

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION, DHAKA
(STATUTORY ORIGINAL JURISDICTION)

INCOME TAX WRIT APPLICATION NO, 11947 OF 2014

IN THE MATTER OF

Alhaj Nurun Newaz Selim

Wazico Tower (2nd Floor),

263, Jubilee Road, Chittagong.

---Applicant

VERSUS

The Commissioner of Taxes,

Large Taxpayer Unit (LTU), Dhaka.

---Respondent

THROUGH:

Asstt./Deputy Attorney General

violation of section 16A of the Ordinance as well. It is pertinent to mention that, while considering questions like equality before law and equal protection of law, the legislature has to consider and keep in mind the realities of life persistent in the country.

24. That with regard to the statement made in paragraph 21 (V) as ground of the writ petition, the respondent begs to state, the Parliament has duly considered the vital point of natural justice within the purview of Article 27 of the Constitution. The impugned section 57 of the Act, in no way, barred the writ petitioner from "*protection of law*" as guaranteed under the Article 27 of the Constitution.

25. That with regard to the statement made in paragraph 21 (VI) as ground of the writ petition, the respondent begs to state, the petitioner appears to have completely misconceived and misconstrued of the Article 83 of the Constitution and section 16 of the Ordinance. The impugned section is fully consistent with other sections of the Ordinance. It is also stated that income is levied on income; surcharge is levied on net wealth. Net wealth, not necessarily, always be the sum total of previous year's income. The relevant point here to light on is, possession of net wealth as on last day of financial year by the assessee.

18. That with regard to the statement made in paragraph 19 of the writ petition, the respondent begs to state that, it contains only factual matter about returns of the assessee appellant of 2013-2014 and 2014-2015 and being their subjudic status, needs no comment.
19. That with regard to the statement made in paragraph 20 of the writ petition, the respondent begs to state that, being a factual statement, it does not warrant any answer.
20. That with regard to the statement made in paragraph 21(I) as ground of the writ petition. the respondent begs to state that, the legislation made under section 57 of the Finance Act 2014 providing for 25% surcharge on the tax payable by the petitioner having net worth over 30(thirty) crore is not a *tax on tax* and it is very much constitutional with every legal base and is not liable to be declared ultra vires.
21. That with regard to the statement made in paragraph 21 (II) as ground of the writ petition, the respondent begs to state that, there is no discrimination between the provision for charging section 16A and section 57 (read with schedule 2) of Finance Act 2014. It is passed in the Parliament with every legal base and is not liable to be declared ultra vires.
22. That with regard to the statement made in paragraph 21 (III) as ground of the writ petition, the respondent begs to state that the

16. That with regard to the statement made in paragraph 17 of the writ petition, the respondent begs to state that, this piece of legislation has no way effected the tax payer appellant. He is only required to pay tax on his net wealth every year being a person more wealthy in the society. It is pertinent to mention that, to create a system of taxation, a nation must make choice regarding the distribution of the tax burden-who will pay the tax and how much they will pay.(Tax, wikipedia). In many countries this type of tax is termed as property tax, wealth (net worth) tax, and they are usually levied on recurrent basis (e.g.yearly), where the base of tax is net worth of property possessed by the person being taxed. The respondent strongly states that being a person wealthier in the society, the assessee appellant should bear some responsibility.

17. That with regard to the statement made in paragraph 18 of the writ petition, the respondent begs to state that, the assessee appellant has misunderstood the impugned section 57 of the Finance Act 2014. It is neither a punitive measure nor *tax on tax* and not it is an unauthorized legislation. The Parliament duly and legally passed this piece of legislation. In this context it is submitted that in the case of *Federation of hotel and restaurant Association of India*, the Supreme Court observed:

Article 27: Equality before law

All citizens are equal before law and are entitled to equal protection of law.

Article 31: Right to protection of law

To enjoy the protection of the law, and to be treated in accordance with law, and only in accordance with law, is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Bangladesh, and in particular no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law.

Section 57 of Finance Act 2014 is duly passed by the Parliament under the power and author vested upon it by the Article 65 (1) of the Constitution and in no way violates Article 26(12), 27, 31, or of any other Article of the Constitution.

14. That with regard to the statement made in paragraph 15 of the writ petition the respondent begs to state that, it contains only some Articles of the Constitution. In this regard the respondent more strongly states that, classification is important in order to attain the objective of a policy or a law. In another decision, the Supreme Court of India observed that **the state, in the exercise of its governmental power, has necessity to make laws operating**

12. That with regard to statement made in paragraph 13 of the writ petition, the respondent begs to state that, section 16 of the Ordinance is charging section, whereas the impugned section 16A deals with surcharge levied on income tax in respect of net wealth shown by the assessee. The Parliament, in its wisdom and particularly for greater interest of people, considered the principle of equity and progressivity with a view to ensuring equitable distribution of resource and to reduce economic disparity, and enacted the provision of surcharge on income tax. Income tax is levied on income of a person. Surcharge is levied on that income tax regarding the asset of that person. That the respondent more strongly states that, by enactment of section 57 of the said Act, taxed income is not taxed again. In this context, we must keep in mind that, surcharge is levied in terms of the stock of net wealth, i.e. tax on the value of gross asset minus liabilities. In this backdrop it is humbly stated that, section 16 and section 16A are separate sections and neither they are complimentary, nor contradictory. Again, the mention of reference case in the writ petition is of 1969 and there is no similarity between the impugned writ petition and the cited case reference.

To understand the concept of surcharge it is pertinent to mention here that, applying surcharge on income tax regarding net wealth, in principle, raise additional revenues, while having a significant redistributive effect. This is because, capital income is

Parliament in the manner of Annual Financial Statement. The Executive Branch also suggests legislative measures that are necessary for achieving the revenue target. The Legislature, empowered by the authority vested upon it by the Constitution under Article 65 makes and amends fiscal laws considering the suggestions of the Executive Branch so that the desired amount revenue can be collected to run the affairs of the Government.

C) Different rates for different groups, exemptions, surcharge, excess profit

It is submitted that fiscal laws all over the world support different types of taxes, different sources of taxation, different tax rates for different groups of taxpayers, special tax treatment for a number of classes, additional tax burden on selected classes of taxpayers etc. Fiscal laws all over the world also provide for varied manners and procedures of taxation for different taxpayers so that tax system can remain effective and can beat the attempt of evasion. All these differing treatments are fiscal necessity; they are done very much in line with the globally accepted principles of taxation.

Fiscal laws incorporate many anti-avoidance provisions such as Minimum Alternative Tax, Final Withholding Tax, Transfer Pricing and Thin Capitalization Wealth tax, Property Tax.

how to collect tax, or who shall be given tax break. There are a number of universal standards or norms and guidelines known as principles or tenets of taxation) that for tax design that can address these vital issues. The Executive and the Legislature, in designing the tax system and in formulating tax legislation, follow these principles.

In India Surcharge on Income Tax was introduced in Finance Act 2013 and an observation made by the Honorable Finance Minister of India before the Parliament in this regard was: “Fiscal consolidation cannot be effected only by cutting expenditure . Wherever possible, revenues must also be augmented. When I need to raise resources, who can I go to except those who are relatively well placed in society?”

(Underlined by the appellant.)

In another example, written evidence submitted by the Institute of Chartered Accountants in England and Wales to the Parliament of the United Kingdom with regard to the Principles of a better Tax Policy was follows:

Key principles of a better tax system

- a. *A key principle underlying tax policy is that it should be certain...*
- b. *The tax system needs to be designed to be as **simple** as possible while achieving its various objectives. It also needs to be **fair and reasonable**....*

Revenue and Expenditure 2014-15 Fiscal Year

Total Expenditure	2,22,491	100%
Total Revenue	1,67,459	75%
Deficit	55,032	25%

The copy of relevant pages of the Budget Speech 2014-15 is hereto annexed and marked as ANNEXURE –1.

It is evident from the budget structure that Bangladesh has a deficit budget, meaning that the revenue of the country can only cover the 75% of the expenditure, and the Government needs to depend on debt to run the affairs of the country. This testifies that the collection of tax is still lower than expected in Bangladesh.

Break-up of Tax Revenue

Head	Amount (Crore taka)	%
NBR Tax Revenue	1,36,090	81%
Non-NBR Tax Revenue	5,129	3%
Non-Tax Revenue	26,240	16%
Total Revenue	1,67,459	100%

It is evident from the above information that tax is the most vital source of the state revenue. The Executive and the Legislative Branch needs to ensure that proper tax system has been ensured to realize gather sufficient amount of tax revenue.

a) Why tax

It is submitted that the Constitution of Bangladesh has adopted the universally accepted doctrine of three separate branches of Government: Executive, Legislative and Judiciary. It is the Constitutional duty of the Executive to run the daily affairs of the state including maintenance of internal security, protection against the external threat and facilitate socio-economic activities for progress of the society.

In order to run the daily affairs of the state including maintenance of internal security, protection against the external threat and facilitate socio-economic activities for progress of the society, and in order to ensure economic development, the Executive Branch of the Government prepared long term goals of a society as envisioned in socio-economic policies namely fiscal policy, monetary policy, investment policy, import and export policy, health policy, education policy etc. In order to materialize the policies, The Executive Branch suggests legislative changes that are necessary for achieving the objectives envisioned in the policies. The Legislative Branch, after due consideration enacts the legislations so that the Government can function effectively.

In order to run the country, the Executive Branch also prepares an estimate of annual revenue and expenditure of the

1. That I, the Deputy Commissioner of Taxes, Large Taxpayers Unit, Dhaka, am well acquainted with the facts and circumstances of the case and competent to swear this affidavit on behalf of respondent as authorized by him in this behalf.
2. That I have gone through the copy of the writ petition No.11947 of 2014 and understood the contents of the same. I have been advised to controvert such of the allegations contained therein as are material for the purpose of the disposal of the application and whatever is not specifically submitted herein, shall be deemed to have been denied by me.
3. That with regard to the statements made in paragraph 1, 2 and 3 the respondent begs to state that, they are of general in nature and hence need no answer.
4. That with regard to the statements made in paragraph 4 and 5 the respondent begs to state that, they are only about tax status and heads of income of the assessee appellant and hence need no answer.
5. That with regard to the statement made in paragraph 6, the respondent begs to state that, the assessee respondent, being an individual assessee, is liable to pay surcharge at the rate of 25% for owing net wealth over 30(thirty) crore taka as on 30/06/2014 and