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Zakat Exemptions Under Pakistani Law: An Analysis of Case Laws

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Abstract

Zakat is a religious fiscal obligation for Sahib-e-Nisab Muslims, holding a central space in the Islamic economic system. Its principles are described by the religion which are specific. This article discusses the jurisdiction of the Federal Shariat Court on the law of zakat. It also examines the judicial decisions of superior courts of Pakistan on the matter of exemptions in zakat (religious fiscal obligation) deduction. According to judicial interpretations of zakat laws, all those institutions that are owned by the government or in which the provincial or federal government holds majority shares are exempted from the definition of Sahib-e-Nisab. NIT Units and KDCs are exempted from tax due to payment of zakat at source, but any asset that is made and derived from them is not exempted. Zakat exemptions are available for charitable trusts and public bodies. This article concludes that tax concession will be granted for assets on which zakat is compulsorily deducted under the Zakat Ordinance in the same year of deduction. The main purpose of this concession is to avoid the burden of double taxation on the payee. However, it is recommended that exemptions based on fiqh and faith should not be permitted. Therefore, there is a need to amend the zakat system to make it consistent with the Islamic zakat system and to discontinue the compulsory deduction of zakat at source.

***Keywords*:** assets, Double Taxation, Fiqh and Faith, Jurisdiction, Sahib-e-Nisab, Tax Concessions, Zakat Exemptions

Introduction

Zakat is an important part of the Islamic economic system. It is a compulsory financial obligation with the rate of 2.5% of total savings and

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wealth for all Sahib-e-Nisab (people can who afford/have enough money) Muslims. Pakistan is an Islamic state and therefore, zakat is an important subject for Pakistani society. One of the purposes of zakat is to create an economic balance and to help the poor in society. Islam has established a comprehensive system of zakat with all the necessary details.

In 1980, General Zia-ul-Haq introduced, for the first time, a proper zakat collection program on a compulsory basis with deduction at source through 'Zakat and Ushr Ordinance 1980' (hereinafter mentioned as the Zakat Ordinance) (Powell, 2010). Initially, this zakat system was under the control of the federal government. Later on in 2010, it came under the control of provinces through the 18th Amendment in the Constitution of Pakistan of 1973 (hereinafter the Constitution). Article 31(c) of the Constitution orders the state for the proper administration of zakat. However, it is no more present in the concurrent legislative list. Article 203-B(c) of the Constitution as well as sections 1(3) and 25 of the Zakat Ordinance are relevant to this present research work (discussed below).

Besides introduction and conclusion, this paper is divided into two sections. The first section highlights the landmark decisions of the Pakistani superior judiciary as to whether zakat is part of 'Muslim personal law' (hereinafter MPL) or not, as construed by the Federal Shariat Court (hereinafter FSC). The second section explores the judicial decisions of the superior judiciary concerning certain tax concessions and zakat exemptions under the Zakat Ordinance. This article specifically reveals exemptions for charitable trusts and corporate entities. These exemptions are discussed on the basis of fiqh and faith, in the term of Sahib-e-Nisab, and assets in light of the Zakat Ordinance. Further, it deals with the concessions in wealth tax and income tax after payment of zakat on a compulsory basis to avoid double taxation.

Literature Review

Maudoodi (1970) discusses that zakat is not a tax but is a worship and a pillar of Islam. A Muslim state cannot exempt its people from the payment of zakat after receiving the tax. A Muslim state must make amendments in

its taxation system to give the zakat a proper place in it. He also highlighted that the ultimate purpose of tax collection and its distribution is not the same as of zakat. However, a Muslim state can impose income tax in addition to zakat just to fulfill the necessities. Zakat and other types of collections cannot replace each other and cannot suspend each other.

Usmani (1994) described that zakat applies to all financial instruments such as bank balances, bonds, company shares, certificates, etc. In Suo Motu Action regarding Combating the Pandemic of Corona Virus (COVID-19) (2020), Mufti Taqi Usmani opined that the deduction of zakat at source was not allowed in Islam. He also declared that the obligation of zakat is not fulfilled when the amount is deducted at source.

Al Qaradawi (2002) argues that there is no obligation on public bodies towards payment of zakat, as these entities belong to the public and their budgets and possessions do not come under the ownership of any person. He also argued that a double deduction of zakat on one item in one lunar year is not allowed.

Powell (2010) discusses a wide variety among the dominant Muslim countries regarding the enforcement of zakat. Most of them have ignored it altogether, such as Turkey. In contrast, it is collected as a necessary tax and distributed among its beneficiaries in countries like Saudi Arabia, Libya, Sudan, Malaysia, Yemen, and Pakistan. There are also some Muslim countries in which the government has established some entities for the collection of zakat on voluntary contributions of payers such as Egypt, Iran, Jordan, Bangladesh, Indonesia etc. According to Powell (2010), a study in 2004 found that 69% of Turkish people gave zakat as compared to 60% of Pakistanis. This disparity might be due to relative wealth and a lesser percentage of Pakistanis who are obliged to pay zakat.

Research Methodology and Analytical Framework

This paper aims to investigate whether the Zakat Ordinance comes under the jurisdiction of the Federal Shariat Court. It also examines how the Pakistani judiciary has interpreted zakat exemptions for charitable trusts and the implications for social welfare organizations. Furthermore, the

paper analyses whether courts decisions regarding zakat exemptions for corporate entities align with the principles of Islamic finance, and if not, what potential consequences may arise.

To address these research questions, a qualitative analysis of Pakistani case laws related to zakat exemptions has been conducted. This paper relies on judicial interpretations and precedents to establish the current understanding of zakat and tax law interaction in Pakistan. For this purpose, an analysis of case laws is done based on judicial reasoning and its social impact.

Interpretation of "Muslim Personal Law" for the Sake of Jurisdiction

The debate regarding the true meaning of the phrase 'Muslim personal law' is important concerning the zakat system of Pakistan because its meaning determines whether the FSC can assume jurisdiction over zakat laws as per the provisions of the Constitution. After the establishment of the FSC, its jurisdiction was barred from certain legal areas, including Muslim personal law. The establishment of the FSC was a part of the Islamization of laws in Pakistan. Article 203-D of the Constitution of Pakistan keeps the personal law of each sect of Muslims outside the scope of scrutiny of the FSC. This context makes it relevant to engage in the following discourse. Furthermore, this jurisdictional debate leads to examining the reforms introduced by the FSC and the Shariat Appellate Bench of the Supreme Court within the legal framework of zakat.

In Mst. Farishta v. Federation (1981) case, 'Muslim personal law' under Article 203-B (c) of the Constitution was interpreted for the first time as, "A law which is not generally applicable on all Pakistanis like a General Law, but it is a law which is applicable only on Muslim citizens of Pakistan."

In the Mian Khalid Rauf v. President (1982) case, it was decided by a Full Court bench that cases under the Zakat Ordinance cannot be entertained by the "Federal Shariat court" because the said Ordinance falls under the definition of "Muslim personal law" due to its exclusive applicability only to Muslims.

In Dr. Mahmood ur Rahman Faisal v. Government (1991) case, FSC dismissed all the petitions regarding inconsistencies of different provisions of the Ordinance concerning Islamic laws by relying upon the above-mentioned judgments.

However, in the appeal against Mst. Farishta v. Federation case, the Shariat Appellate Bench of Supreme Court on review of its decision decided that "Muslim personal law is a law of each sect of Muslims which is based on the interpretation of Quran and Sunnah of Holy Prophet (peace be upon him) by that sect." And it is outside the jurisdiction of the FSC to prevent conflicts between different sects of Muslims. However, FSC can entertain all cases under the domain of MPL that are 'generally applicable' to the Muslims of Pakistan. So, it is concluded by the court that the Zakat Ordinance is not outside the jurisdiction of FSC as it is generally applicable to Muslims of Pakistan and mere general applicability of any law does not make it MPL.

Exemptions and Concessions

Section 1(3) of the Zakat Ordinance

According to this section, exemption from compulsory deduction of zakat is available for individuals who, in a prescribed manner, declare themselves as followers of one of the recognized fiqhs. They must affirm that their fiqh and faith do not oblige them to pay zakat in a manner that is provided by the Zakat Ordinance.

i. Exemption Based on Fiqh and Faith

In the case cited as Miss Farzana Asar v. Messrs National Investment Trust (1991), the petitioner contended that, practically, this facility of exemption under above section 1(3) is limited only to those who belonged to Fiqh Jafariyah. Through the confidential directive from the zakat administrative authorities of the government, two letters were issued to the president of the National Bank. The first letter was marked as a confidential order. According to this letter, directions were issued to give exemption only to the followers of Fiqh Jafariyah and to ignore the followers of the rest of

the fiqhs including Fiqh Hanafi. Miss Farzana was a Hanafi Muslim, and when she filed a declaration for exemption from the compulsory deduction of zakat, it was rejected.

The High Court held that these letters issued were merely administrative orders and lacked legal authority if they conflicted with the established law. The intention behind the letters was seen as discriminating behaviour by higher authorities among the citizens of Pakistan. Clearly violating Article 4 (deals with the 'Right of individuals to be dealt with under law') and Article 25 (deals with the 'equality before the law and equal protection of law') of Pakistan's Constitution. Only the Federal Shariat Court has an exclusive jurisdiction to decide the declaration filed by any Hanafi Muslim, who is demanding exemption under the Zakat Ordinance. FSC can allow exemption only if it thinks it is appropriate, otherwise, he/she would be liable to pay zakat. The zakat deducting agency has no power or authority to declare the declaration invalid. The Court further held that Fiqh Hanafi is also a recognized fiqh and its followers are also entitled to claim exemption in a manner and form which is prescribed by the Zakat Ordinance. So, in this case, the court issued directions to the deducting agency to accept the declaration of Miss Farzana as a Hanafi Muslim and to treat her account as non-deductible for zakat collection. Later on, the Supreme Court in Federation of Pakistan v. Miss Farzana Asar (1999) upheld the decision of the High Court and dismissed the appeal.

The High Court accepted the exclusive jurisdiction of FSC in the above-mentioned case, which is assigned by the law to decide whether a declaration by a Hanafi Muslim is valid or invalid. However, questions arise about why the High Court chose to decide this case itself, instead of referring it to the FSC? If it is a matter of 'equality' among the citizens of Pakistan, then why do fiqh and faith need to be checked by the High Court to grant the exemption? Moreover, the decision of the High Court has undermined the true purpose of zakat collection at the state level. There was a need to make the zakat system stronger but court weakened it by granting an exemption from zakat to all recognized fiqhs of Muslims.

ii. Exemption Based on Sahib-E-Nisab

In the Market Committee v. Federation of Pakistan (1991) case, the petitioners' committees, who were market committees, were mandated to deduct zakat under the memorandum issued by the higher authorities. The counsel of petitioners argued that these petitioners' committees are local authorities under section 3(28) of the General Clauses Act 1897. Market committees known as local authorities and according to section 2(xxiii) of the Zakat Ordinance, are exempted from the payment of zakat. The counsel of respondents argued that according to the bar in section 4 of the Zakat Ordinance, market committees are not local authorities. Market committees being liable to pay other taxes are also liable to pay zakat as a tax.

The court held that section 2(xxiii) of the Zakat Ordinance does not explain the meaning of local authority. Hence, it is explained by section 3(28) of the General Clauses Act 1897. According to this Act, '*local authority is an authority which is legally entitled by the government to manage its funds.'* The court also held that these market committees have their own funds which are also managed by them. Additionally, these committees have powers to manage their internal matters such as maintaining and using the funds, levying the tax, appointing the workers, and acquiring the property, etc. Thus, these committees, although liable to pay the tax, are exempted from the payment of zakat. This is because they do not fall in the definition of Sahib-e-Nisab under section 2(xxiii) of the Ordinance. The petition was accepted by the court.

In the Hassan Ali Esaji Bhaiji Trust v. Administrator General of Central Zakat Administration (1991) case, the petitioner was a charitable and religious Trust of the Bohra Community of Fiqh Jafariyah. It invested in Khas Deposit Certificates (KDCs) and as a charitable trust, it did not pay zakat on them. At the time of the sale of KDCs with profit, the respondent informed the petitioner about the deduction of zakat on them. Otherwise, the petitioner was required to produce the registration certificate and a certificate which was required under section 47 of the Income Tax Ordinance 1979 (ITO). The petitioner challenged these demands of the respondent. The petitioner's counsel contended that the registration for the

purpose of section 47 of ITO is necessary only for the payment of income tax. While the petitioner as a charitable trust does not pay income tax. So, it is not necessary for the petitioner to be registered under this section. The petitioner does not fall under the definition of Sahib-e-Nisab. It is exempted from zakat under section (xxiii) (i) of the Zakat Ordinance as a Charitable Trust. The counsel of the opposite party contended that to fulfil the conditions of rule 41 of Income Tax Rules 1982 before approval under section 47 of ITO is necessary. The main purpose behind these conditions is to ensure the right use of donations by charitable institutions and to keep watch on them. The demand made by the respondent is right and justified by the law.

The court held that by careful reading of section (xxiii) (i) (a) and (b) of the Zakat Ordinance, it is revealed that the intention of the legislature is clear and without any ambiguity. The claim of the petitioner for disjunctive reading of sub-clause (a) and (b) is based on a misinterpretation of the law. The registration as a charitable institution and the prior approval of the Board of Revenue is necessary to seek allowance under section 47 of ITO. The respondent has rightly demanded from the petitioner. Therefore, the petition was dismissed by the court.

In the Bank of Punjab v. Administrator General of Central Zakat Administration (1994) case, the Bank of Punjab (petitioner Bank) through its petition claimed that it should not be treated as Sahib-e-Nisab. It also claimed exemption from compulsory deduction of zakat on National Investment Trust (NIT) Units. The reason behind this claim was that the majority of its shares are held by the government of Punjab around 60 percent, which are also under the control of the government. While the respondents denied giving this exemption to the petitioner Bank. The advocate of the petitioner argued that section 2 of the Zakat Ordinance does not include those corporations or companies that are owned by the provincial or federal government. So, the benefit of exclusion should also be given to the petitioner Bank. The petitioner Bank also acts as a zakat deducting agency. It deducts zakat under the Zakat Ordinance, on the deposits of its depositors. It invested in NIT Units based on the amount

deposited by these depositors. The deduction of zakat on this investment means a double deduction of zakat. While the double deduction of zakat is not allowed in Pakistani law and Islamic law as well. The Deputy Attorney General argued that only those companies and corporations are exempted from zakat, which are 'wholly owned' by the government. The petitioner Bank is not wholly owned by the government. The share of the government is only 60 percent as accepted by the learned counsel of the petitioner. So, the Petitioner Bank is not outside the payment of zakat.

On the contrary, the court by interpreting the term Sahib-e-Nisab and by the joint reading of section 1(2) and section 2(xxiii) (a) of the Zakat Ordinance declared that zakat would not be deducted on NIT Units, by the investment of petitioner Bank in it. Otherwise, it would come under the double deduction of zakat on the same asset, which is not allowed. The court also held that majority shares of government in a company make it excluded from the definition of Sahib-e-Nisab. The court accepted the petition of the petitioner Bank.

In the Administrator General of Zakat v. Pakistan Insurance Corporation (2016) case by relying upon the above-mentioned judgment, the court declared that the Federal Government has fifty-one (51) percent equity shares in the Insurance Corporation. That is why it does not come under the definition of Sahib-e-Nisab and is exempted from the compulsory payment of zakat.

In the Pakistan Tobacco Company Limited v. Administrator General of Zakat (2017) case, two Pakistani tobacco companies filed two separate petitions based on the common question of fact and law. The petitioners challenged the deduction of zakat on the profit of their investments in National Saving Schemes. They contended that they are exempted from zakat on being 'recognized provident funds' under section 2(xx) of the Zakat ordinance. The counsel of the petitioners submitted that the petitioners do not come in the definition of Sahib-e-Nisab, because they are 'recognized provident funds'. While the counsel of the opposite side argued that the nature of assets has been changed due to the investment in the saving schemes. So, the profit that came from this investment is liable to

the deduction of zakat.

Nevertheless, through a consolidated judgment. The court held that the petitioners being 'recognized provident funds' are exempted from the term of Sahib-e-Nisab. Zakat cannot be deducted from them and if it was deducted, then it must be refunded to them.

In the Telecommunication Employees Trust v. Federation of Pakistan (2017) case, the Pakistan Telecommunication Employees Trust (PTET) was managing the pension funds of retired employees of the Pakistan Telecommunication Department. Zakat and the Ushr Department deducted zakat from the PTET under section 3 of the Zakat Ordinance. PTET challenged this deduction of zakat. The attorney of the appellant argued that the appellant is not Sahib-e-Nisab because it is owned by the Federal Government. The Zakat Ordinance is applied only to the Muslim citizens of Pakistan, while the appellant is not a Muslim citizen. The PTET is a charitable trust and its funds are just 'Amanat (Mandate)' of the pensioners and they are not the assets of PTET. The deduction of zakat from PTET may burden petitioners with double taxation if they are Sahib-e-Nisab. The attorney of the respondent established his arguments claiming that as PTET was established in 1996, zakat had continuously been deducted per annum since 1997, and the writ was filed in 2004. Therefore, by applying the 'principle of laches', the writ is not maintainable. PTET is Sahib-e-Nisab and liable to pay zakat and it is not owned by the Federal Government.

Despite that, the court held that the 'principle of laches' does not apply in this case and the appeal is maintainable. It is because a fresh cause of action arises every year due to the new deduction of zakat annually. The PTET is not owned by the Federal Government and it is an independent institution. It is free to carry out its powers and functions. It can acquire property, can sue and be sued. It is not answerable to the Federal Government and is not bound to get any permissions prior to its actions. The beneficiaries of PTET are Muslim citizens of Pakistan and the Zakat Ordinance is applied to them. They cannot escape from the payment of zakat. Although the funds of PTET belong to its pensioners and PTET has only possession of these funds, still it is Sahib-e-Nisab. Pakistan

Telecommunication (Reorganisation) Act 1996 has vested all funds with liabilities to PTET by its section 45. The petitioner is a Trust but not a Charitable Trust. It is not registered as a Charitable Trust under any relevant law. Zakat is deducted once a year. If it is paid in one year on funds by PTET, and in the next year the pensioner receives his pension and is also a Sahib-e-Nisab, then the pensioner will pay zakat and not PTET. There is no chance of a double deduction. This appeal was dismissed by the court.

Tax Concessions by Section 25 under the Zakat Ordinance

All incomes, assets, and land subject to compulsory zakat and ushr deductions (One-tenth financial obligation on the agricultural produce of the land on Muslims) under this Ordinance shall be excluded from tax which is levied under Income Tax Ordinance 1979, Wealth Tax Act 1963. The land revenue and development cess should not be collected on land on the produce from which ushr or contribution have been charged on a compulsory basis. This exemption aims to prevent the burden of double taxation.

iii. Exemption Based on Assets

In the Income Tax Appellate Tribunal Pakistan (1991) case, an objection was raised against of tax officers' decision to disallow the deduction of Zakat on profits from investment in Khas Deposit Certificates. The contention was raised that these certificates are exempted from tax under ITO because zakat is compulsorily deducted from them. The reason was provided that the zakat deduction on profit from Khas Deposit Certificates comes under zakat on the expense of exempt income. So, by relying on the principle "expenditure incurred for earning exempt income, cannot be allowed as a deduction". The counsel for the appellant invited the attention of the court to section 25 of the Zakat Ordinance, which is a 'special provision' for the tax concession. He contended that the assessing officer had committed a serious mistake by not allowing the above-mentioned deduction of zakat.

The court held that zakat is not only obligatory under Islam but also under the Zakat Ordinance and the Constitution of Pakistan. The Khas

Deposit Certificates are considered as the assets. All the assets according to the First Schedule of Zakat Ordinance which are under the possession of an assessee on the evaluation date will come under the deduction of zakat. Zakat is a charge on KDCs as an asset and not on expenditure to get an asset. The court declared that section 25 of the Zakat Ordinance has a dominating effect as a special provision.

In another the Income Tax Appellate Tribunal Pakistan (2002) case, the Wealth Tax Officer (WTO) imposed wealth tax on the plots. These plots were purchased by the appellant through the amount created by the selling of NIT Units. The WTO imposed this tax on the self-assessed value of the plots. The appellant was not satisfied with WTO. He filed an appeal on the basis of these objections such as the opportunity of hearing was not given to him and the values of plots were not rightly assessed as well as the plots should be exempted from the wealth tax. The counsel of the appellant side contended that the Wealth Tax cannot be imposed on the plots because plots are created by the sale amount of NIT Units and to avoid the double deduction, these units are exempted from tax due to the deduction of zakat on them. He asserted that the WTO did not assess the value of the plots correctly. He relied upon the self-assessed value of the appellant which is more than the value fixed by the Deputy Commissioner. He pointed out that the WTO could not adopt the value of an open plot higher than that fixed by the Deputy Commissioner, without prior approval of the Commissioner, which had not been obtained in this case.

The court held that, after assessing the order of the WTO, it was revealed that a proper opportunity for a hearing had been given to the appellant. His issues and explanations were also considered by the WTO. The court distinguished between NIT Units and the plots purchased from their sale, noting that while zakat was paid on the NIT Units, it did not apply to the plots. Consequently, the NIT Units were exempt from tax, whereas the plots were not. As a result, the court rejected the appeal concerning the first two objections but accepted it regarding the third objection about the exemption status of the plots.

In the Qaiser A. Manoo v. Income Tax Appellate Tribunal (2005) case,

the assessee held KDCs. He did not pay tax on them because zakat was paid on them. He wanted exemption also on cash, obtained on encashment of these assets on which he was enjoying exemption from wealth tax.The court upheld the decision of ITAT in the matter of exemption of tax on KDCs. The court declared that KDCs and cash obtained from them were two different assets. Tax exemption is available for KDCs due to the payment of zakat on them, but not on cash obtained from KDCs on which no zakat is paid. Appeal dismissed to this extent.

In a case cited as Bank Alfalah Limited v. Administrator General of Zakat (2009), a money decree (An order of the court finding judgment debtor a liable to pay a sum of money to a decree holder) was passed against the petitioner Bank. The Bank paid the decretal amount in the High Court, on the order of the Supreme Court. The Supreme Court also directed the High Court to deliver the profit to the decree holder, by investing the same in Special Saving Certificates of the government. Later on, both parties compromised on the issue, and the decretal amount was paid back to the bank after the deduction of zakat. The petitioner bank challenged this deduction. The petitioner's attorney contended that zakat was being deducted beyond the lawful authority and this amount was not an asset of the petitioner. The opposite counsel contended that the deposited amount could be treated as an asset of the petitioner because the Supreme Court directed to invest it and not to keep it in the Court. Furthermore, zakat can be deducted from the amount that was released by the Court

The court decided that the amount which was deposited in the High Court on the order of the Supreme Court in a pending case did not come under the definition of Nisab (the minimum amount of wealth that a Muslim must have before being obliged to give zakat). Zakat cannot be deducted from this amount. If it has been deducted, it must be refunded.

iv. Concessions to Avoid Double Taxation

In an Income Tax Appellate Tribunal Pakistan (1992) case, an appellant paid zakat at source out of Interest and Dividend on securities, which were received by him. He claimed that it should be included in total income, for

the purpose of exemption during assessment. He claimed exemption from tax due to payment of zakat on them. His claim of exemption was rejected by the assessing officer. The assessing officer held the opinion that Rule 8 of the 4th Schedule of ITO had excluded the effect of all other laws that were not consistent with ITO. The counsel of the appellant did not accept the view of the Assessing Officer and he supported the claim of exemption from tax. He contended that after payment of zakat, exemptions were also provided to the payee under section 25 of the Zakat Ordinance. The counsel of the respondent argued that Rule 8 of ITO had an overriding effect not only over the other provisions of ITO but also over the other laws. He further argued that under this Rule 8 no exemption is given to the amount of zakat which is already deducted at the source.

The Bench held that the main issue in this case was to decide the overriding effect between the Zakat Ordinance and ITO. After perusing the arguments of learned counsels from both sides and careful reading of section 25 of the Zakat Ordinance and Rule 8 of ITO, the Bench decided that *the Zakat Ordinance has an overriding effect over the Income Tax Ordinance.* The Bench supported its decision with the arguments that the Zakat Ordinance was enforced later than the ITO. During the making of the ITO, the Zakat Ordinance was not in the mind of the legislature. While making the Zakat Ordinance, the legislature was aware of ITO. That is why the legislature excluded all other laws by adding the statement "Notwithstanding anything contained in any other law for the time being in force" at the start of section 25 of the Zakat Ordinance. So, the Bench concluded that after the payment of zakat on a compulsory basis at source, the appellant deserves the tax concession.

In a case with the citation of Commissioner of Income Tax v. AGRO General Insurance Co. LTD. (2005), the court upheld the decision of the above-mentioned case on the same grounds and granted the exemption to the general insurance company from tax due to payment of zakat on KDCs. The assessee in the case of Income Tax Appellate Tribunal Pakistan (2003) had shares in a private limited company. His company deducted zakat on the face value of shares. He claimed exemption from tax, during the

assessment of his wealth for the purpose of tax. He contended that he had already paid zakat on his shares, and now his shares should be exempted from the tax. The Assessing Officer did not accept his plea and viewed that zakat was paid only on face value and not on the remaining value of shares. Meanwhile, the Assessing Officer added the determined value of each share by determining the breakup value of each share.

It was held by the court that there was a difference between the face value and the breakup value of the shares. The assessee had rightly paid zakat on the face value and his shares were exempted from the tax, as the act of the Assessing Officer was void with no legal authority.

In the case of the Commissioner of Income Tax v. Azlak Enterprises (Pvt.) LTD. (2003), two Assessing Officers disallowed the deduction of zakat. They treated it as an expenditure incurred for earning exempt income. It was because ITO had not exempted KDC but the income came from them. The Zakat Ordinance directed the deduction of zakat at source on KDC and it may be deducted from their profits, which was exempted from the income tax under the ITO. Income Tax Appellate Tribunal (ITAT) referred a question as "whether the Tribunal had rightly allowed the deduction of zakat attributable to the exempt income towards the taxable income" to this High Court for seeking the court's opinion on the matter.

The court held that the payment of zakat is a religious obligation and the Zakat Ordinance was introduced to recover the same from all Sahib-e-Nisab Muslims of the state. Section 25 of the Zakat Ordinance is a special provision and it has an overriding effect over other laws. This section provides a tax concession only to those items on which Zakat is compulsorily deducted at the source. The court upheld the decision of ITAT and answered the referred question in the affirmative and rejected the decision of the Assessing Officers .

Conclusion

This article concludes that the Pakistani superior judiciary has played a very important role in the enforcement of zakat laws by interpreting them in response to various issues raised regarding the Zakat Ordinance before the

courts. Initially, an important matter that was decided by the court was related to the jurisdiction of FSC. It is because zakat laws apply to Muslims only, and 'Muslim Personal Law' does not fall under its jurisdiction. After a long discussion, it was finally decided by the court that the zakat matters do not fall in the definition of MPL so, thus remaining under the jurisdiction of FSC. Furthermore, the court determined that the Zakat Ordinance is not outside the jurisdiction of FSC as it is generally applicable to Muslims of Pakistan and mere general applicability of any law does not qualify it as MPL.

It is further concluded that the Zakat Ordinance has an overriding effect over all other laws, with its section 25 serving as a special provision. Zakat is liable to be deducted only from Sahib-e-Nisab Muslims. According to the above-mentioned judicial decisions, all those institutions that are owned by the government or in which majority shares are held by the provincial or federal government are exempted from the definition of Sahib-e-Nisab. NIT Units and KDCs are exempted from tax due to payment of zakat at source, but any asset which is made and derived from them is not exempted. Exemption from Zakat can be granted to a trust only when it is registered as a religious or charitable trust under the relevant law. It is also concluded that tax concession will be provided on all those assets on which zakat is compulsorily deducted under the Zakat Ordinance in the same year of deduction. The main purpose of this concession is to prevent the burden of double taxation on the payee. Zakat exemptions are also available for charitable trusts and public bodies. However, corporate entities may benefit from exemption only when the majority of their shares are held by the government.

It is recommended that exemptions based of fiqh and faith should not be permitted. There is a need to amend zakat laws according to the consensus of renowned Muslim scholars from all fiqhs. Such amendments should encourage individuals to confidently pay zakat instead of seeking exemptions. There is also a need to amend the definition of Sahib-e-Nisab provided in the Ordinance with the Islamic definition of Sahib-e-Nisab. Moreover, according to Mufti Taqi Usmani (a renowned Pakistani scholar)

deduction of zakat at source is not allowed in Islam. So, there is a need to amend the zakat system to make it consistent with the Islamic zakat system and to stop the compulsory deduction of zakat at source. It is because zakat is purely a religious financial obligation and its principles are also described by religion which are specific. However, concessions to avoid double deductions after payment of zakat are appreciable, as they alleviate the financial burden on individuals. However, there is a need for further research on specific aspects of zakat exemptions such as comparative studies or empirical research on the social and economic impact of these exemptions.

Conflict of Interest

The author of the manuscript has no financial or non-financial conflict of interest in the subject matter or materials discussed in this manuscript.

Data Availability Statement

Data availability is not applicable as no new data was created.

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