

HIGH COURT OF AZAD JAMMU & KASHMIR

Writ petition No. 2338/2025.

Date of Institution 15.09.2025.

Date of decision 10.11.2025.

1. Imran Ashraf S/o Muhammad Ashraf (Al-Makkah Traders) Dhamni Sharqi, Tehsil Rawalakot District Poonch.
2. Ayaz Ashraf S/o Muhammad Ashraf (Distribution Tapal Tea) Chahar Tehsil Rawalakot, District Poonch.
3. Ishtiaq Hussian Kiyani S/o Jannat Hussian Kiyani (wholesale) Pak Gali, Tehsil Rawalakot District Poonch.
4. Qamar Rafique S/o Muhammad Rafique (Distributor Tobacco PTC) Bismillah Chowk Rawalakot, District Poonch.
5. Zahid Shafique S/o Muhammad Shafique (wholesale) bypass road near Grammar School, Rawalakot District Poonch.
6. Balish Hussain Kiyani S/o Ishtiaq Hussain Kiyani (Nestle Products) Pak Gali, Tehsil Rawalakot, District Poonch.

....Petitioners

Versus

1. Government of Azad Jammu and Kashmir through its Chief Secretary having his office at Muzaffarabad.
2. The Finance Secretary, New Secretariat Lower Chatter Muzaffarabad.
3. The Central Board of Revenue through its Chairman.
4. The Chairman Central Board of Revenue, Muzaffarabad.
5. The Secretary Central Board of Revenue, Muzaffarabad.
6. The Commissioner IR (North Zone) Inland Revenue, Muzaffarabad.
7. The Additional Commissioner Inland Revenue, Circle 04, Rawalakot.
8. The Deputy Commissioner Inland Revenue, Circle 04, Rawalakot.

.... Respondents

WRIT PETITION

Before:- **Justice Syed Shahid Bahar, J.**

PRESENT:

Sardar Tahir Anwar, Advocate for the petitioners.

Mrs. Bilqees Rasheed Minhas, Advocate for the respondents.

JUDGMENT:

The above titled writ petition has been filed under Article 44 of the Azad Jammu and Kashmir Interim Constitution, 1974, whereby following relief has been solicited by the petitioner:-

“It is, therefore, most humbly and graciously prayed as under:-

1. That the Section 236H in Income Tax Ordinance, 2001 may kindly be declared void as ultra-virus and contrary to the constitution.
2. The charging section are already exist in the Income Tax Ordinance, 2001 in form of section 153 & 236G of the said statute, may kindly be considered as legal and according to spirit of constitution and amendment in shape of section 236H be declared void ab-initio.
3. That concerned respondents may kindly be given a direction to refrain from implementing the impugned Section 236-H in Income Tax Ordinance, 2001.

Any other relief which this Honorable Court may deem fit and proper may also be awarded to the petitioners.”

2. Summarized facts of the case as per petitioners are that petitioners are the 1st Class State Subjects of State of Azad Jammu and Kashmir, hails from District Poonch, registered tax payers, running business of Distributors, Wholesalers and the Suppliers of the goods purchased from different companies/Brands and having their registered offices in Rawalakot and Hajira Azad Kashmir. Petitioners contended that they have been intimated through notifications served by the Inland Revenue Department that all the distributors and wholesalers have now been declared as withholding agents under newly inserted section 236H of the Income Tax Ordinance, 2001 from July 01, 2025 by the adaptation of Finance Act, 2024 of Pakistan., hence petitioners are bound lawfully to withhold the tax of retailers at the time of supply of

goods as per specified rates; furthermore, they are also bound to submit a quarterly statement consisting detail of tax withheld and deposited during relevant quarter. Petitioners averred that impugned levy has been introduced through section 236H of Income Tax Ordinance, 2001. Petitioners alleged that the impugned tax is over and above than advance tax which has already been deducted by the manufacturer at the time of supply of the goods to distributors, wholesalers and suppliers, hence, the tax imposed through amendment under section 236-H is replication of charging section 153 & 236-G of the Income Tax Ordinance, 2001, on one same transaction which comes under ambit of additional, extra and double taxation. Petitioners vehemently contended that the impugned levy under section 236H of the Income Tax Ordinance, 2001 is an amount of tax over and above than tax deduced at source at earlier stages by the manufacturers under section 153 & 236G of the Income Tax Ordinance, 2001, thus, this is repetition of section 153 and 236G of the Income Tax ordinance, 2001 which comes under ambit of additional and double taxation is highly unlawful and against the fundamental rights of peoples of State. Petitioners prayed that the Section 236-H in Income Tax Ordinance, 2001 may be declared void as ultra vires and contrary to the Constitution.

3. Written statement have been filed on behalf of the respondents wherein the claim of the petitioners have been refuted and further contended that the burden of advance tax collected under section 236-H falls exactly upon retailers not on wholesalers and

distributors, while instant writ petition filed by the distributors and wholesalers is liable to be dismissed solely on this ground. Respondents in reply of writ petition contended that the tax collection u/s 236H is not a double taxation on the ground that tax under section 236-G is collected from the wholesalers/ Distributors/ Dealers, whereas, under section 236-H, the tax is to be collected from the retailers. They averred that it is the domain of the legislature to impose taxes for the purpose of generation of revenues required to defray the cost of governance. Respondents contended that the petitioners are not aggrieved person, thus, the petition at hand may be dismissed.

4. Pro and contra arguments heard. Record appended with the petition as well as law on the subject has also been perused.

5. Claim of the petitioners is that the impugned section 236-H of Income Tax Ordinance, 2001 is ultra vires and against the spirit of the Constitution, hence same may be declared void and be set aside. Petitioner alleged that charging section are already exist in the Income Tax Ordinance, 2001 in form of section 153 & 236-G of the said Statute. Petitioners also alleged that the concerned respondents may kindly be given a direction to refrain from implementing the impugned section 236-H in Income Tax Ordinance, 2001. It is necessary to reproduce section 236-H as infra:

236-H. Advance tax on sales to retailers.- (1) Every manufacturer, distributor, dealer, wholesaler or commercial importer of pharmaceuticals, poultry and animal feed, edible oil and ghee, auto-parts, tyres, varnishes, chemicals, cosmetics, IT equipment.] electronics, sugar, cement, iron and

steel products, [] motorcycles, pesticides, cigarettes, glass, textile, beverages, paint or foam sector, at the time of sale to retailers [, and every distributor or dealer to another wholesaler in respect of the said sectors], shall collect advance tax at the rate specified in Division XV of Part IV of the First Schedule, from the aforesaid person to whom such sales have been made.

(2) Credit for the tax collected under sub-section (1) shall be allowed in computing the tax due by retailer on the taxable income for the tax year in which the tax was collected.].

6. It is oozing from the bare perusal of the supra section that tax palpably is collectible from retailers, while the petitioners are distributors/wholesalers, thus in this sense it can safely be held that wholesalers and distributors merely act as withholding tax agents when they make sales to retailers, consequent of which burden of advance tax collected under section 236-H rests upon retailers.

7. As far as the contention of the learned counsel for the petitioners is that the section 236H is the repetition of sections 153 and 236G of Income Tax Ordinance, 2001 is concerned. In this regard, it may be mentioned here that although all related to withholding and advance taxes, but they cover different types of transactions and have different applicability. The Section 236G is related to the advance tax on sales made to distributors, dealers and wholesalers and section 236H deals with the advance tax on sales to retailers. The whole idea behind the scheme was build up a database unregistered persons and then use this information for broadening of tax base. Section 153 is a tax on payments for goods and services, while sections 236G and 236H are

taxes on sales of specific goods. It is also mentioned here that all the withholding taxes/advance taxes (sections 148 to 156 and sections 231 to 236) under Income Tax Ordinance, are being withheld/collected through the persons other than Inland Revenue Department since decades, thus, the Distributors/Wholesalers are not the sole withholding tax agents. Tax u/s 236 is a tax on income of a retailer and same cannot be shifted to consumers. In this view of the matter, the objection raised by the petitioners is not considerable and is hereby repelled.

8. It may be mentioned here that it is the prerogative of the legislature to impose tax under the Interim Constitution of AJK. It is the domain of the legislature to impose taxes for the purpose of generation of revenues required to defray the cost of governance; subject to the roadmap of the Constitution.

9. Modus operandi of tax deduction is prerogative of the legislature to device the mechanism for the Collection of taxes.

10. Stance of levying dual/double taxation is seemingly misconceived, thus repelled.

11. **Tax collectable under section 153, 236G and 236H is to be borne by suppliers, distributors and retailers respectively against the income separately. The tax chargeable under section 236H is nominal which merely serve to document the economy in view of contribution in DGP i.e. 18%.**

12. Trite that presumption is always there in favour of the constitutionality of enactment in case of challenge being made to it, however another principle qua presumption regarding judging the statute that there should have been no classification at all (excepting reasonable classification). No eventuality arising from the case to take contra presumption, thus, I presume in favour of the Constitutionality of the law impugned. (Underlining is mine)

13. In case of revenue relating laws, if they are questioned and attacked and 2 equal possible interpretations can be possible one favouring the revenue is to be adopted.¹

14. The petitioner has failed to point out any illegality or irregularity on the part of the respondents. Writ can be issued where any violation of law and rules is pointed out but no such eventuality has been found in this case. Petitioner has failed to make out his case for interference, thus, instant petition is liable to be dismissed.

15. Crux of the above discussion is that, instant petition having without any substance stands dismissed.

File shall be kept in archive.

Muzaffarabad,
10.11.2025.*

JUDGE

Note: Judgment is written and duly signed. Office is directed to transmit this file to Circuit Rawalakot, forthwith. Deputy Registrar Circuit Rawalakot is directed to announce the judgment in presence of the learned counsel for the parties.

JUDGE

Approved for reporting

JUDGE

¹- 2000 PTD 2959.