

**26th OF 2024 KTBA ONE PAGER
CASE LAW UPDATE
(NOVEMBER 18, 2024)**

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Dear Members,

A brief update on a judgment by the Supreme Court of Pakistan on “**Deduction of Section 156A from Petrol Pumps in FATA is Pakistan Source Income; Place of income origination is pivotal for exemption of entities situated in FATA**” 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

**26th OF 2024 KTBA ONE PAGER
CASE LAW UPDATE
(November 18, 2024)**

**DEDUCTION OF SECTION 156A FROM PETROL PUMPS IN FATA IS
PAKISTAN SOURCE INCOME**

**PLACE OF INCOME ORIGINATION IS PIVOTAL FOR EXEMPTION
OF ENTITIES SITUATED IN FATA**

Appellate Authority: Supreme Court of Pakistan (the SC)

Appellant: CIR, RTO PSH

Respondent: Akbar Khan Filling Station

Section: 156A of the Income Tax Ordinance, 2001 (the Ordinance)

Detailed judgment was issued on 19 December 2023

Background: The respondent established, operated and managed petrol pump stations in the territorial jurisdiction of FATA (Federally Administered Tribal Areas). The petroleum products were, however, purchased from companies incorporated in Pakistan and the agreements were executed outside the territorial limits of FATA. The companies in Pakistan deducted tax under section 156A of the Ordinance on commission of the pump operators, which was a final tax. The pump operators claimed refund of the tax deducted under section 156A on the premise that the provisions of the Ordinance were not applicable to the territorial jurisdiction of FATA in the first place, hence the amount of commission / discount under section 156A was never not subject to Pakistan tax.

Decision of the Court:

First ruling of the Court:

The Court distinguished the activities carried out by the pump operators and observed that activities relating to operation of petrol pump stations in FATA and purchase of petroleum products from companies in Pakistan are separate and distinct from each other. The income, which was claimed as exempt by the respondents, was accrued on account of commission paid to the respondents and not for the sale of petroleum products to the consumers. The Court emphasized that whilst retail sale through petrol pump stations is carried out in the territorial jurisdiction of FATA, the activity of sale of petroleum products to the pump operators, payment of commission on such sale and its related tax deduction took place outside FATA. Accordingly, it was held that income arising on account of commission was not immune from the applicability of the provisions of the Ordinance.

Second ruling of the Court:

The Court decided that the territorial source / place of origination of an income is the moot point to determine whether such income accruing to entities established in FATA is exempt or not. In case any income was derived from the area(s) where the Ordinance is enforced and applicable, such income would not be exempt from tax merely on the basis that the business premises of the recipients is in FATA.

The Court while deciding this issue also relied upon its own judgment reported as 2008 PTD 169 in case of CIT v. Gul Cooking Oil and Vegetable Ghee (Pvt.) Ltd where similar issue was decided under the provisions of Repealed Income Tax Ordinance, 1979, wherein it was held that immunity from payment of income tax could not be claimed without establishing the fact that taxable income was not being derived from the area where the Income Tax Ordinance, 1979 is applicable.

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.

THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Justice Sardar Tariq Masood, ACJ
Justice Syed Mansoor Ali Shah
Justice Athar Minallah

(A.F.R.)

Civil Appeals No.1314 to 1337 of 2014 & Civil Appeals No.1611 to 1624 of 2013

(Against the judgment dated 26.05.2014 of the Peshawar High Court, Peshawar passed in TRs No.1-P to 23-P of 2013 and judgment dated 03.07.2013 of the Peshawar High Court, Mingora Bench (Dar ul Qaza) Swat passed in T.Rs.No.1-M to 13-M of 2011)

Chief Commissioner/Commissioner
IR Zone-II/Zone-III, RTO, Peshawar

...Appellant in all cases

Versus

| | |
|--|-------------------------------|
| M/s Akbar Khan Filling Station | (in CAs-1314 to 1317 of 2014) |
| M/s Muslim Khan Filling Station | (in CA-1318 of 2014) |
| Muhammad Asad | (in CA-1319 of 2014) |
| Bashir Ahmed | (in CAs-1320 to 1322 of 2014) |
| Gul Bahadur | (in CAs-1323 to 1325 of 2014) |
| Muhammad Asad | (in CAs-1326 to 1329 of 2014) |
| Khalid Latif | (in CA-1330 of 2014) |
| Alamgir | (in CAs-1331 to 1334 of 2014) |
| Bashir Ahmed | (in CA-1335 of 2014) |
| Gul Bahadur | (in CA-1336 of 2014) |
| Khalid Latif | (in CA-1337 of 2014) |
| Umarzada, Filling Station, Distt. Dir. | (in CAs-1611 to 1615 of 2013) |
| M/s Shah Rehman, Swat | (in CAs-1616 to 1618 of 2013) |
| Zahoor Iqbal | (in CAs-1619 to 1622 of 2013) |
| M/s Forvil Cosmetics, Mingora, Swat | (in CA-1623 of 2013) |
| Zahoor Iqbal | (in CA-1624 of 2013) |

...Respondents

For the appellant: Mr. Ghulam Shoaib Jally, ASC
Syed Rifaqat Hussain Shah, AOR
(in all cases)

For the respondents: Mr. Zulfiqar Khalid Maluka, ASC
(in CAs.1318, 1616-1624 of 2013)

Mr. Junaid Akhtar, ASC
(in CA.1611 of 2013)

Date of hearing: 19 December 2023

ORDER

Athar Minallah, J. The Chief Commissioner/Commissioner ('appellant') had impugned the judgment of the High Court, whereby the questions of law were answered in favor of the taxpayers. This Court had granted leave and consequently the petitions were converted into appeals.

2. The respondents in all these appeals are engaged in the business of purchase of petroleum products and its subsequent sale to the retail consumers. They assert that the retail sale of petroleum products is made by them through the petrol sale stations (**'petrol pumps'**) established, operated and managed by them in the Federally Administered Tribal Areas (**'FATA'**). The petroleum products are purchased from companies incorporated in Pakistan and the respective agreements are executed outside the territorial limits of FATA. The companies selling the petroleum products pay commission or give a discount to the purchasers. This contractual arrangement between the seller and buyer of the petroleum products is distinct from the further sale to the consumers through the petrol pumps. The former activity generally takes place in Pakistan outside the territorial limits of FATA. Section 156 A of the Income Tax Ordinance, 2001 (**'Ordinance of 2001'**) makes it a mandatory obligation of the person selling the petroleum product to a petrol pump operator to deduct tax from the amount of the commission or discount allowed by the latter at the rate specified in Division VI A of Part III of the First Schedule *ibid*. This deduction is in the nature of a final tax regime since subsection 2 of section 156 A declares it to be the final tax. In the cases before the Court, the companies selling the petroleum products to the respondents had deducted the tax from the amount of commission paid to or discount allowed by the latter. The respondents filed applications for refund of the amount deducted as tax under section 156 A of the Ordinance of 2001 solely on the ground that the enforcement of the Ordinance of 2001 was not extended to the territorial limits of FATA in accordance with law and the constitutional mandate expressly provided under Article 247(3) of the Constitution of the Islamic Republic of Pakistan, 1973 (**'Constitution'**). It is not disputed that the President had not directed

that the Ordinance of 2001 shall apply to FATA. The applications filed under section 170 of the Ordinance of 2001 were dismissed by the taxation officer on the basis of a letter dated 23.11.2011 issued by the then Central Board of Revenue. Moreover, it was further held that the provisions of the Ordinance of 2001 were attracted because of the payments having been made by the respondents in the settled/taxable areas. The appeals preferred by the respondents under section 129 of the Ordinance of 2001 were allowed by the Commissioner Inland Revenue (Appeals) on the sole ground that the business was being carried on in an area where the Ordinance of 2001 did not apply. The department challenged the orders but the appeals were dismissed by the Appellate Tribunal Inland Revenue (**'Tribunal'**). The High Court answered the question of law against the department in response to the questions proposed in the references filed under section 133 of the Ordinance of 2001.

3. We have heard the learned counsel for the appellant-department as well as the counsel for the respondents. It is not disputed that the enforcement of the Ordinance of 2001 was not extended to the territorial limits of FATA and, therefore, its provisions were not attracted to the income arising therein. It is also not disputed that the respondents are operating petrol pumps in FATA. Section 156 A of the Ordinance of 2001 provides that every person selling petroleum products to a petrol pump operator shall deduct tax from the amount of commission or discount allowed to the operator at the rates specified in Division VI A of Part III of the First Schedule. The tax deductible under sub section 1 shall be a final tax on the income arising from the sale of petroleum products. It is noted that the obligation of deduction of tax is on the person selling the petroleum products to the operator of the petrol pump while the said

deduction is relatable to the commission paid to or discount allowed by the latter. In the case of the appeals before us, the respondents assert to be operators of petrol pumps and they were claiming refund of the tax deducted from their commission by the persons who had sold the petroleum products to them. The factum of income having been accrued was on account of the commission paid to the respondents for the sale of petroleum products and not the sale of the petroleum products to the consumers at the petrol pumps operated in FATA. As already noted, the deduction of tax fell under the final tax regime. Admittedly, the contractual arrangement for the sale of petroleum products, the actual sale and payment as well as deduction of the tax had taken effect in the areas of Pakistan outside the territorial limits of FATA and, therefore, the transactions and the income arising from such sale were not immune from the enforcement of the provisions of the Ordinance of 2001. The income derived by the respondents was on account of commission paid to them by the seller companies outside FATA. This Court has already held that immunity from the payment of taxation under the Ordinance of 2001 shall not be claimed merely on the basis that the business premises have been established in FATA, rather the onus was on the tax payer to establish the fact that taxable income was not being derived from the area where the statute was enforced and applicable.¹ This crucial factum could not be successfully established by the respondents and their refund claims were, therefore, justifiably rejected by the taxation officer. It appears that the appellate authorities, as well as the High Court, were not correctly assisted regarding the scope and nature of the deduction of tax under section 156 A of the Ordinance of 2001. It also appears from the record that the taxation officer had received photocopies of

¹ C.I.T. v. Gul Cooking Oil and Vegetable Ghee (Pvt.) Ltd. (2008 PTD 169)

applications from the respondents claiming refunds under section 170 of the Ordinance of 2001. The contractual arrangement between the companies selling the petroleum products to the respondents was not properly disclosed by the respondents. Nonetheless, the claim of refund of the tax deducted under section 156 A of the Ordinance of 2001 was not tenable and, therefore, rightly rejected.

4. For the above reasons, all these appeals are allowed and consequently the respective judgments of the High Court and other appellate *forums* are hereby set aside.

Islamabad
19.12.2023
M. Azhar Malik/*

Approved for reporting -