

Present: Syed Mansoor Ali Shah, Muhammad Ali Mazhar and Shahid Bilal Hassan, JJ

The COMMISSIONER INLAND REVENUE and others---Appellants

Versus

MEKOTEX (PVT.) LIMITED and others---Respondents

C.P.L.As Nos. 824-K to 872-K, 545-K to 554-K, 582-K to 679-K, 699-K to 708-K, 1020-K to 1023-K, 1066-K of 2023 and C.M.As. Nos. 4002, 4003, 4384, 4004, 4005, 4006, 4007 and 7911 of 2023, decided on 18th September, 2024.

(Against the judgment of High Court of Sindh, Karachi dated 07-02-2023, passed in C.Ps. Nos. D-8385, D-8373, D-665, D-2208, D-2273, D-2661, D-8396, D-8277, D-8376, D-8372, D-8394, D-8370, D-8371, D-8164, D-8369, D-8278, D-8345, D-8390, D-8434, D-8375, D-8417, D-8539, D-8452, D-8470, D-1351, D-359, D-2209, D-8389, D-8343, D-8344, D-8416, D-8428, D-8534, D-8540, D-8552, D-2429, D-8561, D-8447, D-8507, D-8528, D-8446, D-8242, D-8449, D-6727, D-8275, D-8247, D-8271, D-8397, D-8546, D-8235, D-8276, D-8272, D-8559, D-8547, D-8560, D-8281, D-8282, D-8506, D-8274, D-8431, D-8432, D-8525, D-8543, D-8500, D-8544, D-8530, D-8526, D-8244, D-8508, D-8527, D-8517, D-8242, D-8241, D-8450, D-8246, D-8518, D-8243, D-8240, D-8238, D-8403, D-8433, D-8245, D-8545, D-8531, D-8529, D-8503, D-8237, D-8236, D-8448, D-8443 of 2019, D-2456, D-2210, D-659, D-6792, D-6729, D-6823, D-6822, D-6729, D-8368, D-8367, D-8374, D-357, D-358, D-6807, D-6728, D-355, 6771, D-6583, D-93, D-6682, D-60, D-3615, D-2652, D-356, D-6582, D-94, D-648, D-6498, D-6497 of 2020, D-04, D-05, D-444, D-09, D-08, D-1828 of 2021, D-140, D-993, D-139, D-141, D-1613, D-1614, D-1517, D-1518, D-36, D-1829, D-1830, D-955, D-8453, D-6815, D-63, D-52, D-114, D-115, D-61, D-3049, D-1718, D-54, D-464, D-357, D-6814, D-55, D-65, D-112, D-53, D-111, D-62, D-06, D-335 and D-3494 of 2022).

(a) Constitution of Pakistan---

---Arts. 12 & 142---Legislative powers of Parliament and Provincial Assemblies---Laws with retrospective effect---Apart from the specified exception under Article 12 of the Constitution, Parliament and Provincial Assemblies cannot enact criminal laws with retrospective effect; however, there is no restriction on their legislative powers to enact civil laws with retrospective effect---Nonetheless, neither prospective nor retrospective laws can be enacted to take away or abridge any of the fundamental rights guaranteed by Articles 9 to 28 of the Constitution or in contravention of any other provision of the Constitution---Constitution's prohibitions and requirements apply equally to both prospective and retrospective laws.

State of Gujarat v. Raman Lal (1983) 2 SCC 33 ref.

(b) Constitution of Pakistan---

---Art. 142---Legislative power to enact civil laws with retrospective effect---Principles---Legislature's power to legislate includes the power to legislate with retrospective effect---Legislature that is competent to make a law on a particular subject also has the power to legislate such a law with retrospective effect and can, by legislative fiat, even take away vested rights or affect past and closed transactions---Therefore, when a legislature gives retrospective effect to a law, either by express provision or by necessary implication, no protection can be afforded to vested rights contrary to that law---Similarly, when a legislature enacts a law with retrospective effect, the person affected cannot plead the imposition of a previously non-existent civil obligation as a ground for declaring the law invalid---Constitution only bars retrospective legislation concerning criminal liabilities, not civil rights and obligations---There is no such rule that even if a legislature has sought to take away a vested right, the courts must hold that such legislation is ineffective or strike down the legislation on the ground that it has retrospectively taken away a vested right---Law cannot be declared ineffective or struck down on the ground that it has taken away a vested right, nor can any protection be offered to vested rights contrary to it.

Amin Ullah v. Pannu Ram PLD 1967 SC 289; Haider Automobile v. Pakistan PLD 1969 SC 623; Molasses Trading v. Federation of Pakistan 1993 SCMR 1905; Muhammad Hussain v. Muhammad 2000 SCMR 367; Taisei Corporation v. A. M. Construction Company 2024 SCMR 640; Raja Amer v. Federation

of Pakistan 2024 SCP 91; Jamshaid Gulzar v. Federation of Pakistan 2014 SCMR 1504; Irshad Sheikh v. NAB 2015 SCMR 588; Annoor Textile v. Federation of Pakistan PLD 1994 SC 568; Taisei Corporation v. A. M. Construction Company 2024 SCMR 640; Haider Automobile v. Pakistan PLD 1969 SC 623; Molasses Trading v. Federation of Pakistan 1993 SCMR 1905 and Nabi Ahmed v. Government of West Pakistan PLD 1969 SC 599 ref.

(c) Interpretation of statutes---

---Laws having retrospective effect---Principles for interpreting laws that have or appear to have retrospective effect stated.

When a law regulating certain affairs is introduced for the first time, it is presumed to apply to future affairs, not to alter the character of past transactions made under the law as it then existed. This principle is encapsulated in the maxim *lex prospicit non respicit*-the law looks forward, not backward. A retrospective law is an exception to this general principle; therefore, courts approach the interpretation of laws with a presumption in favour of the general principle that laws are intended to regulate future affairs, not to affect past transactions. Exceptions of retrospective effect are interpreted strictly, as are other exceptions to general principles. This presumption is rooted in the rule of fairness, as altering accrued rights and obligations retrospectively is often considered unfair. Since the legislature is not expected to act in an unfair manner, it becomes essential to closely scrutinize a law that appears to have such an effect, ensuring that this was indeed the legislature's intent. Thus, the legislature is presumed not to have intended to alter the law applicable to accrued rights and obligations or past events and transactions unless a clear contrary intention is expressed. The strength of this presumption varies with the degree of potential unfairness-the greater the unfairness, the more explicit the legislature's intent must be.

C.I.T. v. Vatika Township (2015) 1 SCC 1 (5MB); L'Office Cherifien v. Yamashita-Shinnihon Steamship Co (1994) 1 AC 486 and Secretary of State v. Tunncliffe (1991) 2 All ER 712 ref.

Therefore, in our jurisdiction, the established principles for interpreting laws that have or appear to have retrospective effect are as follows. Every statute that relates to substantive rights and obligations should be deemed prospective unless, by express provision or necessary implication, it has been given retrospective effect. Courts must lean against giving a statute retrospective effect that affects vested rights and/or past and closed transactions by adhering to two rules: first, if two interpretations are reasonably possible, the one that saves vested rights and/or past and closed transactions should be adopted; and second, no statute should be construed to have retrospective effect to a greater extent than its language necessarily requires. Although vested rights may be affected and taken away by express provision or necessary implication, past and closed transactions can be disturbed and reopened only by express provision. This is because the greater the unfairness, the more explicit the legislature's intent must be.

Nagina Silk Mill v. Income-Tax Officer PLD 1963 SC 322; Province of East Pakistan v. Sharafatullah PLD 1970 SC 514; C.I.T. v. EFU Insurance Co. PLD 1982 SC 247; Ghulam Hyder Shah v. Chief Land Commissioner 1983 CLC 1585; Chief Land Commissioner v. Ghulam Hyder Shah 1988 SCMR 715; Molasses Trading v. Federation of Pakistan 1993 SCMR 1905; Muhammad Hussain v. Muhammad 2000 SCMR 367; Molasses Trading v. Federation of Pakistan 1993 SCMR 1905 and Zila Council Jehlum v. Pakistan Tobacco Company PLD 2016 SC 398 and Shahnawaz (Pvt.) Ltd. v. Pakistan 2011 PTD 1558 ref.

(d) General Clauses Act (X of 1897)---

---S. 6---Effect of repeal of a law---'Repeal' and 'amendment'---Synonymity---There is no difference in principle between repeal and amendment, as every amendment inherently involves a repeal, where the law in its previous form disappears and a new law takes its place---Whether the legislature states that a particular section will be amended in a certain way or declares that the section is repealed and replaced by a new one, the outcome is fundamentally the same---In its broader scope, the word 'repeal' as used in Section 6 of the General Clauses Act, 1897 includes amendment, as both processes ultimately achieve the same legislative result---While 'repeal' generally refers to the abrogation of an entire law and 'amendment' to changes within a statute, both carry the same effect, making it necessary to treat them similarly---Therefore, Section 6 of the General Clauses Act, 1897 also applies to the amendment of a law.

Saeed Ahmad v. State PLD 1964 SC 266; Dad Muhammad v. ADJ 1996 SCMR 1688; Mukhtar Hamid v. Government of Punjab PLD 2002 SC 757 and Anwar Yahya v. Federation of Pakistan 2017 PTD 1069 ref.

(e) Interpretation of statutes---

---Vested right under a law---Scope---Past and closed transaction---Scope---A right vests when all the facts required by law to establish that right have occurred---In other words, when all the facts necessary to create a right have occurred, the right is said to be "vested"---A right remains inchoate and contingent when some, but not all, of the investitive facts have occurred---A "vested right" is, therefore, one that is absolute, complete and unconditional, with no obstacles to its exercise---It is immediate and perfect in itself, not dependent upon any contingency---Vested right are thus free from contingencies, but ordinarily there are always specific occasions and circumstances under which such vested rights may be exercised---A vested right becomes a past and closed transaction when such right is exercised, or deemed to have been exercised by operation of law, at a specific occasion and under specific circumstances---Since such specific occasions and circumstances may vary under different laws, it is determined on the basis of the peculiar facts and legal position of each case whether a vested right has turned into a past and closed transaction.

Government of Punjab v. Kamran Bashir 2022 PLC (C.S.) 6; Nabi Ahmed v. Government of West Pakistan PLD 1969 SC 599; Zaman Cement Co. v. CBR 2002 SCMR 312; Asdullah Mangi v. PIA Corporation 2005 SCMR 445; Amer v. Federation of Pakistan 2024 SCP 91; CIT v. EFU Insurance Co. PLD 1982 SC 247; Nagina Silk Mill v. Income-Tax Officer PLD 1963 SC 322; Ghulam Hyder Shah v. Chief Land Commissioner 1983 CLC 1585; Chief Land Commissioner v. Ghulam Hyder Shah 1988 SCMR 715; Molasses Trading v. Federation of Pakistan 1993 SCMR 1905; Muhammad Hussain v. Muhammad 2000 SCMR 367; Zila Council Jehlum v. Pakistan Tobacco Company PLD 2016 SC 398 and Shahnawaz (Pvt.) Ltd. v. Pakistan 2011 PTD 1558 ref.

(f) Income Tax Ordinance (XLIX of 2001)---

---S. 65B (as amended by the Finance Act, 2019)---Constitution of Pakistan, Art. 25---Amendments made to Section 65B of the Income Tax Ordinance, 2001 by the Finance Act, 2019 ("2019 amendments"), vires of---Tax credit---Purchase of plant and machinery for an industrial undertaking set up in Pakistan---Competency of legislature to modify or withdraw the benefit of tax credit through retrospective amendments---Past and closed transaction---Vested right---Scope---For purposes of present case there were two categories of taxpayer companies; the "first category" consisted of those companies who had both purchased and installed the plant and machinery by 30 June 2019, while the "second category" included those who had purchased the plant and machinery by 30 June 2019 but installed it after that date but before 30 June 2021---Provisions of subsection (1) of Section 65B of the Income Tax Ordinance, 2001 are to be read in conjunction with subsection (2)---When so read together, it becomes clear that to avail the benefit of the tax credit under Section 65B, taxpayer companies must fulfill two conditions: first, they have to purchase the plant and machinery; and second, they have to install the purchased plant and machinery in an industrial undertaking set up in Pakistan---Only when both of these conditions are fulfilled does a taxpayer company acquire a vested right to avail the benefit of the tax credit conferred by Section 65B---In the present case the second category of taxpayer companies had purchased the plant and machinery before 1 July 2019, when the 2019 amendments came into force, but had not yet installed it---Therefore, they had fulfilled only one of the two required conditions---As a result, they had not yet acquired any vested right to avail the benefit of the tax credit conferred by Section 65B, thus no question arose as to them being affected by the 2019 amendments---As for the first category of taxpayer companies, they had undoubtedly acquired a vested right to avail the benefit of the tax credit conferred by Section 65B---This was because they had fulfilled both of the required conditions by 1 July 2019, when the 2019 amendments came into force; they had both purchased and installed the plant and machinery by that date---Vested right of a taxpayer company to avail the benefit of the tax credit conferred by Section 65B matured into a past and closed transaction upon the filing of the claim by the taxpayer company, either separately as per the instructions of the Federal Board of Revenue (FBR), if such or similar instructions existed, or along with the income tax returns, as the case may be---In the present case, the second category of taxpayer companies had neither filed the claim separately, as per the FBR instructions, nor

filed their income tax returns along with the claim by 1 July 2019, when the 2019 amendments came into force---Therefore, their vested right did not "crystallize" into a past and closed transaction---By way of the 2019 amendments the proviso added to subsection (1) of Section 65B of the Income Tax Ordinance, 2001, was in violation of the prohibition against discrimination and the guarantee of equal treatment provided by the fundamental right enshrined in Article 25 of the Constitution---This proviso reduced the rate of the tax credit for the tax year 2019 from 10% to 5% of the amount invested, whereas for all other tax years from 2010 to 2018, taxpayer companies were granted a tax credit at the rate of 10% of the amount invested---As a result, the first category of taxpayer companies had been discriminated against and had not been afforded the equal treatment that was given to other taxpayer companies for the tax years 2010 to 2018---As for the second category of taxpayer companies, their case was distinguishable from the first category, therefore, the amendment made to subsection (2) of Section 65B, which reversed the expiry date of availing the benefit of the tax credit from 30 June 2021 to 30 June 2019, did not fall within the scope of the constitutional prohibition contained in Article 8 read with Article 25 of the Constitution---Supreme Court declared that the proviso added to subsection (1) of Section 65B through the 2019 amendments infringed the fundamental right of the first category of taxpayer companies to protection against discrimination and the guarantee of equal treatment under Article 25 of the Constitution, and was therefore liable to be struck down; that the change made to subsection (2) of Section 65B through the 2019 amendments did not infringe any of the fundamental rights of the second category of taxpayer companies guaranteed by Articles 18, 23, 24 and 25 of the Constitution---Petitions were converted into appeals, which were partly allowed.

(g) Promissory estoppel, doctrine of---

----Doctrine of promissory estoppel does not operate against the legislature.

Army Welfare Sugar Mills v. Federation of Pakistan 1992 SCMR 1652 ref.

(h) Precedent---

----Earlier decision of a Bench of equal numeric strength---Precedential value---Earlier decision of a bench of a High Court, or of the Supreme Court, on a question of law is binding on another bench of equal numeric strength when dealing with the same question, in the sense that the latter bench cannot decide the same question contrary to the first decision---However, the latter bench is not precluded from examining the correctness of the earlier decision or forming a different view---In such a case, the proper course of action is to refer the matter to the Chief Justice of the High Court, or in the case of the Supreme Court to the Bench-Constitution Committee, with a request for the constitution of a larger bench to examine the correctness of the earlier decision and, if necessary, to reconsider and decide the question.

Multiline Associates v. Ardesbir Cowasjee 1995 SCMR 362 ref.

(i) Judicial review---

----Economic matters and policies---In complex economic matters, the best solutions are often not easily discernible; the wisdom of any choice may be debated or criticized, but mere errors of policy judgment are not subject to judicial review---Only clear and definite violations of fundamental rights or other constitutional provisions warrant judicial intervention---Legislative and executive branches of the State are entitled to make pragmatic adjustments which may be called for by particular circumstances---Courts cannot strike down an economic policy decision taken by them merely because they feel that another policy decision would have been fairer, wiser, or more scientific or logical---It is for the legislature, not the courts, to balance the advantages and disadvantages of various economic concerns---Therefore, while examining the constitutionality of fiscal laws on the touchstone of fundamental rights, particularly the fundamental right to equality before the law, courts should exercise greater restraint and extend more deference to legislative judgment than they do with laws concerning civil and political rights---Legislature must be afforded some "play in its joints" because it is tasked with addressing complex economic problems that do not admit solutions through doctrinaire or rigid formulas.

Metropolis Theatre Co. v. Chicago (1913) 228 U.S. 61; Morey v. Doud (1957) 354 US 457; R.K. Garg v. UOI (1981) 4 SCC 675 and Bain Peanut Co. v. Pinson (1931) 282 U.S. 499 ref.

In attendance:

Dr. Shah Nawaz, Advocate Supreme Court.

M. Tariq Arbab, Member (L) FBR.

Mir Badshah Khan, Member (Operation) FBR and Fahad Faizan, CIR, FBR.

Dr. Sohail Ahmed Fazlani, Addl. Comm. FBR. Abdul Wahid, Addl. Commissioner, LTO. and Malik Waqas Nawaz, ADC/DR CTO, FBR.

Rashid Anwar, Advocate Supreme Court.

Irfan Mir Halipota, Advocate Supreme Court.

Abid Hussain Shaban, Advocate Supreme Court.

Hussain Ali Almani, Advocate Supreme Court.

Hyder Ali Khan, Advocate Supreme Court.

Imtiaz Rashid Siddiqui, Advocate Supreme Court.

Ms. Lubna Pervez, Advocate Supreme Court.

Muhammad Nadeem Qureshi, Advocate Supreme Court.

Arshad Hussain Shahzad, Advocate Supreme Court.

Naeem Suleman, Advocate Supreme Court.

Taimur Mirza, Advocate Supreme Court.

Mst. Abida Parveen Channar, Advocate-on-Record.

Syed Rafaqat Hussain Shah, Advocate-on-Record.

Rashideen Nawaz Kasuri, Addl. AGP.

M. Ibrahim Khan, L.O. (AGP office).

Date of hearing: 3rd July, 2024.

JUDGMENT

SYED MANSOOR ALI SHAH, J.---The constitutionality of the amendments made to Section 65B of the Income Tax Ordinance, 2001 ("ITO") by the Finance Act, 2019 is under challenge in the present case. Section 65B was introduced into the ITO by the Finance Act, 2010 as a tax incentive provision for local industry. It allowed taxpayer companies a tax credit at the rate of 10% of the amount invested in the purchase of plant and machinery for an industrial undertaking set up in Pakistan, provided that the plant and machinery were purchased and installed between 1 July 2010 and 30 June 2015. Subsections (1) and (2) of Section 65B are relevant to the questions involved in the present case. Some minor changes were made to subsection (1) by the Finance Act, 2012,¹ which are not important for the purposes of the present case. Therefore, the provisions of subsections (1) and (2), as amended in 2012, are reproduced here for ease of reference:

65B. Tax credit for investment.---(1) Where a taxpayer being a company invests any amount in the purchase of plant and machinery, for the purposes of extension, expansion, balancing, modernization and replacement of the plant and machinery, already installed therein, in an industrial undertaking set up in Pakistan and owned by it, credit equal to ten per cent of the amount so invested shall be allowed against the tax payable, including on account of minimum tax and final taxes payable under any of the provisions of this Ordinance, by it in the manner hereinafter provided.

(2) The provisions of subsection (1) shall apply if the plant and machinery is purchased and installed at any time between the first day of July, 2010, and the 30th day of June, 2015.

(Emphasis added)

The ending year, 2015, mentioned in subsection (2) was changed to 2016 by the Finance Act, 2015; to 2019 by the Finance Act, 2016; and to 2021 by the Finance Act, 2018. However, the Finance Act, 2019 brought the ending year back from 2021 to 2019 and, by adding a proviso to subsection (1), reduced the rate of tax credit from 10% to 5% of the amount invested for the tax year 2019.² The said proviso is also reproduced here for ready reference:

Provided that for the tax year 2019 the rate of credit shall be equal to five percent of the amount so invested:

2. Aggrieved by the amendments made to Section 65B of the ITO by the Finance Act, 2019 ("2019 amendments"), some taxpayer companies ("respondents") challenged the constitutionality thereof by invoking the writ jurisdiction of the High Court of Sindh. By its order dated 7 February 2023 ("impugned order"), detailed reasons of which were released on 27 February 2023 ("impugned judgment"), the High Court concluded that two categories of taxpayer companies—firstly, those respondents which had both purchased and installed the plant and machinery by 30 June 2019, and secondly, those respondents which had purchased the plant and machinery by 30 June 2019 and installed the same after that date but by 30 June 2021—had protected vested rights that could not be vitiated by the 2019 amendments. Consequently, the High Court allowed the writ petitions, declaring that for these two categories of taxpayer companies, the amended provisions of subsection (2) of Section 65B should be "read to reflect that the provisions of subsection (1) shall apply if the plant and machinery was purchased before 30 June 2019 and installed before 30 June 2021". Furthermore, the High Court struck down the proviso added to subsection (1), which had reduced the rate of tax credit from 10% to 5% for the tax year 2019. Hence, the Commissioner Inland Revenue ("petitioner") has filed the present petitions for leave to appeal against the impugned order passed by the High Court.

3. The learned counsel for the petitioner challenged the validity of the impugned order, primarily arguing that the legislature is competent to modify or withdraw the benefit of tax credit through retrospective amendments to Section 65B of the ITO and can thereby take away the vested rights, if any, of the respondents. He contended that the High Court legally erred in holding that the vested rights of the respondents could not be vitiated by the 2019 amendments. On the other hand, the learned counsel for the respondents stated that, in the case of the first category of taxpayer companies which purchased and installed plant and machinery by 30 June 2019 ("first category of taxpayer companies"), the transaction of the tax credit benefit has become past and closed. As for the second category of taxpayer companies which purchased plant and machinery before 30 June 2019 ("second category of taxpayer companies"), such taxpayer companies have acquired a vested right to avail the benefit of the tax credit by installing the purchased plant and machinery by 30 June 2021.

They contended that retrospective legislation does not reopen past and closed transactions unless the legislature uses express and clear language to that effect, which, according to them, is not present in the 2019 amendments (the proviso). Thus, they argued, the first category of taxpayer companies is not affected by the said amendments. Regarding the second category of taxpayer companies, they argued that the amendment made to subsection (2), reverting the ending year of the tax credit benefit from 2021 to 2019, applies only to investments made after, not before, 30 June 2019. They further contended that the 2019 amendments infringe upon the respondents' fundamental rights to conduct lawful business, to acquire and hold property, and to equality before the law, as guaranteed by Articles 18, 23, 24 and 25 of the Constitution.

4. We have considered the arguments of the learned counsel for the parties, read their written submissions as well as the cases cited therein, and examined the record of the case.

5. The contentions of the learned counsel for the parties give rise to the following questions:

- (i) Whether the High Court legally erred in holding that the vested rights of the respondents could not be vitiated by the 2019 amendments.
- (ii) Whether the second category of taxpayer companies has acquired a vested right to avail the benefit of the tax credit and such right is not affected by the 2019 amendments.
- (iii) Whether in the case of the first category of taxpayer companies, the transaction of the tax credit benefit has become past and closed and the same is not affected by the 2019 amendments.
- (iv) Whether the 2019 amendments infringe upon the respondents' fundamental rights to conduct lawful business, to acquire and hold property and to equality before the law, as guaranteed by Articles 18, 23, 24 and 25 of the Constitution.

However, before addressing these questions, we find it appropriate to briefly outline the constitutional position regarding the legislative powers of Parliament and Provincial Assemblies, as well as the settled principles of law concerning the legislature's power to enact laws with retrospective effect and the established

principles for interpreting laws that have or appear to have retrospective effect. This will facilitate the decision on the questions.

Constitutional position regarding the legislative powers of Parliament and Provincial Assemblies

6. In our country, Article 142 of the Constitution of the Islamic Republic of Pakistan ("Constitution") is the fountainhead of legislative powers. In addition to other specific provisions in the Constitution, the legislative powers of the Federal Legislature (Parliament) and the Provincial Legislatures (Provincial Assemblies) stem from the general provisions of this Article. It confers on Parliament the power to make laws with respect to any matter in the Federal Legislative List and on Provincial Assemblies the power to make laws with respect to any matter not enumerated in the Federal Legislative List, while also conferring on both the concurrent power to make laws with respect to criminal law, criminal procedure and evidence. There is no restriction on the legislative powers conferred by this Article on Parliament and Provincial Assemblies regarding the enactment of laws with retrospective effect, except that it makes this conferment of legislative powers "subject to the Constitution".

7. The phrase "Subject to the Constitution" used in Article 142 indicates that where the Constitution itself imposes a restriction on the exercise of legislative power in a particular manner or prescribes a specific manner for the exercise of legislative power, then the legislative power conferred by this Article cannot be exercised in the prohibited manner or can only be exercised in accordance with the manner specifically prescribed by the Constitution, as the case may be.³ Since Article 8 of the Constitution imposes a restriction on the legislative powers of Parliament and Provincial Assemblies with respect to making any law that takes away or abridges the rights conferred by Articles 9 to 28, neither Parliament nor Provincial Assemblies can exercise their legislative powers in a manner prohibited by this Article.⁴ Article 12 bars the enactment of retrospective laws concerning criminal liabilities, except for acts of abrogation or subversion of the Constitution. Therefore, apart from the specified exception, Parliament and Provincial Assemblies cannot enact criminal laws with retrospective effect; however, there is no restriction on their legislative powers to enact civil laws with retrospective effect. Nonetheless, neither prospective nor retrospective laws can be enacted to take away or abridge any of the fundamental rights guaranteed by Articles 9 to 28 of the Constitution or in contravention of any other provision of the Constitution. The Constitution's prohibitions and requirements apply equally to both prospective and retrospective laws.⁵

Principles of law concerning the legislature's power to enact laws with retrospective effect

8. Given the above constitutional position, which imposes no restriction on enacting civil laws either prospectively or retrospectively within constitutional limits, the settled principles of law regarding the legislature's power to enact civil laws with retrospective effect are as follows. The legislature's power to legislate includes the power to legislate with retrospective effect.⁶ A legislature that is competent to make a law on a particular subject also has the power to legislate such a law with retrospective effect and can, by legislative fiat, even take away vested rights or affect past and closed transactions.⁷ Therefore, when a legislature gives retrospective effect to a law, either by express provision or by necessary implication, no protection can be afforded to vested rights contrary to that law.⁸ Similarly, when a legislature enacts a law with retrospective effect, the person affected cannot plead the imposition of a previously non-existent civil obligation as a ground for declaring the law invalid.⁹ The Constitution only bars retrospective legislation concerning criminal liabilities, not civil rights and obligations.¹⁰ There is no such rule that even if a legislature has sought to take away a vested right, the courts must hold that such legislation is ineffective or strike down the legislation on the ground that it has retrospectively taken away a vested right.¹¹

Principles for interpreting laws that have or appear to have retrospective effect

9. As for the principles for interpreting laws that have or appear to have retrospective effect, it is axiomatic that every person is presumed to know the law currently in force and is expected to arrange their affairs accordingly-current law governs current affairs. If a person acts today, he does so with the knowledge of today's law, not with knowledge of future laws. Therefore, when a law regulating certain affairs is introduced for the first time, it is presumed to apply to future affairs, not to alter the character of past transactions made under the law as it then existed. This principle is encapsulated in the maxim *lex prospicit non respicit*-the law

looks forward, not backward. A retrospective law is an exception to this general principle; therefore, courts approach the interpretation of laws with a presumption in favour of the general principle that laws are intended to regulate future affairs, not to affect past transactions. Exceptions of retrospective effect are interpreted strictly, as are other exceptions to general principles. This presumption is rooted in the rule of fairness, as altering accrued rights and obligations retrospectively is often considered unfair. Since the legislature is not expected to act in an unfair manner, it becomes essential to closely scrutinize a law that appears to have such an effect, ensuring that this was indeed the legislature's intent. Thus, the legislature is presumed not to have intended to alter the law applicable to accrued rights and obligations or past events and transactions unless a clear contrary intention is expressed. The strength of this presumption varies with the degree of potential unfairness—the greater the unfairness, the more explicit the legislature's intent must be.¹²

10. Therefore, in our jurisdiction, the established principles for interpreting laws that have or appear to have retrospective effect are as follows. Every statute that relates to substantive rights and obligations should be deemed prospective unless, by express provision or necessary implication, it has been given retrospective effect. Courts must lean against giving a statute retrospective effect that affects vested rights and/or past and closed transactions by adhering to two rules: first, if two interpretations are reasonably possible, the one that saves vested rights and/or past and closed transactions should be adopted; and second, no statute should be construed to have retrospective effect to a greater extent than its language necessarily requires.¹³ Although vested rights may be affected and taken away by express provision or necessary implication, past and closed transactions can be disturbed and reopened only by express provision.¹⁴ This is because, as noted above, the greater the unfairness, the more explicit the legislature's intent must be.

11. It is pertinent to mention that the above principles are also statutorily underpinned by the provisions of Section 6 of the General Clauses Act, 1897, which inter alia provides that where any Act repeals an enactment, then, unless a different intention appears, the repeal shall not affect the previous operation of the repealed enactment or anything duly done or suffered thereunder (past and closed transactions), nor shall it affect any right, privilege, obligation or liability acquired, accrued or incurred under the repealed enactment (vested rights). We may also underscore, as held by this Court in *Saeed Ahmad*,¹⁵ that there is no difference in principle between repeal and amendment, as every amendment inherently involves a repeal, where the law in its previous form disappears and a new law takes its place. Whether the legislature states that a particular section will be amended in a certain way or declares that the section is repealed and replaced by a new one, the outcome is fundamentally the same. In its broader scope, the word 'repeal' as used in Section 6 of the General Clauses Act, 1897 includes amendment, as both processes ultimately achieve the same legislative result. While 'repeal' generally refers to the abrogation of an entire law and 'amendment' to changes within a statute, both carry the same effect, making it necessary to treat them similarly. Therefore, Section 6 of the General Clauses Act, 1897 also applies to the amendment of a law.

Legal position as to retrospective law, vested right, and past and closed transaction

12. To have a clear and complete understanding of the questions at hand, it is also necessary to briefly state the legal position as to which statute is considered a retrospective law, how a right becomes vested and when a vested right turns into a past and closed transaction.

13. A statute is considered retrospective if it takes away or impairs any vested right already acquired under the then existing law or creates a new obligation or disability in respect of a transaction that is already past and closed.¹⁶ In other words, a statute that does not affect vested rights or create new obligations regarding past and closed transactions cannot be said to be retrospective.¹⁷ Similarly, a statute that extinguishes, by repeal of an existing law, a bare, abstract, inchoate or contingent right is not deemed to be retrospective, and such rights do not survive the repeal of the law under which they existed.¹⁸

14. As for vested rights, the legal position is also well settled. A right vests when all the facts required by law to establish that right have occurred. In other words, when all the facts necessary to create a right have occurred, the right is said to be "vested". A right remains inchoate and contingent when some, but not all, of the investitive facts have occurred. A "vested right" is, therefore, one that is absolute, complete and unconditional, with no obstacles to its exercise. It is immediate and perfect in itself, not dependent upon any

contingency.¹⁹ Vested right are thus free from contingencies, but ordinarily there are always specific occasions and circumstances under which such vested rights may be exercised.²⁰

15. The last sentence of the above paragraph indicates how a vested right becomes a past and closed transaction: this occurs when such right is exercised, or deemed to have been exercised by operation of law, at a specific occasion and under specific circumstances. Since such specific occasions and circumstances may vary under different laws, it is determined on the basis of the peculiar facts and legal position of each case whether a vested right has turned into a past and closed transaction²¹. Accordingly, this question has been addressed differently in several cases, each with its own peculiar facts and legal context. For example, In *EFU Insurance Co.*,²² it was held that once the four-year period prescribed under the then-existing law for the assessment or reassessment of tax on profits that had either escaped assessment or were under-assessed had expired, the assessment for the year concerned became a past and closed transaction; in *Ghulam Hyder Shah*,²³ it was held that since the Land Commissioner had exercised his power to scrutinize the disputed gifts and affirmed them under the provisions of the then-existing law, the transaction of gifts had become past and closed. In *Molasses Trading*,²⁴ it was held that when the petitioners had presented the bills of entry for the quantification of customs duty payable on the imported goods and thereby exercised their vested right to avail exemption under the then-existing law, the transaction had become past and closed. In *Muhammad Hussain*,²⁵ the suits filed within the limitation period prescribed under the then-existing law were treated as past and closed transactions with respect to the right to file suits within the prescribed limitation period. In *Zila Council Jehlum*,²⁶ it was held that since the respondents' goods had passed through the terminal of the appellant without payment of the 'goods exit tax' in accordance with the then-existing law, the transaction of exiting the goods had become past and closed; and, in *Shahnawaz*,²⁷ it was determined that the deemed assessment order under Section 120 of the ITO becomes a past and closed transaction for the purpose of audit once it is selected for audit and the audit is conducted or abandoned in accordance with Section 177 of the ITO as applicable to the tax year concerned.

16. Having thus laid down the constitutional and legal position on the key points concerning the questions raised, we can now conveniently address those questions.

(i) Whether the High Court legally erred in holding that the vested rights of the respondents could not be vitiated by the 2019 amendments.

17. In the impugned judgment, the High Court observed that 'the curtailing of the benefit extended in section 65B of the Ordinance [ITO], consequent upon the amendment made via [the] Finance Act 2019, amounted to impermissible vitiation of vested rights/past and closed transactions'²⁸ (para 14); that 'the amendment to section 65B of the Ordinance [ITO] via the Finance Act 2019 amounted to impermissible vitiation of vested rights' (para 22); that 'notwithstanding the curtailment of the expiration date, protected vested rights had been created in favor of the persons having purchased the pertinent plant and machinery prior to 30th June 2019' (para 24); that 'the Proviso is determined to be an unjustified attempt to vitiate protected vested rights' (para 26). With the said observations, the High Court concluded that the 'two category identified were found to have protected vested rights and it was our much deliberated view that such rights could not be vitiated in the manner intended by the amendment to section 65B of the Ordinance [ITO] by the Finance Act 2019' (para 35).²⁹

18. We are completely at a loss to understand the constitutional and legal basis of the above observations and conclusion of the High Court. As afore noted, a legislature that is competent to make a law on a particular subject also has the power to legislate such a law with retrospective effect and can, by legislative fiat, even take away vested rights. Therefore, when a legislature gives retrospective effect to a law, either by express provision or by necessary implication, no protection can be afforded to vested rights contrary to that law.

19. It is evident from the above-cited observations and conclusion of the High Court that it recognized the legislature's intent through the 2019 amendments was to vitiate the vested rights, if any, of the taxpayer companies. However, the High Court found this to be "impermissible" and "unjustified", and regarded the rights of the taxpayer companies vested in them under Section 65B, before the amendments, as "protected vested rights". Therefore, in essence, it declined to give effect to the 2019 amendments through the impugned

judgment. This approach of the High Court in determining the constitutionality of a law that has or appears to have a retrospective effect clearly contradicts the statements and principles of law enunciated by this Court in several cases, which are binding on all courts of the country, including the High Courts, under Article 189 of the Constitution. Some of these statements and principles, most relevant to the question under discussion, are cited here for ready reference:

Haider Automobile v. Pakistan PLD 1969 SC 623 (5MB)

There is no such rule that even if the Legislature has, by the use of clear and unambiguous language, sought to take away a vested right yet the Courts, must hold that such a legislation is ineffective or strike down the legislation on the ground that it has retrospectively taken away a vested right.

Molasses Trading v. Federation of Pakistan 1993 SCMR 1905 (5MB)

It also cannot be disputed that the legislature, which is competent to make a law, has full plenary powers within its sphere of operation to legislate retrospectively or retroactively. Therefore vested rights can be taken away by such a legislation and it cannot be struck down on that ground.

Jamshaid Gulzar v. Federation of Pakistan 2014 SCMR 1504

[W]hen the legislature has given the amending enactment retrospective effect with clear intendment spelt out from its language, than no protection to the alleged vested rights of appellants can be offered contrary to it.

It is more than evident from the above pronouncements that a law cannot be declared ineffective or struck down on the ground that it has taken away a vested right, nor can any protection be offered to vested rights contrary to it. Therefore, the High Court legally erred in holding that the vested rights of the respondents could not be vitiated by the 2019 amendments. Vested rights, if any, of the respondents can be vitiated by the 2019 amendments if such legislative intent appears either from the express provisions or by necessary implication of the amendments. Question (i) is answered accordingly.

20. However, whether the respondents have any vested rights and whether the 2019 amendments indeed affect such rights will be addressed in the following questions.

(ii) Whether the second category of taxpayer companies has acquired a vested right to avail the benefit of the tax credit and such right is not affected by the 2019 amendments.

21. As above noted, the first category of taxpayer companies consists of those respondents who had both purchased and installed the plant and machinery by 30 June 2019, while the second category includes those who had purchased the plant and machinery by 30 June 2019 but installed it after that date but before 30 June 2021. Although the High Court classified the respondents into these categories for discussion, it granted both categories the same relief that was available to them before the 2019 amendments, i.e., a tax credit at the rate of 10% of the amount invested in the purchase of plant and machinery.

22. It is not clear from the impugned judgment which category's claimed right was treated as a past and closed transaction and which was considered only a vested right. This lack of clarity in the impugned judgment suggests that, despite citing extensive extracts from *Shahnawaz*³⁰ that elaborate on the distinction between vested rights and past and closed transactions, as earlier expounded in *Ghulam Hyder Shah*³¹ and *Molasses Trading*,³² the High Court did not fully comprehend this distinction. The conclusion recorded in paragraph 35 of the impugned judgment suggests that the High Court perhaps treated the claimed rights of both categories as vested rights. Nonetheless, since the learned counsel for the respondents have argued before us that the vested rights of the first category of respondents have become past and closed transactions while those of the second category remain vested rights, we have opted to discuss and decide the matter on that basis for the sake of clarity.

23. It was argued on behalf of the petitioner before the High Court, and also before us, that to avail the benefit of the tax credit under Section 65B, the taxpayer companies must fulfill two conditions: first, they must purchase the plant and machinery; and second, they must install the purchased plant and machinery in an industrial undertaking set up in Pakistan. Only once both of these conditions are fulfilled by a taxpayer company does it acquire a vested right to avail the benefit of the tax credit. On the other hand, the stance of the respondents before the High Court, as well as before us, was that the only

condition to avail the benefit of the tax credit is the purchase of the plant and machinery for an industrial undertaking set up in Pakistan, as prescribed in subsection (1) of Section 65B, which grants such a benefit.

24. Relying on its earlier decision in *Gulshan Spinning*,³³ the High Court accepted the stance of the respondent and held that the right to claim the tax credit comes into existence with the purchase of the plant and machinery, while the installation is material only in respect of the tax year when the credit is to be claimed.³⁴

25. We find that the High Court's reliance on *Gulshan Spinning* is misplaced, and it erred in accepting the respondents' stance that the sole condition to avail the benefit of the tax credit under subsection (1) of Section 65B is the purchase of plant and machinery. The provisions of subsection (2) of Section 65B make it clear that subsection (1) is not to be read in isolation, but rather in conjunction with subsection (2). To clarify this point, the provisions of subsection (2), as they were before the 2019 amendments, are reproduced here:

(2) The provisions of subsection (1) shall apply if the plant and machinery is purchased and installed at any time between the first day of July, 2010, and the 30th day of June, 2021.

(Emphasis added)

The language of the above-cited provisions of subsection (2) could not be clearer and more explicit in expressing the legislative intent. It is hard to understand how these provisions could be interpreted differently from what they plainly state: "The provisions of subsection (1) shall apply if the plant and machinery is purchased and installed at any time between the first day of July, 2010, and the 30th day of June, 2021." The expression "purchased and installed" used in subsection (2) leaves little room for doubt that to avail the benefit of the tax credit provided in subsection (1), both the conditions of purchase and installation of the plant and machinery must be fulfilled. In fact and effect, subsection (2) operates like a proviso to subsection (1). As is well known, a proviso, in its classic sense, limits or qualifies what precedes it. Subsection (2) performs this very function by qualifying the application of the provisions of subsection (1), making them subject to the conditions of purchase and installation made between the first day of July 2010 and the 30th day of June 2021. The High Court itself read the provisions of subsection (2) as a proviso in the very first sentence of paragraph 2 of the impugned judgment, stating that "section 65B was inserted into the Ordinance [ITO] via the Finance Act 2010 and it conferred a tax credit of ten percent upon qualifying companies for investment, provided that the requisite investment and installation of the pertinent plant and machinery took place within a specified time."³⁵ However, in the latter part of the impugned judgment, the High Court overlooked this crucial aspect of subsection (2) and misplaced its reliance on *Gulshan Spinning*, where no provision similar to subsection (2) was under consideration.

26. As the High Court placed much reliance in the impugned judgment on *Gulshan Spinning*, we feel constrained to observe that in that case also, the High Court failed to appreciate the necessary implication of subsection (2) of Section 107 of the Income Tax Ordinance, 1979, which was similar to subsection (3) of Section 65B of the Income Tax Ordinance, 2001. To clarify this point, the provisions of both subsections are reproduced:

Section 107 of the Income Tax Ordinance, 1979

(2) The amount of credit admissible under this section shall be deducted from the tax payable by the assessee in respect of the income year in which the machinery or plant in the purchase of which the amount referred to in subsection (1) is invested is installed.

Section 65B of the Income Tax Ordinance, 2001

(3) The amount of credit admissible under this section shall be deducted from the tax payable by the taxpayer in respect of the tax year in which the plant or machinery in the purchase of which the amount referred to in subsection (1) is invested and [sic-is]³⁶ installed.

A plain reading of the above-cited provisions of subsection (2) of Section 107 of the Income Tax Ordinance, 1979, makes it evident that the amount of credit admissible under that section was to be deducted from the tax payable by the assessee (taxpayer) in the income year (tax year) in which the purchased machinery or plant was installed. The necessary implication of these provisions was that the amount of credit could neither be claimed nor deducted from the tax payable unless the purchased machinery or plant was installed. Only once

the assessee (taxpayer) had installed the machinery or plant, could the amount of credit be claimed by it and deducted by the assessing officer (income tax officer) from the tax payable in respect of the income year (tax year) in which the installment took place. If the purchased machinery or plant was not installed, the question of claiming and deducting the amount of credit from the tax payable did not arise. Therefore, the installation of the purchased machinery or plant was a necessary condition, along with the purchase, to avail the benefit of the credit allowed by subsection (1) of Section 107 of the Income Tax Ordinance, 1979. The same is the effect of the similar provisions of subsection (3) of Section 65B of the Income Tax Ordinance, 2001.

27. However, since Gulshan Spinning had held otherwise in 2005, the legislature---presumed to be aware of the interpretation of the law made by constitutional courts---provided this time the clear and explicit provisions of subsection (2) of Section 65B while inserting it into the Income Tax Ordinance, 2001, in 2010. This was done by the legislature to express its intent unequivocally, leaving no room for further interpretation. Unfortunately, in the impugned judgment, the High Court failed to appreciate this legislative move and did not give due effect to it, but rather stuck to the interpretation made in Gulshan Spinning.

28. The correct legal position, as held above, is that the provisions of subsection (1) of Section 65B are to be read in conjunction with subsection (2). When so read together, it becomes clear that to avail the benefit of the tax credit under Section 65B, taxpayer companies must fulfill two conditions: first, they have to purchase the plant and machinery; and second, they have to install the purchased plant and machinery in an industrial undertaking set up in Pakistan. Only when both of these conditions are fulfilled does a taxpayer company acquire a vested right to avail the benefit of the tax credit conferred by Section 65B.

29. The second category of taxpayer companies had purchased the plant and machinery before 1 July 2019, when the 2019 amendments came into force, but had not yet installed it. Therefore, they had fulfilled only one of the two required conditions. As a result, they had not yet acquired any vested right to avail the benefit of the tax credit conferred by Section 65B. Their right was inchoate and contingent upon fulfilling the second condition, i.e., installing the purchased plant and machinery in an industrial undertaking set up in Pakistan. As above expounded, a right vests when all the facts required by law to establish that right have occurred. In other words, when all the investitive facts necessary to create a right have occurred, the right is said to be "vested". A right remains inchoate and contingent when some, but not all, of the investitive facts have occurred. Therefore, we conclude and answer question (ii) accordingly: the second category of taxpayer companies has not acquired a vested right to avail the benefit of the tax credit conferred by Section 65B; thus, no question arises as to its being affected by the 2019 amendments.

30. We may observe in passing that the alteration of their position by the taxpayer companies through the fulfillment of one of the two conditions might have attracted the doctrine of promissory estoppel if the benefit of the tax credit had been extended and amended by an executive action.³⁷ However, in the present case, the benefit of the tax credit was conferred by legislative action, and the amendment thereto has also been made by legislative action. Therefore, the doctrine of promissory estoppel is of no avail to the taxpayer companies, as like the doctrine of vested rights it also does not operate against the legislature.³⁸

(iii) Whether in the case of the first category of taxpayer companies, the transaction of the tax credit benefit has become past and closed and the same is not affected by the 2019 amendments.

31. As for the first category of taxpayer companies, they have undoubtedly acquired a vested right to avail the benefit of the tax credit conferred by Section 65B. This is because they had fulfilled both of the required conditions by 1 July 2019, when the 2019 amendments came into force; they had both purchased and installed the plant and machinery by that date. The question, therefore, arises as to whether such right has become a past and closed transaction and the same is not affected by the 2019 amendments. If it is found that the right has not become a past and closed transaction but remains a vested right, then it will require determination whether such vested right is affected by the 2019 amendments.

32. In the impugned judgment, although the High Court did not explicitly hold that the right of the first category of taxpayer companies had become a past and closed transaction, it did mention, by referring to Gulshan Spinning, that "the tax credit crystallized upon making the relevant investment".³⁹ The word "crystallized" was perhaps first used by this Court in *Molasses Trading*⁴⁰ in the context of a retrospective law

that affected vested rights, to distinguish vested rights from past and closed transactions. In that case, the Court held that the retrospective amendment made to the Customs Act, 1869, by inserting Section 31A therein, though took away vested rights, it did not have the effect of reopening past and closed transactions where the liability of customs duty had "crystallized" upon the presentation of bills of entry, as there was no express provision to that effect in Section 31A. This term was later also used, in the same sense, in *Gulshan Spinning and Shahnawaz*⁴¹ to refer to those vested rights that move forward and become past and closed transactions. Therefore, as we understand, the High Court, by relying on *Gulshan Spinning*, treated the vested rights of the first category of taxpayer companies as having become past and closed transactions.

33. As the High Court decided this point in the impugned judgment by simply relying on *Gulshan Spinning*, we are constrained to examine the correctness of the decision made in *Gulshan Spinning* on this point as well.

34. In *Gulshan Spinning*, the High Court accepted the contention of the taxpayer companies and held that the right to claim a tax credit under Section 107 of the Income Tax Ordinance, 1979---which was similar to Section 65B of the ITO---accrued with the investment made in the purchase of plant and machinery and, at the same time, became a past and closed transaction. The High Court reasoned that the right to claim any allowance, deduction or exemption is crystallized and matured with finalization of assessment proceedings culminating into an assessment order, because anything in the nature of exemption, allowance or deduction forms part of the assessment order and thus, is an integral part of the assessment process. However, the tax credit, the High Court held, is not in the nature of an exemption, allowance or deduction for the purpose of computing income under the head of business or profession, and therefore, it is not part of the assessment process/ assessment order. To support its view that the tax credit is not part of the assessment process/assessment order, the High Court also cited the following extract from the instructions issued by the C.B.R. (now F.B.R.) via Circular No.13(ii)/IT-1/80, dated 27 March 1984:

(i) a separate claim can be filed by a tax payer within the specified period of two years.

(ii) a separate order under section 107 should be passed on the claim made by the assessee.

In light of the distinction between an exemption and a tax credit as explained by this Court in *H.M.*

Extraction,⁴² we have no cavil with the statement made in *Gulshan Spinning* that an exemption forms part of the assessment process, whereas a tax credit does not. However, this does not imply that a taxpayer company need do nothing to exercise its vested right to avail the benefit of a tax credit, nor that such vested right automatically matures (crystalizes) into a past and closed transaction. As is evident from the instructions of the FBR cited by the High Court in *Gulshan Spinning*, a taxpayer company having a vested right to avail the benefit of the tax credit must file a claim separate from its filing of income tax returns, and a separate order is to be passed on this claim. We understand that the vested right of a taxpayer company cannot remain in a state of uncertainty or be jeopardized by delays in passing an appropriate order on the claim by the public functionary-the income tax officer. Therefore, such vested right must be considered to have "crystallized" into a past and closed transaction upon filing of the claim by the taxpayer company, as held by this Court in *Molasses Trading* regarding the presentation of a bill of entry for exercising the vested right to avail an exemption in customs duty. However, the statement that the right to claim a tax credit accrues with the investment made in the purchase of plant and machinery and simultaneously matures into a past and closed transaction is not legally correct.

35. As above noted, a vested right becomes a past and closed transaction when such right is exercised at a specific occasion and under specific circumstances. It has also been clarified that since such specific occasions and circumstances may vary under different laws, it is determined on the basis of the peculiar facts and legal position of each case whether a vested right has turned into a past and closed transaction. In the peculiar facts and legal position of the present case, we hold that the vested right of a taxpayer company to avail the benefit of the tax credit conferred by Section 65B matures into a past and closed transaction upon the filing of the claim by the taxpayer company, either separately as per the above-cited instructions of the FBR, if such or similar instructions exist, or along with the income tax returns, as the case may be. In the present case, the second category of taxpayer companies had neither filed the claim separately, as per the above-cited FBR instructions, nor filed their income tax returns along with the claim by 1 July 2019, when the 2019

amendments came into force. Therefore, their vested right did not "crystallize" into a past and closed transaction. The High Court erred in the impugned judgment by treating their vested right as having "crystallized" into a past and closed transaction. Since the vested right of the second category of taxpayer companies did not become a past and closed transaction, the question of it being unaffected by the 2019 amendments does not arise. Question (iii) is answered accordingly.

36. However, that answer to question (iii) does not conclude the discussion on the status of the vested right of the first category of taxpayer companies. Rather, it necessitates determining of an ancillary point: whether such vested right is affected by the 2019 amendments. For ease of reference, the proviso added to subsection (1) of Section 65B by the 2019 amendments, which pertains to this point, is cited again here:

Provided that for the tax year 2019 the rate of credit shall be equal to five percent of the amount so invested:

Although it was argued before us that this proviso could be interpreted in a manner that would preserve the vested rights of the first category of taxpayer companies, we find it impossible to do so without distorting the language of the proviso. The language of the proviso clearly expresses the legislative intent to reduce the rate of the tax credit for the tax year 2019 from 10% to 5% of the amount invested. It is incomprehensible how anyone could reasonably interpret it to mean anything else. The proviso, by its explicit terms, affects the vested right of the first category of taxpayer companies to avail the benefit of the tax credit at the rate of 10% for the tax year 2019 on the amount invested in the purchase of plant and machinery. The point ancillary to the answer to question (iii) is decided accordingly.

37. Before parting with this portion of the judgment, we feel constrained to address another incidental point. A reading of the impugned judgment shows that the Division Bench of the High Court, which decided the present case, considered itself to be "absolutely" bound by the decision of an earlier bench of equal strength in *Gulshan Spinning* and referred to the case of *Multiline Associates*⁴³ to support this understanding. No doubt, the earlier decision of a bench of a High Court, or of this Court, on a question of law is binding on another bench of equal numeric strength when dealing with the same question, in the sense that the latter bench cannot decide the same question contrary to the first decision. However, the latter bench is not precluded from examining the correctness of the earlier decision or forming a different view. In such a case, the proper course of action is to

refer the matter to the Chief Justice of the High Court, or in the case of this Court to the Bench-Constitution Committee, with a request for the constitution of a larger bench to examine the correctness of the earlier decision and, if necessary, to reconsider and redetermine the question.⁴⁴ The Division Bench of the High Court that decided this case should, therefore, have appreciated the respective contentions of the parties with an open and objective judicial mind, without considering itself to be "absolutely" bound by the decision in *Gulshan Spinning*, which, on the two points discussed above,⁴⁵ has been found to have been incorrectly decided. For the sake of removing any ambiguity in future cases, we expressly disapprove of *Gulshan Spinning* on those two points.

(iv) Whether the 2019 amendments infringe upon the respondents' fundamental rights to conduct lawful business, to acquire and hold property and to equality before the law, as guaranteed by Articles 18, 23, 24 and 25 of the Constitution.

38. This is the last question involved in the case, and before embarking on its discussion, we find it appropriate to make some preliminary remarks pertaining to this question. In economic matters, most legislative and executive decisions are essentially empirical, based on experimentation or what might be called the "trial and error method".⁴⁶ "The problems of government"⁴⁷ are practical and may sometimes justify rough accommodations based on unscientific formulas. In complex economic matters, the best solutions are often not easily discernible; the wisdom of any choice may be debated or criticized, but mere errors of policy judgment are not subject to judicial review. Only clear and definite violations of fundamental rights or other constitutional provisions warrant judicial intervention. The legislative and executive branches of the State are entitled to make pragmatic adjustments

which may be called for by particular circumstances. Courts cannot strike down an economic policy decision taken by them merely because they feel that another policy decision would have been fairer, wiser, or more scientific or logical. It is for the legislature, not the courts, to balance the advantages and disadvantages of various economic concerns. Therefore, while examining the constitutionality of fiscal laws on the touchstone of fundamental rights, particularly the fundamental right to equality before the law, courts should exercise greater restraint and extend more deference to legislative judgment than they do with laws concerning civil and political rights.⁴⁸ The legislature must be afforded some "play in its joints"⁴⁹ because it is tasked with addressing complex economic problems that do not admit solutions through doctrinaire or rigid formulas.

39. While describing the constitutional position regarding the legislative powers of Parliament and Provincial Assemblies, we have observed above that since Article 8 of the Constitution imposes a restriction on the legislative powers of Parliament and Provincial Assemblies with respect to making any law that takes away or abridges the rights conferred by Articles 9 to 28, neither Parliament nor Provincial Assemblies can exercise their legislative powers in a manner prohibited by this Article. Neither prospective nor retrospective laws can be enacted to take away or abridge any of the fundamental rights guaranteed by Articles 9 to 28 of the Constitution or in contravention of any other provision of the Constitution. The Constitution's prohibitions and requirements apply equally to both prospective and retrospective laws.

40. In light of the above constitutional position, when we examine the proviso added to subsection (1) of Section 65B, we find it to be in violation of the prohibition against discrimination and the guarantee of equal treatment provided by the fundamental right enshrined in Article 25 of the Constitution. This proviso reduces the rate of the tax credit for the tax year 2019 from 10% to 5% of the amount invested, whereas for all other tax years from 2010 to 2018, taxpayer companies were granted a tax credit at the rate of 10% of the amount invested. As a result, the first category of taxpayer companies has been discriminated against and has not been afforded the equal treatment that was given to other taxpayer companies for the tax years 2010 to 2018.

41. We are fully cognizant of the constitutional position that Article 25 does not bar reasonable classification, provided it is based on intelligible differentia with a rational nexus to the object sought to be achieved. In the context of Article 25, courts generally afford relatively greater latitude to the State in matters of fiscal legislation. However, as held by this Court in *Tariq Mehmood*,⁵⁰ this latitude is not infinitely elastic and the fiscal legislation is not entirely beyond the scope of Article 25. Therefore, having carefully considered the impact of the proviso on the first category of taxpayer companies, we find that there are no intelligible differentiae distinguishing these taxpayer companies in respect of tax credit for the tax year 2019 from the other taxpayer companies that were granted a tax credit at the rate of 10% of the amount invested for the tax years 2010 to 2018. The differentiation created by the proviso lacks any rational nexus with the object sought to be achieved. Consequently, the proviso is clearly in violation of the constitutional prohibition contained in Article 8, read with Article 25 of the Constitution.

42. We clarify that we have examined Section 65B in its entirety as it stood on 1 July 2019, when the 2019 amendments came into force, treating it as a unified provision applicable to all taxpayer companies and all tax years from 2010 to 2019. We have not dissected Section 65B into before and after the 2019 amendments, as any amendment made to a law becomes an integral part of it. A law that, if enacted today, would be invalid due to the infringement of a fundamental right or any other constitutional provision cannot gain validity simply because its different parts were enacted at different times.

43. Moreover, we clarify that we are not inclined to examine the constitutionality of the proviso against the fundamental rights guaranteed by Articles 18, 23 and 24, because of the principle that "if it is not necessary to decide more, it is necessary not to decide more."⁵¹ Even otherwise, we have serious reservations about the relevance of the cases⁵² cited regarding the point of alleged infringement of the fundamental rights guaranteed by Articles 18, 23 and 24 to the present case involving the matter of an income tax credit, as those cases dealt with retrospective amendments in sales tax laws where the tax could not be recovered by the taxpayer (seller) from the purchasers of goods sold in the past, we leave this point to be addressed in some other appropriate case.

44. As for the second category of taxpayer companies, their case is distinguishable from those taxpayer companies that have both purchased and installed plant and machinery between 1 July 2010 and 30 June 2019. Their situation is not at par with that of the latter category of taxpayer companies, which forms a separate class for the purpose of availing the benefit of the tax credit granted by Section 65B. Therefore, the amendment made to subsection (2) of Section 65B, which reversed the expiry date of availing the benefit of the tax credit from 30 June 2021 to 30 June 2019, does not fall within the scope of the constitutional prohibition contained in Article 8 read with Article 25 of the Constitution. As for the issue of the alleged infringement of the fundamental rights of this category of taxpayer companies guaranteed by Articles 18, 23, and 24, the same does not even arise for consideration, as they did not acquire any vested right regarding the benefit of the tax credit that might have become their property.

45. In view of the above findings, we hold and answer question (iv) as follows: (i) the proviso added to subsection (1) of Section 65B through the 2019 amendments infringes the fundamental right of the first category of taxpayer companies to protection against discrimination and the guarantee of equal treatment under Article 25 of the Constitution, and is therefore liable to be struck down; and (ii) the change made to subsection (2) of Section 65B through the 2019 amendments does not infringe any of the fundamental rights of the second category of taxpayer companies guaranteed by Articles 18, 23, 24 and 25 of the Constitution.

Relief

46. Given the above answers to the four questions, the present petitions are converted into appeals, which are partly allowed: the impugned order and judgment of the High Court are set aside to the extent of the interpretation of the amendment made to subsection (2) of Section 65B and are upheld to the extent of striking down the proviso added to subsection (1) of Section 65B of the ITO by the 2019 amendments, but for the reasons recorded in this judgment and the answer to question (iv). As the appeals have been partly allowed, the parties shall bear their own costs.

MWA/C-19/SC

Order accordingly.