,23(1)(x) Clause (62)(1) – Part-I of 2nd Schedule to the Income Tax Ordinance, 1979

ITR Ref. No: ITR No. 4 of 2009

Background: The AWT registered as a society under the Societies Registration Act, 1860, claimed that its income, essentially derived from resources of the Pakistan Army should be taxed in the hands of the Army itself due to income diversion to the Welfare and Rehabilitation Directorate of Pakistan Army (WARD). However, income tax authorities disagreed, assessing AWT income separately. The Commissioner (Appeals) considered AWT as a Company eligible for exemption under specific clauses for welfare activities expenditure. The Appellate Tribunal upheld taxation of AWT income, rejecting the concept of income diversion and emphasizing legislative intent for AWT taxation. The Petitioner challenged the Tribunal decision on income diversion, while the Department challenged findings related to exemption clauses.

Decision of the Court:

First Ruling of the Court:

As to whether the income derived by AWT is taxable in its own hands or not the IHC referenced a Indian Supreme Court ruling in a case Commissioner of Income Tax vs. Shri Sitaldas Tirathdas (1961 AIR 728) to clarify the doctrine of diversion of income due to overriding title. The Court explained that this doctrine applies only when income is diverted before reaching the assessee, not when it is applied afterward. This distinction, elucidated through the aforementioned Indian Supreme Court case, helped clarify the principle's application.

The Court emphasized that Pakistani tax laws, as outlined in the 1979 Ordinance and 2001 Ordinance, do not recognize such income diversion. Since AWT, being a society, directly receives income from its assets and projects without redirection to another entity prior to receipt, the Court concluded that this income should be taxed in its own hands.

Second Ruling of the Court:

As to whether outright expenditure of funds for welfare activities is necessary for claiming the exemption the court while addressing the issue as to which portion of AWT income qualifies for tax exemption, it dismissed the petitioner's argument equating "funds set apart" for future welfare activities with the explicit phrases "expended for welfare activities" found in the relevant exemption clauses. The Court clarified that only the income actually spent or utilized for welfare activities would be eligible for tax exemption. In reaching this conclusion, the Court cited provisions such as Section 23(xii) of the 1979 Ordinance, which includes the term "laid out" alongside "expended," and clause (93) of Part-I of the 2nd Schedule to the 1979 Ordinance, which mentions "set apart" in addition to "actually supplied." Emphasizing the principle of interpretation that discourages importing meanings from external sources into the law, the Court affirmed that income exemption should be based on actual expenses rather than funds earmarked for future spending.

Conclusions:

1- The doctrine of diversion of income due to overriding title is not recognized in Pakistani tax laws therefore any income actually received by a person is taxable in his own hands regardless of the ultimate destination of the income.

2- Mere setting the funds apart is not sufficient to claim the exemption and outright expenditure towards welfare activities is a must to claim exemption under Clause (58)(2)(1) of Part-I of 2nd Schedule to the 2001 Ordinance and Clause (62)(1) of Part-I of 2nd Schedule to the 1979.

NOTE: Members are requested to read the complete order attached

DISCLAIMER:

This update has been prepared for KTBA members and carries a brief narrative on a detailed Judgment and does not contain an opinion of the Bar, in any manner or sort. It is therefore, suggested that the judgment alone should be relied upon. Any reliance on the summary in any proceedings would not be binding on KTBA.

Islamabad High Court

**Tax Reference No. 50 of 2005 and I.T.R. No. 4 of 2009, decided on 7th April, 2022,
Date of hearing: 24th November, 2021.**

MOHSIN AKHTAR KAYANI AND BABAR SATTAR, JJ

**MESSRS ARMY WELFARE TRUST, RAWALPINDI VS COMMISSIONER OF INCOME
TAX**

**Khaliq uz Zaman Khan for Applicant. Saeed Ahmed Zaidi, Dr. Farhat Zafar, Sheikh
Anwar ul Haq, Babar Bilal and Ms. Shazia Bilal for Respondents.**

Law: Income Tax Ordinance, 2001

Section: 2(29),9,10,11,80(2)(b)(v),133,SecondSched.,Part-1,Cl.58(2)(1)

Law: Income Tax Ordinance, 1979

Section: 2(24),11,15,23(1)(x),SecondSchedule,Part-1,CL62(1)

(a) Income Tax Ordinance (XLIX of 2001)--Ss.2(29), 9, 10, 11, 80(2)(b)(v), 133, Second Sched., Part-1, Cl.58(2)(1)—Income Tax Ordinance (XXXI of 1979), Ss.2(24), 11, 15, 23(1) (x), Second Schedule, Part-1, CL 62(1)—Income of trust—Tax exemption—Overriding title—Applicant IT rust sought exemption on the plea that its income was diverted by virtue of overriding title of Directorate of Army controlling the affairs of applicant/Trust and other projects—Validity—Concept of overriding title leading to diversion of income had no application when had come to income of a trust or society or a charitable institution—Constituent documents of such entity constrain its ability to determine freely how the income was to be used once it had reached the entity, who was not free and autonomous to use it as it pleased—Constituent documents of the entity determined how income was to be employed or even who all would be the beneficiaries of such income—Such constraint did not transform income of welfare entity (whether constituted as a S. 42 company or a trust or a society) into that of the beneficiaries—Once income had reached the entity (i.e. the taxpayer), it qualified as income under Ss.2(24), 11 of the Income Tax Ordinance, 1979 and Ss. 2(29), 9, 10 of Income Tax Ordinance, 2001—Manner in which such income was to be employed was a question of its utilization and not that of overriding title— Income that had reached a taxpayer or accrued to it, notwithstanding the manner of its utilization, remained income in the hands of taxpayer and was to be taxed as such—What qualified as “income” under Income Tax Ordinance, 1979 or Income Tax Ordinance, 2001 was income liable to tax in the hands of taxpayer who was in receipt of such income—Applicant / Trust was under no legal obligation to transfer its entire income to the Directorate due to legal necessity—Even in the event that the constituent documents of applicant / Trust stated that its entire income would be employed in welfare activities through another organization such as the Directorate, such arrangement for utilization of income of applicant / Trust would still not create any overriding title in favour of Directorate over the properties and income of applicant / Trust to the extent that applicant / Trust had received income generated by assets and projects owned by it and such income would be liable to tax in the hands of applicant / Trust—Reference was disposed of accordingly.

Octavius Steel Company, Ltd. v. The Commissioner of Income Tax, Dacca PLD 1960 SC 371; Commissioner Inland Revenue u. Multan Educational Trust 2014 PTD 402; The Commissioner of Income Tax v. Shri Sitaldas Tirathdas AIR 1961 SC 728; Bejoy Singh Dudhuria v. The Commissioner of Income Tax (1933)1 ITR 135 and Associated Power Company Ltd. v. Commissioner of Income Tax AIR 1996 SC 894 ref.

The Commissioner of Income Tax, East Pakistan, Dacca v. The Liquidator, Khulna-Bagerhat Railway Company Ltd., Ahmadabad PLD 1962 SC 128; Commissioner of Inland Revenue v. Korean Syndicate Limited 1 KBD 598 e 603; Genertech Pakistan Ltd. and others v. Income Tax Appellate Tribunal of Pakistan, Lahore and others 2004 SCMR 1319; Lucky Cement Ltd. v. Commissioner Income Tax, Zone Companies, Circle-5, Peshawar 2015 SCMR 1494; Tuticorin Alkali Chemicals and Fertilizers Ltd. v. Commissioner of Income Tax 1997 Supp. (1) SCR 528 and 1998 PTD 900 rel.

(b) Co-operative Societies Act (VII of 1925)---Ss.3, 5—Cooperative Society—Status—Society is a juristic person and body incorporated and formed under Cooperative Societies Act, 1925—As legal personality of society registered under Cooperative Societies Act, 1925 becomes distinct from personality of natural persons who come together to create the society, it becomes a body corporate formed as a legal person by virtue of its registration under Cooperative Societies Act, 1925.

Commissioner Inland Revenue (Legal Division) v. Messrs Multan Educational Trust 2014 PTD 420 and Commissioner of Income Tax/Wealth Tax Companies Zone-II, Lahore v. Messrs Lahore Cantt. Cooperative Housing Society, Lahore 2009 PTD 799 rel.

(c) Income Tax Ordinance (XLIX of 2001)---Second Sched., Part I, Cl. 58(1)—Income Tax Ordinance (XXXI of 1979), Second Sched., Part 1, Cl. 62(1)—Tax exemption—Trust, entitlement of—Army Welfare Trust is a welfare institution and is entitled to seek exemption under Second Schedule, Part I, Cl. 62(1) of Income Tax Ordinance, 1979 as well as under Second Sched., Part I, Cl. 58(1) of Income Tax Ordinance, 2001, in relation to “income from business as is expended in Pakistan for purposes of carrying out welfare activities” to the extent permissible under such clauses.

(d) Words and phrases--Expend—Meaning--Oxford Advanced Learner’s Dictionary rel.

(e) Income Tax Ordinance (XLIX of 2001)---Second Sched., Part I, Cl. 58(1)—Income Tax Ordinance (XXXI of 1979), Second Schedule, Part I, Cl. 62 (1)—Tax exemption—Welfare activity—Onus to prove—Onus of discharging obligation of establishing that a certain amount from income from business has been expended in carrying out welfare activities in tax year in question rests with the taxpayer.

(f) Income tax---Profit margin—Determination—Taxation officer, discretion of— Scope—Taxation officer has no discretion to determine in arbitrary manner profit margin that he finds reasonable in relation to a certain income stream—What is vested in taxation officer under Income Tax Ordinance, 2001 is not discretion but a right to exercise while reassessing income pursuant to provisions of Income Tax Ordinance, 2001—Where such is being exercised in a manner that rejects the treatment afforded to income by taxpayer, the taxation officer is under an obligation to provide reasons for the manner in which he /she has chosen to exercise —Without such reasons, which are justiciable, rejection of tax treatment afforded by taxpayer or change in profit margin applied by tax department cannot be countenanced—Tax authorities cannot arbitrarily apply a profit margin.

(g) Income Tax Ordinance (XLIX of 2001)--S.29—Bad debts—Pre-condition—For purposes of any tax year in relation to which either Income Tax Ordinance, 1979 or Income Tax Ordinance, 2001 is applicable, a necessary precondition for any debt to qualify as bad debt is for the taxpayers to have written off such debt in its books and accounts for such tax year as bad debt— Such written off amount in lieu of bad debts then determines ceiling of bad debt in lieu of which adjustment can be sought in relation to a particular tax year—

Treatment in the books and accounts of debt in relation to which taxpayer seeks a deduction on account of it being bad debt as having been written off in relevant tax year is a necessary precondition—Once such condition is met, the second condition to be satisfied is reasonability of belief that such written off debt is irrecoverable— Where a taxpayer has not written off debt within its own books and accounts for relevant tax year for having become irrecoverable, question of seeking deduction for such debt as bad debt does not arise.

Commissioner of Income-Tax v. National Bank of Pakistan Karachi PLD 1976 Kar. 1025; Commissioner Inland Revenue (Zone-I), Karachi v. Messrs Faisal Bank Limited 2020 SCMR 1045 and Commissioner of Income Tax (Legal), Islamabad v. Askari Commercial Bank Limited, Rawalpindi 2018 PTD 1089 rel.

JUDGMENT

BABAR SATTAR, J.----Through this judgment, we will decide tax references listed in Annexure-A attached hereto. The questions of law proposed for our consideration in the references listed in Annexure-A have been amalgamated with the assistance of the learned counsel for the taxpayer (i.e. Army Welfare Trust) and the tax department. The questions so proposed have been listed in Annexure-B. Seeking guidance from the law laid down by the august Supreme Court in Octavius Steel Company, Ltd. v. The Commissioner of Income Tax, Dacca (PLD 1960 SC 371), we find it to be in the interest of clarity that we reformulate the questions proposed for our consideration, in order to squarely address the underlying legal issues, as follows:

1. Whether income derived by the projects of Army Welfare Trust (AWT) is to be treated as diverted income by virtue of overriding title of the Welfare and Rehabilitation Directorate of Pakistan Army (WARD) and consequently not to be treated as income of AWT chargeable to tax in its hands?
2. What is the status of AWT being a society registered under the Societies Registration Act, 1860, and whether it is to be treated as a trust under the Income Tax Ordinance, 1979 ("Ordinance of 1979") and whether it is to be treated as a company under section 2(16)(bb) of the Ordinance of 1979, which could attract provisions of section 80D of the Ordinance of 1979, and whether AWT qualifies as a company under section 80(2)(b)(v) of the Income Tax Ordinance, 2001 ("Ordinance of 2001") rendering it liable to minimum tax under section 113 of the said Ordinance?
3. If the income of the AWT is not to be treated as income to be diverted to WARD by virtue of overriding title, would such income qualify for exemption under clause 62(1) of Part I of the Second Schedule to the Ordinance of 1979 and clause 58(2)(i) of Part I of the Second Schedule of the Ordinance of 2001 for purposes of the Ordinance of 2001. In order to seek exemption under clause 62(1) of Part I of the Second Schedule to the Ordinance of 1979 and clause 58(2)(i) of Part I of Second Schedule to the Ordinance of 2001, does AWT need to discharge the onus of establishing the "quantum of income expended" on welfare activities or would setting aside income for welfare activates suffice to seek exemption under the clauses of the Ordinance of 1979 and the Ordinance of 2001?
4. Whether the interest income is to be treated as "income from business" under section 15 of the Ordinance of 1979 or under section 11 of the Ordinance of 2001, or whether such income is to be treated as "income from other sources" for purposes of the said sections?
5. Whether in relation to assessing the income from Blue Lagoon project of AWT, the tax

department was justified in applying a gross profit rate of 30% without furnishing reasons for applying such rate or otherwise identifying any defects in the return submitted by AWT on the basis of applying a lesser gross profit rate to the revenue generated?

6. Whether AWT was entitled to deduction in lieu of bad debt under section 23(1)(x) of the Ordinance of 1979.

2. A perusal of the questions summarized in Annexure-B reflects that there are certain other questions framed for our consideration as well. But after review of the judgments of the learned Tribunal we are of the view that no other questions of law emanate from the said judgments from which the references have arisen and consequently the additional questions listed in Annexure-B have not been included in the reformulated questions listed above.

3. Army Welfare Trust ("AWT") was initially registered as a society under the Societies Registration Act, 1860, with the name of Army Welfare Projects Fund and a certificate of registration was issued dated 13.10.1971. Its name was subsequently changed to Army Welfare Trust pursuant to the permission granted on 13.10.1974.

4. The basic legal question in the references being

decided is the status of AWT for purposes of the Ordinance of 1979 and the Ordinance of 2001, as some references relate to tax years to which the Ordinance of 1979 is applicable and others relate to tax years to which the Ordinance of 2001 is applicable.

5. AWT has taken the position that it has no real income as all of its income is diverted to WARD by virtue of overriding title over such income. The Tax Department refused to acknowledge the concept of diversion of income and assessed the income received by AWT in its own hands. The Commissioner (Appeals) by order dated 04.10.2000 held that AWT qualified as a company under section 2(16) of the Ordinance of 1979 in view of the fact that AWT had filed returns with the status of a company up until 1995-1996. The Commissioner (Appeals) further held that AWT was a juristic person with distinct legal personality and could claim an exemption under clause 62(1) of Part I of the Second Schedule to the Ordinance of 1979 to the extent that it expended income chargeable to tax under the head of income from business as required by such clause. The Commissioner (Appeals) did not allow the interest income from investments placed in bank accounts to be treated as income from business and held that such income was to be treated as income from other sources. The learned Tribunal by order dated 24.03.2003 after discussing all the case law cited by AWT and considering the arguments on behalf of AWT and the Tax Department held that diversion of income on the basis of overriding title was not a concept recognized under the Ordinance of 1979. It observed that the basis being claimed by AWT for attributing overriding title over AWT's income to WARD was a letter dated 02.05.1999 issued by the Adjutant General Branch of GHQ directing AWT to transfer its entire income to WARD and that such letter would at best be treated as an administrative instruction to AWT and could create no overriding title in favour of WARD over the property of AWT or the income produced by such property. It held that the income received by AWT was to be treated as AWT's income for purposes of section 11 of the Ordinance of 1979 liable to tax in the hands of AWT. On the question of legal status of AWT, the learned Tribunal held that given that AWT was a society it could not be treated as a trust under section 2(16)(bb) of the Ordinance of 1979 and was liable to be treated as an association of persons and would not be subject to minimum tax under section 80D of the Ordinance of 1979 for purposes of minimum tax. It held that the income of AWT was exempt to the extent of clause 62(1) of Part I of the Second Schedule to the Ordinance of 1979. But it was for the assessee to

establish that the income from business was actually expended for welfare activities. It further held that the interest income generated by funds parked in bank accounts was to be regarded as income from business under section 22 of the Ordinance of 1979 as opposed to income from other sources. In a separate order the learned Tribunal held that the adjustment for bad debts was to be disallowed for purposes of section 23(1)(x) of the Ordinance of 1979 as AWT had not written off such debt in its books and accounts for which it was seeking adjustment. In holding that income of AWT was to be taxed in its own hands and not to be treated as the income of WARD, the learned Tribunal also took in account clause 9 of Part II of the Second Schedule to the Ordinance of 1979 which identifies AWT and provides that, "so much of the income [of AWT] chargeable under the head income from business or profession as is not exempt under clause (62) of Part I, shall be charged to tax at the rate of 20% of such income". The learned Tribunal opined that as the legislature had provided an explicit provision for application of reduced tax rate to the income of AWT from business to the extent that such income was not exempt under clause 62(1) of Part I of the Second Schedule to the Ordinance of 1979, the legislative intent was explicit that the income of AWT was liable to tax in its own hands and further that AWT's income from business was also liable to exemption under clause 62(1) of Part I of the Second Schedule to the Ordinance of 1979. Against such findings, the AWT as well as the Tax Department filed cross references.

6. Learned counsel for AWT took the Court through the history of creation of AWT and how the seed money for registration of AWT as a society had been provided by Pakistan Army. He submitted that not every sort of income was taxable under section 11 of the Ordinance of 1979 but only such income that "accrues" to a person and when the income in the hands of an assessee was not its own income, such income could not be offered for taxation as income of such assessee. He submitted that income received by AWT was immediately diverted to WARD and that AWT had no power to employ such income as it pleased and that it was WARD that employed the income in welfare activities. His basic argument was that the income being treated by tax authorities as AWT's income was not AWT's real income as AWT had no control over such income. And consequently such income should be regarded as the income of WARD and not that of AWT due to WARD's overriding title over such income due to which it was diverted to WARD.

7. Learned counsel for FBR submitted that pursuant to the provisions of the Ordinance of 1979 and the Ordinance of 2001 fruits of one tree could not be attributed to another tree. That AWT was a juridical person and a taxpayer being a society registered under the Societies Registration Act, 1860, and was liable to sue in its own name and was consequently taxed as a legal entity. That AWT was a large commercial empire carrying business and other commercial activities and could not be exempt from taxation merely because it was transferring its income to WARD, which was then using it in welfare activities. He submitted that Indian judgments cited by the learned counsel for the applicant were not binding on this Court, and even if they were deemed to have persuasive value, the concept of diversion of income explained therein was not applicable to the facts of the instant case. He submitted that the basic question to be considered in determining whether income of a taxpayer had been diverted by virtue of overriding title was whether such income was diverted before or after reaching the taxpayer. And the jurisprudence produced in India suggested that in the event that a charge was created against the property whose income was liable to tax by overriding title, such income was to be excluded from the income of the taxpayer as such income never reached the taxpayer by virtue of being diverted. But that in the instant case there was no overriding title in favour of WARD as the income generated by assets and projects was being received by AWT and had subsequently been transferred to WARD on the basis of administrative instructions issued by the Adjutant General Branch of GHQ, which instructions were being abided by as a matter of policy and

not as a matter of law. He submitted that AWT was liable to be treated as a company as has been held by the learned Lahore High Court in Commissioner Inland Revenue v. Multan Educational Trust (2014 PTD 402). That a society registered under the Societies Act was an entity incorporated under the Societies Act and fell within the definition of a company under the Ordinance of 1979 and the Ordinance of 2001. He further submitted that the question whether or not bad debts were to be adjusted under section 23(1)(x) of the Ordinance of 1979 had been correctly determined by the learned Tribunal, as pursuant to section 23(1)(x) such debt had to be written off within the books and accounts of the taxpayer and found to be irrecoverable by the Deputy Commissioner undertaking the assessment of taxpayer and in the instant case it had been found that AWT had not written off such debts in its books as bad debt. The crux of the arguments of the learned counsel for the Department was that in view of Article 165-A of the Constitution there was no question regarding the competence of the Parliament to impose tax on an entity established by or under a federal law and owned or controlled either directly or indirectly by the Federal Government, and that in exercise of such authority the Ordinance of 1979 as well as the Ordinance of 2001 created no overarching exemption for the income of welfare institutions owned or controlled by the Federal Government. And that in view of the scheme of the Ordinance of 1979 as well as the Ordinance of 2001, irrespective of the ultimate destination of the income generated by an entity owned or controlled by the Federal Government, the income was taxable in the hands of an entity that it received. He submitted that AWT was a juristic person and there was no room to lift its veil of incorporation as a society and hold that the income being generated through assets owned and vested in such society was not liable to tax despite having been received by such taxpayer.

Diversion of Income through overriding title.

8. The concept of diversion of income due to overriding title doctrine has not been recognized in the jurisprudence produced in relation to the Ordinance of 1979 or the Ordinance of 2001. The pillar judgment in India was Indian Supreme Court's decision in The Commissioner of Income Tax v. Shri Sitaldas Tirathdas (1961 AIR 728), wherein it interpreted the decision of the Privy Council in Bejoy Singh Dudhuria v. The Commissioner of Income Tax (1933)1 ITR 135, where the stepmother of the Raja had brought a suit for maintenance and a compromise deed was passed under which the stepmother was to be paid a certain amount which was treated as a charge on the properties in the hands of the Raja and thus not part of his income. In Shri Sitaldas, it was held that:

"There is a difference between an amount which a person is obliged to apply out of his income and an amount which by the nature of the obligation cannot be said to be a part of the income of the assessee. Where by the obligation income is diverted before it reaches the assessee, it is deductible; but where the income is required to be applied to discharge an obligation after such income reaches the assessee, the same consequence, in law, does not follow. It is the first kind of payment which can truly be excused and not the second. The second payment is merely an obligation to pay another a portion of one's own income, which has been received and is since applied. The first is a case in which the income never reaches the assessee, who even if he were to collect it, does so, not as part of his income, but for and on behalf of the person to whom it is payable."

9. In Associated Power Company Ltd. v. Commissioner of Income Tax (1996 AIR 894), the Indian Supreme Court reiterated the test laid down in Shri Sitaldas and held that, "the doctrine applies when, by reason of an over-riding title or obligation, income is diverted and never reaches the person in whose hands it is sought to be assessed."

10. Perusal of Indian Jurisprudence on the concept of overriding title leading to diversion of

income reflects that it has largely evolved in the context of attributing income of property of Joint Hindu Family i.e. in determining to whom belongs the title of the joint property or income produced by such property. The concept has no application when comes to the income of a trust or society or a charitable institution. The constituent documents of such entity constrain its ability to determine freely how the income is to be used once it reaches the entity. In other words, the entity is not free and autonomous to use it as it pleases. Its constituent documents determine how the income is to be employed or even who all would be the beneficiaries of such income. But such constraint does not transform the income of the welfare entity (whether constituted as a section 42 company or a trust or a society) into that of the beneficiaries. Once the income reaches the entity (i.e. the taxpayer), it qualifies as income under sections 2(24) and 11 of the Ordinance of 1979 and sections 2(29), 9 and 10 of the Ordinance of 2001, and the manner in which such income is to be employed is a question of its utilization and not that of overriding title. The income that reaches a taxpayer or accrues to it, notwithstanding the manner of its utilization, remains income in the hands of the taxpayer and is to be taxed as such.

11. The Ordinance of 1979 or the Ordinance of 2001 does not recognize the idea that "real income" of a taxpayer may be a subset of his "income", and that it is only the real income that is to be offered up for taxation. What qualifies as "income" under the Ordinance of 1979 or the Ordinance of 2001 is the income liable to tax in the hands of the taxpayer who is in the receipt of such income. An example of overriding title would be income from joint property, which, even if received by one co-owner, would be received as income of the other co-owners to the extent of their respective shares, and would not be taxed as income of the receiving co-owner. The issue of attribution of income from property can be complex in the context of a Hindu Undivided Family that is taxed as a person, which is where jurisprudence on the question of diversion of income through overriding title has developed in Indian. The concept is however not attracted at all in the present case. WARD is neither a legal person, nor has any title to the income of AWT or any overriding title to the assets of AWT. The Chairman of the Governing Body of AWT is the Adjutant General of Pakistan Army. If the Adjutant General has issued instructions to AWT as to how to the employ and expend its income, such administrative instructions neither create a legally binding obligation for AWT nor create any title in favour of the organizational set-up to whom such income is to be handed over for use i.e. WARD in the instant case.

12. The relevant provisions of the Ordinance of 1979 and the Ordinance of 2001 that define income to be offered for tax are as follows:

Income Tax Ordinance, 1979

2. Definitions.-In this Ordinance, unless the context otherwise requires,-

(24) "income" includes-

(a) any income, profits or gains, from whatever source derived, chargeable to tax under any provision of this Ordinance under any head specified in section 15;

(b) any loss of such income, profits or gains;

(c) any sum deemed to be income, or income accruing or arising or received in Pakistan under any provision of this Ordinance, but does not include, in the case of a shareholder of a domestic company, the amount representing the face value of any bonus shares or the amount of any bonus declared, issued or paid by the company to its share-holders with a view to increasing its paid-up share-capital; and

(d) in the case of shareholder of a domestic company, the amount representing the face value of any bonus shares or the amount of any bonus declared, issued or paid by the company to its shareholders with a view to increasing its paid-up share capital,

11. Scope of total income.- (1) Subject to the provisions of this Ordinance, the total income, in relation to any assessment year, or a person,-

(a) who is a resident, includes all income from whatever source derived, which -

(i) is received, or is deemed to be received, in Pakistan in the income year by, or on behalf of, such person; or

(ii) accrues or arises, or is deemed to accrue or arise, to him in Pakistan during such year; or

(iii) accrues or arises to him outside Pakistan during such year;

(b) who is a non-resident, includes all income from whatever source derived, which-

(i) is received, or is deemed to be received, in Pakistan in the income year by, or on behalf of, such person; or

(ii) accrues or arises, or is deemed to accrue or arise, to him in Pakistan during such year.

(2) Notwithstanding anything contained in subsection (1), where any amount consisting of either the whole or a part of any income has been included in the total income of a person on the basis that it has accrued or arisen, or is deemed to have accrued or arisen, to him in any year, it shall not be included again in his total income on the basis that it is received, or is deemed to be received, by him in Pakistan in any other year.

Income Tax Ordinance, 2001

2. Definitions.- In this Ordinance, unless there is anything repugnant in the subject or context -

(29) "income" includes any amount chargeable to tax under this Ordinance, any amount subject to collection or deduction of tax under sections 148, 150, 152(1), 153, 154, 156, 156A, 233, subsection (5) of section 234 and any amount treated as income under any provision of this Ordinance] and any loss of income;

9. Taxable income.-The taxable income of a person for a tax year shall be the total income under clause (a) of section 10 of the person for the year reduced (but not below zero) by the total of any deductible allowances under Part IX of this Chapter of the person for the year.

10. Total Income.- The total income of a person for a tax year shall be the sum of the (a) person's income under all heads of income for the year; and 4 (b) person's income exempt from tax under any of the provisions of this Ordinance.

13. The provisions of the Ordinance of 1979 very clearly define total income as the income "received by or on behalf of a taxpayer". Likewise, sections 9 and 10 of the Ordinance of 2001 when read together with section 18(1)(a) that define income from business, include in

the income of an entity from business, "the profits and gains of any business carried on". Neither the Ordinance of 1979 nor the Ordinance of 2001 create any room for diversion of income through overriding title as both these tax codes also include deeming provisions which further explain how the income is to be treated even where there could be confusion regarding the person to whom the income accrues. But there is no need to get into any further discussion regarding deeming provisions as in the instant case AWT is a society and its assets and projects admittedly produce revenue and income from assets and projects vested in AWT as a juristic person. Further, the income in question is the income actually received by AWT and does not include any funds that are diverted to any other person or entity by virtue of overriding title prior to receipt of such funds by AWT. AWT's claim that WARD has overriding title over the entire income of AWT is based on an administrative instruction issued by the Adjutant General Branch of Pakistan Army. Merely because the Adjutant General who oversees WARD is also the Chair of the Governing Body of AWT and has issued administrative instructions in compliance with which AWT transfers all of its income to WARD for being employed in welfare activities creates no overriding title for WARD, which is not a legal person in any event. In other words, the AWT is under no legal obligation to transfer its entire income to WARD due to legal necessity. But even in the event that the constituent documents of AWT stated that the entire income of AWT would be employed in welfare activities through another organization such as WARD, such arrangement for utilization of the income of AWT would still not create any overriding title in favour of WARD over the properties and income of AWT. To the extent that AWT receives income generated by assets and projects owned by AWT, such income would be liable to tax in the hands of AWT.

Legal Status of AWT and its entitlement to tax exemption

14. The definition of company as provided under section 2(16) of the Ordinance of 1979 is as follows:

2. Definitions.-In this Ordinance, unless the context otherwise requires,-

(16) "company" means-

(a) company as defined in the Companies Act, 1913 (VII of 1913); or

(b) a body corporate formed by or under any law for the time being in force; or

(bb) a trust formed by or under any law for the time being in force; or

(d) a body corporate incorporated by or under the law of a country outside Pakistan relating to incorporation of companies; or

(cc) a modaraba as defined in the Modaraba Companies and Modarabas (Floatation and Control) Ordinance, 1980 (XXXI of 1980);

(d) the Government of a Province;

(e) a foreign association, whether incorporated or not which the Central Board of Revenue may, be general or special order, declare to be company for the purposes of this Ordinance for such assessment year or years (whether commencing before, on or after the first day of July, 1979) as may be specified in the said order;

Section 80D of the Ordinance of 1979 creates an obligation for certain persons to pay

minimum tax against income, including companies.

15. Likewise, section 2(12) of the Ordinance of 2001 read together with section 80(2)(b) defines the 'company' as follows:

2(12) "company" means a company as defined in section 80.

80(2) For the purposes of this Ordinance -

(b) "company" means -

(i) a company as defined in the Companies Act, 2017 (XIX of 2017);

(ii) a body corporate formed by or under any law in force in Pakistan;

(iii) a modaraba;

(iv) a body incorporated by or under the law of a country outside Pakistan relating to incorporation of companies;

(v) a co-operative society, a finance society or any other society;

Section 113 of the Ordinance of 2001 creates a minimum tax obligation against the income of certain persons, including a company.

16. The question before us is whether a society registered under the Societies Registration Act, 1860 ("Societies Act"), falls within the definition of a company being "a body corporate formed by or under any law for the time being in force in Pakistan". A society is formed and registered under section 3 of the Societies Act. Section 5 of the said Act provides that property belonging to a society if not vested in trustees it deems to be vested in the governing body of the society. Section 6 of the Societies Act provides the following:

6. Suits by and against societies. Every society registered under this Act may sue or be sued in the name of the president, chairman, or principal secretary, or trustees, as shall be determined by the rules and regulations of the society, and, in default of such determination, in the name of such person as shall be appointed by the governing body for the occasion:

Provided that it shall be competent for any person having a claim or demand against the society, to sue the president or chairman, or principal secretary or the trustees thereof, if on application to the governing body some other officer or person be not nominated to be the defendant.

17. Section 8 of the Societies Act provides that where a judgment is rendered against a person or officer named on behalf of the society that judgment is not to be enforced against such person or officer but against the property of the society. The scheme of the Societies Act is that seven or more persons who come together for any literary, scientific or charitable purposes and agree on a memorandum of association, which is then to be filed with the Registrar of Joint Stock Companies, can register a society. Once such society is registered it acquires a distinct legal personality independent of the natural persons who are members of such society. It is governed by the rules agreed to within the memorandum of association. The society, once formed, acquires a legal or juristic personality and the ability to sue and may be sued in its name and to have property vested in its governing body on its behalf.

The society as a juristic person is a body incorporated and formed under the Societies Act. As the legal personality of the society registered under the Societies Act becomes distinct from the personality of the natural persons who come together to create the society, it becomes a body corporate formed as a legal person by virtue of its registration under the Societies Act.

18. The question of whether the Society registered under the Societies Act falls within the definition of a company under section 80(2)(b) of the Ordinance of 2001 came before the learned Lahore High Court in Commissioner Inland Revenue (Legal Division) v. Messrs Multan Educational Trust (2014 PTD 420), wherein the following was held:

8. Section 80(2)(b)(v) of the Ordinance provides that a company is a society established or constituted by or under any law for the time being in force. What does "established or constituted by or under the Act" mean? "By and Act" would mean by a provision directly enacted in the statute in question and which is gatherable from its express language or by necessary implication therefrom. The words under the Act "would, in that context, signify what is not directly to be found in the statute itself but is conferred or imposed by virtue of powers enabling this to be done; in other words, by laws made by a subordinate law-making authority which is empowered to do so by the parent Act."

9. In our context "by the Act" means that the entity is the creation of the statute itself, in other words, the primary legislation itself establishes the entity, the source being the legislature itself. Whereas "under the Act" means that an entity is formed by complying with the procedure set out under the Act and not directly by the Act. For example, Federal Board of Revenue (FBR) is a body established and constituted by the Act of the Parliament i.e., The Federal Board of Revenue Act, 2007 whereas Pakistan Revenue Automation (Pvt.) Ltd. (PRAL) is a private company incorporated by the FBR under the provisions of the Companies Ordinance, 1984 and hence is considered to be a body formed, established or constituted under the Act.

In Multan Educational Trust the learned Lahore High Court had also distinguished the case of Commissioner of Income Tax/Wealth Tax Companies Zone-II, Lahore v. Messrs Lahore Cantt. Cooperative Housing Society, Lahore (2009 PTD 799), wherein a Cooperative Housing Society registered under the Cooperative Societies Act, 1925, was held not to be a company under the Ordinance of 1979. The learned Lahore High Court held that under section 5 of the Co-operative Societies Act, 1925, a society that was established could be registered under such Act if it met certain terms and conditions and consequently it could not be said that a society came into existence by virtue of its registration under the Cooperative Societies Act, 1925. But that situation was different under the Societies Act, as it was by virtue of the registration of a society after satisfying the requisite conditions prescribed under the Societies Act that a society stood formed, which is why such society was to be treated as having been established or formed under the Societies Act.

19. The discussion in Multan Educational Trust was in relation to section 80(2)(b)(v) of Ordinance of 2001 and not section 80(2)(b)(ii). The only additional question before us is whether a society qualifies as a body corporate for purposes of section 2(16)(b) of the Ordinance of 1979 and section 80(2)(b)(ii) of the Ordinance of 2001. For the reasons stated above, we are of the considered view that a society being a legal and juristic person after being registered and formed does not remain an association of persons but qualifies as a body corporate for purposes of section 2(16)(b) of the Ordinance of 1979 and section 80(2)(b)(ii) of the Ordinance of 2001, and would be liable to pay minimum tax under section 80D of the Ordinance of 1979 or section 113 of the Ordinance of 2001, to the extent that obligation for payment of minimum tax against a company existed in the relevant tax year.

20. We agree with the opinion rendered by the learned Tribunal that AWT is a welfare institution and is entitled to seek exemption under clause 62(1) of Part I of the Second Schedule to the Ordinance of 1979 as well as under clause 58(1) of Part I of the Second Schedule to the Ordinance of 2001 in relation to "income from business as is expended in Pakistan for purposes of carrying out welfare activities" to the extent permissible under such clauses. The erstwhile scheme of exemption prescribed under clause 62(1) of Part I of the Second Schedule to the Ordinance of 1979 and clause 58(1) of Part I of the Second Schedule to the Ordinance of 2001 has now been replaced by section 100C of the Ordinance of 2001. But we need not discuss this change as none of references before us relate to any tax years since the promulgation of section 100C within the Ordinance of 2001. For our present purposes it would suffice to clarify that AWT is a welfare institution entitled to exemption as prescribed under clause 62(1) of Part I of the Second Schedule to the Ordinance of 1979 and clause 58(1) of Part I of the Second Schedule to the Ordinance of 2001.

21. We are not impressed by the argument of the learned counsel for AWT that the word "expend" as used within clause 62(1) of Part I of the Second Schedule to the Ordinance of 1979 and 58(1) Part I of the Second Schedule to the Ordinance of 2001 ought to be read as "set apart". Such interpretation accorded to the word "expend" would be contrary to its ordinary dictionary meaning. "Expend" according to Oxford Advanced Learner's Dictionary means "to use or spent". The learned Tribunal while rejecting the argument of AWT (i.e. to accord a wider meaning to the word "expend" and include within the meaning of such word any income allocated or set apart for welfare activities) took into account the fact that other provisions of the Ordinance of 1979 used additional words besides the word "expend" where the legislature wished to take into account any income that was not actually expended (see for example section 23(xii) wherein word "laid out" is used in addition to "expended" or clause 93 of Part I of the Second Schedule to the Ordinance of 1979 where the word "set apart" is used in addition to "actually applied"). The learned Tribunal also correctly took into account clause 9 of Part II of the Second Schedule of the Ordinance, 1979, which clearly provides that the income of AWT is envisaged to be liable to exemption under clause 62(1) of Part I of the Second Schedule to the Ordinance of 1979 and such part of the "income from business" which does not qualify for such exemption would be liable to be taxed at the reduced rate of 20%. We therefore agree with the learned Tribunal that AWT's "income from business" is qualified for exemption under clause 62(1) of Part I of the Second Schedule to the Ordinance of 1979 and clause 58(1) of Part I of the Second Schedule to the Ordinance of 2001, in accordance with conditions prescribed therein, but only to such extent that the qualifying proportion of income from business has actually been expended (i.e. spent or used) for purposes of carrying out welfare activities in the particular tax year in question. The onus of discharging the obligation of establishing that a certain amount from income from business has been expended in carrying out welfare activities in the tax year in question is rests with the taxpayer.

Interest Income

22. In *The Commissioner of Income Tax, East Pakistan, Dacca v. The Liquidator, Khulna-Bagerhat Railway Company Ltd., Ahmadabad* (PLD 1962 SC 128), the question of treatment of interest income came before the august Supreme Court, from a decision of the High Court that had relied on the following observations of Rowlatt, J. in *Commissioner of Inland Revenue v. Korean Syndicate Limited* (1 KBD 598 e 603):

"If what the company is doing-namely, receiving interest and royalties-was done by an individual no one would say that the Individual was carrying on a business, and it does not

become a business merely because it is done by an artificial body like a company and not by an individual.

But I wish to make this reservation. It does not follow that, whenever at some particular moment a company is doing nothing but receiving an income from its investments, it is not carrying on a business. The business of a company may be the investing of money, and there may be times when the company's money is all satisfactorily invested and the company does nothing but receive the dividends. It may be that in a case of that sort although the company was not actively doing anything, the right conclusion of fact would be that the company was nevertheless carrying on a business."

The august Supreme Court approved the principle enunciated by Rowlatt, J., and held the following:

If the Company, instead of retaining its surplus moneys in idle condition, invested them under, the powers given to them by their Articles of Association, it would not follow that the income so derived would be part of the Company's normal business-income. Each case must be decided on its own facts anti, in the instant case, the circumstances brought out in the evidence do not indicate that the receiving of interest on invested money was really included in the business-d income of the Company.

23. In *Genertech Pakistan Ltd. and others v. Income Tax Appellate Tribunal of Pakistan, Lahore and others* (2004 SCMR 1319) the taxpayer had set up an electric power generation project and was seeking interest earned from the share capital deposited in the banks to be treated as income from business. But the apex court held that, "the profits and gains from the electric power generation project" were "distinct and different from the interest being obtained by the company on the deposit of share capital in the Banks."

24. In *Lucky Cement Ltd. v. Commissioner Income Tax, Zone Companies, Circle-5, Peshawar* (2015 SCMR 1494) by a majority of two to one the august Supreme Court dismissed the appeal against a High Court's judgment wherein the interest income from surplus funds of a company incorporated primarily to carry out cement production business was declared to be income from other sources and not business income. The Court reiterated the law laid down in *The Commissioner of Income Tax, East Pakistan, Dacca v. The Liquidator, Khulna-Bagerhat Railway Company Ltd., Ahmadabad* (PLD 1962 SC 128). It also endorsed the judgment of Indian Supreme Court in *Tuticorin Alkali Chemicals and Fertilizers Ltd. v. Commissioner of Income Tax* (1997 Supp. (1) SCR 528), also reported as (1998 PTD 900) in which treatment of interest income from bank deposits under the head of "income from other sources" was approved. The test laid down by the august Supreme Court appears to be that unless the constituent documents of an entity authorize it to indulge in the business of "investment", idle or surplus funds parked by such entity in the bank to generate additional income would be treated as "income from other sources" and not "business income".

25. In the case of AWT, it would need to establish that the entity is authorized by its constituent documents to indulge in the business of investment and such business is a recognized line of business according to its constituent documents. In view of the law laid down by the apex Court in *Lucky Cement*, only if investment is declared and recognized as a line of business amongst the objects for which AWT was incorporated can it treat its interest income being generated by funds placed in banks as income from business. Else such interest income would be treated as income from other sources.

Profit rate applied in relation to Blue Lagoon sales

26. A perusal of the order in original does not provide any reasoning as to why the taxation officer used a profit rate of 30 percent to determine the income of AWT from the Blue Lagoon Project. In the event that the taxation officer disagreed with the income declared by AWT in relation to the said project and wished to reassess the same, he was under an obligation to furnish reasons and could not simply apply a certain profit margin to the revenues generated by such project without providing an explanation as to why such profit margin was being applied.

27. We are of the opinion that the taxation officer has no discretion to determine in an arbitrary manner the profit margin that he finds reasonable in relation to a certain income stream. What is vested in the taxation officer under the Ordinance of 2001 is not discretion but a right to exercise judgment while reassessing income pursuant to provisions of the Ordinance of 2001. And where such judgment is being exercised in a manner that rejects the treatment afforded to income by the taxpayer, the taxation officer is under an obligation to provide reasons for the manner in which he/she has chosen to exercise judgment. Without such reasons, which are justiciable, rejection of tax treatment afforded by the taxpayer or change in the profit margin applied by the tax department cannot be countenanced. We therefore conclude that the tax department could not arbitrarily apply a profit margin of 30 percent to the sales from the Blue Lagoon Project of AWT and the learned Tribunal erred in not holding so.

Bad Debt

28. In Commissioner of Income-Tax v. National Bank of Pakistan Karachi (PLD 1976 Karachi 1025) the learned Sindh High Court held that, "the burden of proving that a debt had become unrecoverable" was on the taxpayer. It further held that the question of whether there was "no ray of hope for recovering a debt" was to be determined in view of the facts and circumstances of a case.

29. In Commissioner Inland Revenue (Zone-I), Karachi v. Messrs Faisal Bank Limited (2020 SCMR 1045) the august Supreme Court held that:

6. ...It is not a matter of discretion for the assessee to decide what a bad debt is; rather the assessee has to establish reasonable grounds showing that having taken the requisite lawful steps for recovery of the outstanding debts, the same are not recoverable in the foreseeable future. It goes without saying that if in a subsequent tax year recovery of a bad debt is effected then the same is taxable as income.

It also cited with the approval the judgment rendered by this Court in Commissioner of Income Tax (Legal), Islamabad v. Askari Commercial Bank Limited, Rawalpindi (2018 PTD 1089). The apex Court held that, "the classification of bad debt is not left to the discretion of the taxpayer", and that the taxpayer ought to demonstrate that it had taken bona fide measures to secure the repayment of outstanding debt.

30. In Commissioner of Income Tax (Legal), Islamabad v. Askari Commercial Bank Limited, Rawalpindi (2018 PTD 1089) it was held that, "it is only when the debt has been declared as written off that it is treated as having become irrecoverable notwithstanding that at a later stage recovery may be affected." The Court further held that:

The person claiming deduction for a bad debt in a tax year is required to meet the above conditions in order to claim deduction. It may be noted that under the Ordinance of 1979 the debt for the purposes of deduction had to be determined as irrecoverable by the Deputy

Commissioner while in case of the Ordinance of 2001 the condition would be satisfied if there existed 'reasonable grounds for believing that the debt is irrecoverable'. This change in the language manifests that, unlike the Ordinance of 1979, the determination relating to recoverability of a loan is not to be made by the Deputy Commissioner, rather, under the Ordinance of 2001 the assessee, at the time of filing the tax returns, has to determine this aspect on the basis of the existence of reasonable grounds thereof. This change is in consonance with the scheme of the Ordinance of 2001 which is based on the theme of self assessment while that was not the case under the repealed statute. Nonetheless, under both the statutes the entitlement for the purposes of deduction of bad debt in a tax year essentially has a nexus with the debt becoming irrecoverable.

31. Section 29 of the Ordinance of 2001 prescribes the following conditions for a person to seek the deduction of bad debt in a tax year:

29. Bad debts.- (1) A person shall be allowed a deduction for a bad debt in a tax year if the following conditions are satisfied, namely:-

(a) the amount of the debt was -

(i) previously included in the person's income from business chargeable to tax; or

(ii) in respect of money lent by a financial institution in deriving income from business chargeable to tax;

(b) the debt or part of the debt is written off in the accounts of the person in the tax year; and

(c) there are reasonable grounds for believing that the debt is irrecoverable.

(2) The amount of the deduction allowed to a person under this section for a tax year shall not exceed the amount of the debt written off in the accounts of the person in the tax year.

32. Section 29 requires that for being characterized as bad debt (i) the amount must previously have been included in the previous income from business chargeable to tax, (ii) the amount must be "written off" in the accounts of such person in the tax year, (iii) the amount of deduction must not exceed the amount written off in the accounts of such person in the tax year, and (iv) the taxpayer must have reasonable basis to believe that the debt is irrecoverable. In view of the law laid down in Commissioner of Income-Tax v. National Bank of Pakistan Karachi (PLD 1976 Karachi 1025), as approved by the august Supreme Court in Commissioner Inland Revenue (Zone-I), Karachi v. Messrs Faisal Bank Limited (2020 SCMR 1045), while the onus to establish reasonability of belief regarding irrecoverability of debt is on the taxpayer, it is not for the tax department to second guess the taxpayer's belief so long as such belief has a reasonable basis. Of course, in the event that a debt deemed irrecoverable is subsequently recovered, it is to be offered for taxation pursuant to section 29(3) of the Ordinance of 2001.

33. For purposes of any tax year in relation to which either the Ordinance of 1979 or the Ordinance of 2001 is applicable, a necessary precondition for any debt to qualify as bad debt is for the taxpayers to have written off such debt in its books and accounts for such tax year as bad debt. Such written off amount in lieu of bad debts then determines the ceiling of the bad debt in lieu of which adjustment can be sought in relation to a particular tax year. Further, under the Ordinance of 1979, it was for the taxpayer to reasonably convince the taxation officer that the amount written off in lieu of bad debts was

irrecoverable. The scheme adopted under the Ordinance of 2001 is slightly different as now it is for the taxpayer to form a reasonable belief that the amount being written off as bad debt is irrecoverable. To conclude this discussion, the treatment in the books and accounts of the debt in relation to which the taxpayer seeks a deduction on account of it being bad debt as having been written off in the relevant tax year is a necessary precondition. Once this is met, the second condition to be satisfied is the reasonability of the belief that such written off debt is irrecoverable. However, where a taxpayer has not written off debt within its own books and accounts for the relevant tax year for having become irrecoverable, the question of seeking deduction for such debt as bad debt does not arise. We answer the questions proposed for our consideration in Para 1 of the judgment accordingly.

34. The office is directed to send a copy of our opinion on the questions of law raised before us in these references to the Registrar of the learned Tribunal under the seal of this Court.

ANNEXURE-A		
1.	T.R. No.50 of 2005	Messrs Army Welfare Trust v. Commissioner of Income Tax
2.	T.R. No.27 of 2003	Commissioner of Income Tax v. Army Welfare Trust, Rawalpindi.
3.	I.T.R. No.68 of 2007	Commissioner of Income Tax v. Army Welfare Trust, Rawalpindi.
4.	I.T.R. No.107 of 2008	Commissioner of Income Tax v. Army Welfare Trust, Rawalpindi.
5.	I.T.R. No.119 of 2008	Commissioner of Income Tax v. Army Welfare Trust, Rawalpindi.
6.	I.T.R. No.4 of 2009	Messrs Army Welfare Trust v. Deputy Commissioner of Income Tax
7.	I.T.R. No.06 of 2009	Messrs Army Welfare Trust v. Deputy Commissioner of Income Tax
8.	I.T.R. No.288 of 2010	Messrs Army Welfare Trust v. Commissioner Inland Revenue
9.	I.T.R. No.20 of 2014	Commissioner Inland Revenue v. Messrs Army Welfare Trust
10.	I.T.R. No.21 of 2014	Commissioner Inland Revenue v. Messrs Army Welfare Trust
11.	I.T.R. No.22 of 2014	Commissioner Inland Revenue v. Messrs Army Welfare Trust
12.	I.T.R. No.23 of 2014	Commissioner Inland Revenue v. Messrs Army Welfare Trust
13.	I.T.R. No.24 of 2014	Commissioner Inland Revenue v. Messrs Army Welfare Trust
14.	I.T.R. No.25 of 2014	Commissioner Inland Revenue v. Messrs Army Welfare Trust
15.	I.T.R. No.26 of 2014	Commissioner Inland Revenue v. Messrs Army Welfare Trust
16.	I.T.R. No.27 of 2014	Commissioner Inland Revenue v. Messrs Army Welfare Trust
17.	I.T.R. No.108 of 2015	Messrs Army Welfare Trust v. Deputy Commissioner of Income Tax

18.	I.T.R. No.03 of 2016	Messrs Army Welfare Trust v. Deputy Commissioner of Income Tax
19.	I.T.R. No.107 of 2016	Commissioner Inland Revenue v. Messrs Army Welfare Trust
20.	I.T.R. No.108 of 2016	Commissioner Inland Revenue v. Messrs Army Welfare Trust
21.	I.T.R. No.109 of 2016	Commissioner Inland Revenue v. Messrs Army Welfare Trust

ANNEXURE-B

Reference No.	Questions of Law	Assessment Years
	1. Whether the income derived by the Projects of AWT qualifies the definition of diversion income?	
	2. What is effect of over-riding title created to divert the income of assessee and whether concept of "Real Income" is to applied or not in case of diversion of income?	
	3. Whether a Welfare Society registered under law is taxable and what is the interpretation of word "expended" as mentioned in clause 62 of Schedule II?	
T.R. No.27 of 2003	4. Whether or not the learned ITAT was justified to hold that the nomenclature given to the assessee of that of a trust was just a name of the assessee (Army Welfare Trust) which cannot be included in the definition of company as given in section 2(16) of the Income Tax Ordinance, 1979?	1993-1994 1994-1995 1995-1996 1996-1997
	5. Whether or not the learned ITAT was justified to hold that the assessee being registered under the Societies Registration Act, 1860, cannot be considered and assigned the status of the company under section 2(16)(bb) of the Income Tax Ordinance, 1979 despite the fact that it contains all the ingredients of trust and it is duly registered with the Registrar, Joint Stock Companies?	
	6. Whether the interest income earned by the assessee from the	

	deposits is liable to be assessed under section 30 of the Income Tax Ordinance, 1979 being income from other source?	
	7. Whether the findings of the learned Tribunal that the interest income is to be treated as income from business or profession under section 22 of the Ordinance is consistent with the law in the fact and circumstances of this case?	
	8. Whether any financial expenses were allowable under section 31 of the Income Tax Ordinance having not been paid wholly and exclusively for earning interest under section 30 of the Income Tax Ordinance?	
	9. Whether on the facts and in the circumstances of the case, the Tribunal was justified in holding that income, derived by the projects of the Applicant, did not qualify for the purposes of diversion of income?	
	10. Whether in the facts and circumstances of the case, the Tribunal has correctly appreciated the provision of clause 62 of the Second Schedule to the Income Tax Ordinance, 1979 to say that AWT is a taxable entity and has to establish the extent of expenditure out of its business income from exemption under clause 62?	
ITR No. 50 of 2005	11. Whether or not the learned ITAT was justified to hold that the assessee being registered under the Societies Registration Act, 1860, cannot be considered and assigned the status of the company under section 2(16)(bb) of the Income Tax Ordinance, 1979 despite the fact that it contains all the ingredients of trust and it is duly registered with the Registrar, Joint Stock Companies?	1997-1998 1998-1999
	12. Whether the findings of the learned Tribunal that the interest income is to be treated as income	

	from business or profession under section 22 of the Ordinance and not under section 30 is consistent with the law in the fact and circumstances of this case?	
	13. Whether on the facts and in the circumstances of the case, the Hon'ble Tribunal was justified in confirming the action of the respondent on the issue of diversion of income?	
	14. Whether on the facts and in the circumstances of the case, the Hon'ble Tribunal was justified in holding that income, derived by the projects of the Applicant, did not qualify for purposes of diversion of income?	
ITRs.Nos.04 of 2009, 06 of 2009 and 03 of 2016 [old No.5 of 2009] 288 of 2010	15. Whether on the facts and in the circumstances of the case, the Hon'ble Tribunal was justified in holding that the effect of overriding title diverting the income of Applicant and the concept of "Real Income" did not apply, in case of diversion of income?	1999-2000 2000-2001 2001-2002 2002-2003
	16. Whether on the facts and in the circumstances of the case, a Welfare Society registered under law is taxable in light of the interpretation of word "expended" as mentioned in clause 62 of Second Schedule to the repealed Income Tax Ordinance, 1979?	
ITRs.Nos.04 of 2009, 06 of 2009 and 03 of 2016 [old No.5 of 2009]	17. Whether in the facts and circumstances of the case, the definition/interpretation of word "Expend" adopted by Hon'ble Tribunal is justifiable?	1999-2000 2000-2001 2001-2002
	18. Whether on the facts and in the circumstances of the case, the learned Tribunal was justified to confirm the disallowance of provision for bad debts on the ground that the same were not written off in the books of accounts, whereas the bad debts had actually been charged to the accounts?	
ITRs Nos.04 of 2009, 06 of 2009	19. Whether on the facts and in the circumstances, the learned	1999-2000 2000-2001

	Tribunal was justified to ignore the fact that the amount written off were not recoverable and the same had been charged to the profit and loss account at the time of confirming the disallowance of Bad Debts?	
	20. Whether on the facts and in the circumstances of the case, the learned Tribunal has rightly interpreted that the preconditions for admissibility for bad debts under section 23(1)(x) have not been fulfilled when the bad debts were not recoverable and therefore, charged to the profit and loss account?	
ITRs Nos. 288 of 2010 and 108 of 2015	21. Whether on the facts and in the circumstances of the case, the Hon'ble Tribunal was justified in holding that the gross profit rate applied by the assessing officer was justified when he had given no plausible reasoning for the application of the same? 22. Whether on the facts and in the circumstances of the case, the assessing office was justified to apply gross profit rate of 30% without establishing any defects in the accounts the application?	2002-2003 2002-2003
T.R. No.108 of 2015	23. Whether on the facts and in the circumstances of the case, the Hon'ble Tribunal was justified in maintaining the gross profit rate earned from the project "Blue Lagoon" without considering the facts of the case? 24. Whether on the facts and in the circumstances case, the Hon'ble Tribunal was justified in holding that the gross profit rate of 30% was justified simply on the ground that it was not the first years of business?	2002-2003
T.R No.119 of 2009 T.R. No.117 of 2008 119 of 2008, 107 of 2008	25. Whether on the facts and in the circumstances of the case the learned ITAT was justified to hold that the nomenclature of a trust was just given to the assessee was just a name of the assessee (Army Welfare Trust) which could not be made basis for treating it	1999-2000 2000-2001 2001-2002 1999-2000 2000-2001

as company within the framework of section 2(16) of the Income Tax Ordinance, 1979? 26.

Whether on the facts and in the circumstances of the case the learned ITAT was justified to hold that the assessee being registered under the Societies Registration Act, 1860, could not be assigned the status of the company under section 2(16)(bb) of the Income Tax Ordinance, 1979 despite the fact that it vested with all the ingredients of a trust and is duly registered with the Registrar, Joint Stock Companies? 27. Whether on the facts and in circumstances of the case the assessee is entitled to the benefit of clause 62 of the Second Schedule to the Income Tax Ordinance, 1979 it is a trust only in name and not in substance, as the said clause is specific to Trust only? 28.

Whether on the facts and in circumstances of the case the learned ITAT was justified to hold that miscellaneous income be assessed as income from business or profession under section 22 of the repealed Ordinance instead of income from other source in contravention of provision of section 30 of the repealed Ordinance? 29. Whether on the facts and in circumstances of the case the learned ITAT was justified to hold that interest income on local currency account be assessed as income from business or profession under section 22 of the repealed Ordinance instead of income from other source in contravention of provision of section 30 of the repealed Ordinance? 30. Whether on the facts and in circumstances of the case the learned ITAT was justified to delete minimum tax charged under section 80D of repealed Ordinance notwithstanding the facts the assessee falls within the ambit of

	definition of company as per section 2(16)(bb) of the repealed Ordinance?	
T.Rs. Nos.20, 21, 23, 24, 25, 26 and 27 of 2014	<p>31. Whether on the facts and in circumstances of the case, the Appellate Tribunal Inland Revenue was justified in holding that exemption under clause 58(2)(i) is available to the taxpayer notwithstanding the fact that the taxpayer to identify the specific scheme approved by the Federal Government under which it is being administrated as a trust?</p> <p>32. Whether on the facts and in circumstances of the case, the Appellate Tribunal Inland Revenue was justified in holding that the M/s Army Welfare Trust is entitled to exemption under clause 58(2) (i) of Part I of the Second Schedule to the Income Tax Ordinance, 2001 without appreciating that it is the Welfare and Rehabilitation Directorate of the Pakistan army (WARD) and not M/s AWT which is actually "carrying out" activities which are for the benefit and welfare exservicemen and serving personnel including civilian employees of the armed forces and their dependents?</p> <p>33. Whether on the facts and in circumstances of the case, the Appellate Tribunal Inland Revenue failed to that the Welfare and Rehabilitation Directorate of the Pakistan Army being a distinct/separate entity from AWT is carrying out welfare activities, therefore, privilege of exemption under clause 58(2)(i) of Part I of the Second Schedule to the Income Tax Ordinance, 2001 does not extend to M/s AWT?</p> <p>34. Whether on the facts and in circumstances of the case, the Appellate Tribunal Inland Revenue lost sight of the fact that the conditions for exemption under clause 58(2)(i) of Part I of the Second Schedule to the Income</p>	2003, 2004, 2005, 2006, 2007, 2008, 2009 and 20

Ordinance, 2001 are not being met by the taxpayer? 35.

Whether on the facts and in circumstances of the case, the Appellate Tribunal Inland Revenue was justified in upholding the order of Commissioner Inland Revenue (Appeals) on the issue of

Dividend income without appreciating the fact that the said income was treated as a separate block of income falling under PTR and not under NTR? 36. Whether

on the facts and in the circumstances of the case, the Appellate Tribunal Inland Revenue was justified in upholding the order of Commissioner Inland Revenue (Appeals) for Tax Years 2003 to 2005 and Tax Years 2007 and 2008 by observing that

income of the taxpayer is covered under clause 58(2)(i) of Part I of Second Schedule to the Income Tax Ordinance, 2001, and by vacating the order of the

Commissioner Inland Revenue (Appeals) for the Tax Years 2009 and 2010 by observing that levy of minimum tax under section 113 of the Income Tax Year, 2001

remains the same as in preceding years thereby deleting the same, notwithstanding the fact that M/s Army Welfare Trust does not come under clause 58(2)(i) of Part I of the Second Schedule? 37.

Whether on the facts and in circumstances of the case, the Appellate Tribunal Inland Revenue was justified in upholding the order of Commissioner Inland Revenue (Appeals) on the issue of

depreciation allowance without keeping in view the fact that the same was allowed to taxpayer on the assets owned by it and

depreciation was not allowed to it only on the assets which were not owned by it and also on those assets which were not purchased during the relevant period? 38.

Whether on the facts and in

circumstances of the case, the Appellate Tribunal Inland Revenue was justified to vacate the order of the Commissioner Inland Revenue (Appeals) regarding the chargeability of tax on sale of CNG as business income, as the taxpayer had claimed adjustment of tax deducted at 4% under section 234A of the Income Tax Ordinance, 2001 whereas the factual position is that it is final/fixed discharge of tax liability? 39. Whether on the facts and in circumstances of the case, the Appellate Tribunal Inland Revenue was justified to vacate the order of the Commissioner Inland Revenue (Appeals) regarding chargeability of tax on property income which is fixed/final income under section 155 of the Income Tax Ordinance, 2001? 40. Whether on the facts and in circumstances of the case, the Appellate Tribunal Inland Revenue was justified to uphold in the case of Army Welfare Trust the principle of Division of income through overriding title, therefore, treating its income as not taxable, whereas the factual position is that the income earned by M/s Army Welfare Trust is its own income being a legal entity and also as the business is being run by Army Welfare Trust itself with its own name and title? 41. Whether on the facts and in circumstances of the case, the Appellate Tribunal Inland Revenue was justified to delete the status of public limited company assigned to M/s AWT without appreciating that in the instant case, no approval has been granted by the CBR/RCIT to the taxpayer as a "Trust"?