

KTBA CASE LAW UPDATE

Committee Members

Mr. Shams Ansari (Convener)

0333-2298701

shamsansari01@gmail.com

Mr. Farhan Mohib

0321-2753467

farhan.mohib@pwc.com

Mr. Arshad Mahmood

0333-2001227

amehmood@yousufadil.com

Mr. Ehtisham Qadir

0334-2210909

ehtisham@aqadirnco.com

Mr. Faiq Raza Rizvi

0302-2744737

federalcorporation@hotmail.com

Mr. Hameer Arshad Siraj

0333-2251555

hameer.siraj@gmail.com

Mr. Imran Ahmed Khan

0300-9273852

iakjci@yahoo.com

Mr. Razi Ahsan

0300-0446892

razi.lawconsultancy@gmail.com

Mr. Shabbar Moraj

0321-8920972

shabbar.muraj@pk.ey.com

Mr. Shiraz Khan

0333-2108546

shiraz@taxmanco.com

Dear Members,

A brief update on a recent judgement on “Withdrawal of exemption from Inter Corporate Dividend” by High Court of Sindh is being shared with you for your knowledge.

This update is in line with the efforts undertaken by our new “CASE LAW UPDATE COMMITTEE” with the larger goal to assist and apprise our Bar members with latest court decisions.

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

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

(Zafar Ahmed)
President

(M. Mehmood Bikiya)
Hon. General Secretary

KTBA CASE LAW UPDATE (Update # 1 of 2023 dated March 31, 2023)

**EXEMPTION CAN BE TAKEN AWAY BY THE GOVERNMENT;
THERE IS NO VESTED RIGHT AGAINST THE LAW.**

Appellate Authority: Sindh High Court

Appellant: International Brands Limited

Section: 59B of Income Tax Ordinance, 2001 and Clause 103A Part-I of 2nd Schedule

Background: Exemption to inter-corporate dividend with reference to Section 59B (Group relief) was given by the Finance Act, 2007, which continued till TY 2016 after which it was deleted by the Finance Act, 2016.

Companies who opted for Group Relief with the prime objective to avail the given exemption challenged its sudden withdrawal as in their considered opinion, the exemption is ought to perpetuate for them as their groups were formed prior to deletion by the Finance Act 2016. This opinion was premised that they have acquired a vested right to the exemption.

Decision of the Court:

First Ruling of the Court: The High Court dismissed the petition and held that since there do not exist any irrevocable interweaving provision between the Clause 103A and the Section 59B, it cannot be held to be compulsive under the Ordinance to keep the exemption continued for them and therefore it remains the prerogative of the Parliament to either confer or withdraw any fiscal benefit, in the interest of the public at large.

Detailed judgment was issued on March 22, 2023 (CPD 8569 of 2018).

Second Ruling of the Court: The High Court not only dismissed the plea on the first ground of non-availability of "irrevocable provision" but also on the second ground of "Discrimination" as compared to Group Taxation u/s 59AA of the Tax Ordinance. The SHC ruled that concept of taxation of a group as One Fiscal Unit, which exists under Group Taxation doesn't exist here under the group relief and instead the benefit of surrendering of losses exists; hence there doesn't arise any case for Discrimination.

Third Ruling of the Court: On the ground of Curative and Remedial legislation taken by the petitioner in the wake of reintroduction of the exemption by the Finance Act, 2019 that it should be allowed retrospectively the Court refuted the same as well and ruled to follow the Supreme Court Judgement of Fawwad Mukhtar as a guiding case that Curative and Remedial legislation is enacted to correct the existing law and cannot be applied retrospectively.

Conclusion: The Sindh High Court finally concluded its decision in the light of the provisions contained under Section 54 of the Ordinance that no exemption is to be considered unless clearly provided for in the Ordinance.

NOTE: Members are requested to read the complete order attached herewith.

This update has been prepared for KTBA members and carries a brief narrative on a detailed Judgement 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 or project would not be binding on KTBA.