

JUDGMENT SHEET
LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Writ Petition No.58683 of 2022

*Service Global Footwear Limited V/S Federation of Pakistan and others
and another*

JUDGMENT

Dates of hearing	08.03.2023, 09.03.2023, 16.03.2023, 20.03.2023, 21.03.2023, 22.03.2023, 29.03.2023, 30.03.2023, 31.03.2023, 03.04.2023, 04.04.2023, 05.04.2023, 06.04.2023, 07.04.2023, 10.04.2023, 11.04.2023 and 12.04.2023
Petitioner(s) by	M/s. Salman Akram Raja, ASC, Malik Ahsan Mehmood, Arslan Riaz and Barrister Raja Hamza Anwar, Advocates in WPs No.58672, 64994, 67221, 65025 of 2023. Mr. Mansoor Usman Awan, ASC, Haris Irfan and Hamza Shehram Sarwar, Advocates in WP No.12761, 58689, 59245, 59251, 59911 and 12768 of 2023. Barrister Haroon Dugal, ASC with Subhe Nasib, Advocate in WP No.75277 of 2022. Zoe K. Khan, Advocate in WP No.75528 of 2022. M/s. Shazib Masud, ASC, M. Asad Buttar, ASC and Jawad Jamil Mailk, Advocate in WP No.56758, 83260 and 59133 of 2023. Dr. Mazhar Ilahi, Advocate with Barrister Asfandyar Khan Tareen, Arslan Saleem Chaudhry and M. Siddique Butt, Advocates in WPs No.567, 829 and 1043 of 2023. M/s. Muhammad Shahbaz Butt, ASC with Khurram Shahbaz Butt, Muhammad Hassan Dogar, Advocates in WPs. No.403, 530, 2452, 4359, 5291, 11364, 11635, 11646, 13559, 13615, 20124, 83497, 67867, 67979, 68023, 68017, 74076, 78120, 79612, 82816 of 2023, 83497 and 83301, 83126, 83311, 5297, 5299, 5347, 83320, 83323 of 2022 and 2023.

	<p>M/s. Abdul Waheed Habib, Mirza Mubashar Baig and Jawad Ahmad, Advocates in WP No.404 of 2023 and 83485, 83486 of 2022.</p> <p>M/s. Munawar ul Salam, ASC, Muhammad Shoaib Rashid, ASC and Hassan Pervaiz, Advocate in WPs No.60340 and 83294 of 2022.</p> <p>Mr. Adil Umar Bandial and Sajjad Ali, Advocates in WP No.82429 of 2022.</p> <p>Scheherezade Shaharyar, Advocate in WP No.78882 of 2022.</p> <p>M/s. Khalil-ur-Rehman, Saad Ullah and Azam Jan Muhammad, Advocates in WPs No.93, 8245, 323, 10273, 571, 14746, 17747, 83231, 13464, 83098, 83384, 83484, 83473, 930, 6960, 2359 and 23807 of 2023</p> <p>Muhammad Nauman Yahya and Shakeel Ahmad Basra, Advocates in WP No.108 and 1211 of 2023</p> <p>Bashir Ahmad Khalid and M.A. Rizwan Kamboh, Advocates in WPs No.112, 379, 3423 of 2023 and 81874, 82187, 82192, 82187, 81884, 82192, 82187, 82788, 82969, 83482, 83371, 82805 of 2022</p> <p>Mr. Jahangir Ahmad, Advocate in WPs No.163/23 and 83400 of 2022.</p> <p>M/s. Nadir Ali Sherazi, Barrister M. Abubakar and Muhammad Usman, Advocates in WP No.200, 312, 627, 1998, 2531, 5550, 6347, 9987, 20606 of 2023 and 82897, 82899, 82905, 83321, 83293, 82908, 82910, 66947, 82917, 83417, 83418, 83019, 83023, 83025 of 2022</p> <p>M/s Faisal Rasheed Ghouri and Omar Iqbal Khawaja, Advocates in WPs. No.206, 518, 3455, 2483, 9824, 9825 of 2023 and 67998, 83335, 66678, 68018, 66716, 66947, 67096, 83665, 83667, 83668 of 2022.</p> <p>Mr. Mustafa Kamal, Advocate in WPs No.250, 1339, 1837, 2415, 3397, 4958, 5913, 6645, 12858, 13416, 14899 of 2023 and 60348, 64237, 66560, 79617, 80573, 82706, 82905, 83302, 81930, 82935, 83106, 83133, 83322, 83331, 83413, 83446, 83571 of 2022.</p> <p>Mr. Zia Haidar Rizvi and Zahid Imran Gondal, Advocates in WPs No.304 of 2023 and 83590, 83610.</p>
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	<p>Mr. Muhammad Zulqarnain, Advocate in W.Ps. No.436, 83503 and 83505 of 2023.</p> <p>M/s. Muhamad Asif Rana and Amir Khan, Advocates</p> <p>Mr. H. M. Majid Siddiqi, Advocate in W.Ps. No.497 and 1989 of 2023.</p> <p>Mr. Muhammad Faisal Hafeez, Advocate in WP No.556 of 2023.</p> <p>M/s. Ahmad Yar Khan and Hashim Aslam Butt, Advocates in W.Ps. No.557, 1999, 83392, 83410, 83433 of 2023.</p> <p>S.M. Raheel, Advocate in WP No.577 of 2023.</p> <p>M/s. Mudassar Shujauddin and Shahid Pervez Jami, Advocates in W.P. No.653, 655, 2345, 4736, 82430, 82749, 82769, 82980, 83154, 83156, 83477 83480, 2251, 83507, 83508, 83349, 83476, 83510, 83514 of 2023.</p> <p>M/s. Usman Javaid Qazi, Muhammad Waseem and Javed Iqbal Qazi, Advocates in WPs. No.820, 3237 and 3302 of 2023.</p> <p>M/s. Muhammad Zafar Iqbal Mian, Rana Muhammad Ishaq M. Rashid Tobassam and Mar Shoakat Hayat, Advocates in W.Ps. No.990 and 83166 of 2023.</p> <p>M/s. Muhammad Ashraf Chaudhry and Jamil Akhtar Baig, Advocates in WP No.1012 of 2023.</p> <p>Mr. Basharat Ali Awan, Advocate in WPs. No.1137 and 2040 of 2023.</p> <p>Mr. Muhammad Humzah, Advocate in WP 1195 of 2023.</p> <p>M/s. Babar Murtaza Khan, Sajjad Ali Chaudhry and Mian Muzaffar Hussain, Advocates in WP No.1285 of 2023.</p> <p>M/s. Ch. Qamar-uz-Zaman, M. Waqar Akram, Muhammad Khalid, Rai Inam Qadir, Arif Munir, Zeba Munir, Ali Raza Cheema and Muhammad Bilal, Advocates in WPs No.1404, 1409, 83624, 7096 and 1404 of 2023.</p> <p>Mr. Allah Nawaz Nasir, Advocate in WP No.1851 of 2023.</p> <p>Mr. Waqar Hasan, Advocate in WP No.2067 and 2251 of 2023.</p> <p>M/s. Muhammad Naeem and Muhammad Aslam Sheikh, Advocates in WP No.90, 2362, 5545, 5576 of 2023.</p>
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	<p>Ch. Anwaar ul Haq Arif, and Shahnawaz, Advocates in WP No.76770 and 2399 of 2023.</p> <p>Rai Amer Ijaz Kharal, Advocate in WP No.3434 and 2403 of 2023.</p> <p>M/s. Amir Fahim Chaudhry, Abbas Ali Awan, Zaheer Ahmad and Abrar Hussain, Advocates in WP No.2324, 14472, 15259 of 2023.</p> <p>M/s. Muhammad Amjal Khan, Khawaja Riaz Hussain, Babar Zaman, Omer Wahab, Rana Usman Habib Khan, Muhammad Ahsan Nawaz and Noureen Fouzia, Advocates in WPs No.2429, 5427, 12198, 13955, 14272, 83419, 2630 of 2023.</p> <p>M/s. Muhammad Naeem Munawar and Farhan Ahmed Jan, Advocates in WP No.2636, 7192 and 2639 of 2023.</p> <p>Syed Saif-ur-Rehman Gillani and Asif Hayat Khattak, Advocates in WP No.2715 of 2023.</p> <p>M/s. Muhammad Mohsin Virk, Arfan Ahmad Chattha, Syed Tanzeel Haider, Hamza Habib Shaikh, Ch. Shoaib Ilyas, Tahir Shabbir, Waleed Akbar Chattha and Hassan Irtaza Tarar, Advocates in WPs No.2726, 81772, 5832 of 2023.</p> <p>Syed Najaf Hussain Shah, Advocate in WP No.3261, 8371, 7868, 7869, 7872, 7874, 8371 of 2023.</p> <p>M/s. Ahsan Ahmed Munir, Ghias Ahmad and Ramsha Shahid, Advocates in WP No.3431 of 2023.</p> <p>Rana Muhammad Afzal and Matie-ur-Rehman, Advocates in WPs No.3442, 83358, 83396, 83422, 83316, 83298, 83223, 83356 of 2023,</p> <p>M/s. Zeeshan Asif and Rizwan Anwar Baig, Advocates in WP No.3704, 3707 3746, 3750 of 2023.</p> <p>M/s. Hassan Ali, Waqqas Ahmad Mir, Ahmad Hassan, Momna Taufeeq, Saad Mazhar and Hamza Hayat, Advocates of 83141 2022 and 3743 of 2023.</p> <p>Mr. Zahid Imran Gondal, Advocate in WP No.4119 of 2023.</p> <p>M/s. Mahmood Ahmad, Mehmood Arif and Asmar Tariq, Advocates in WP No.4198 and 5803 of 2023.</p>
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	<p>M/s. Shafaqat Ali, Hassan Maqsood Ahmad Auila, Waris Nishaber Ali Cheema and Muhammad Idrees Aslam Chauhan, Advocates in WPs No.4615, 9493, 18117, 4839, 5297, 5299, 5347 of 2023.</p> <p>Sardar Abdul Majeed Dogar, Syed Qasim Askari and Sardar M. Arslan Raza Dogar, Advocates in WPs No.4659 and 8111 of 2023.</p> <p>Mr. Farhan Ahmed Jan, Advocate in WP No.5454 of 2023.</p> <p>M/s. M. Zohaib Ali Sidhu, Syed Ali Tarab, Ali Aqib Shah and Usman Latif, Advocates in WP No.5916 of 2023.</p> <p>Mr. Zahid Ateeq Choudhary, Advocate in WP No.6293 of 2023.</p> <p>Mr. Fahad Majeed Rathor, Advocate in WP No.6300 of 2023.</p> <p>M/s. Javed Farooq, Usman Khalil, Shahzaib ul Hassan Chattha, Ali Ijaz Shah and Tauqeer Ahmad Ranjha, Advocates in WPs No.6549 and 6560 of 2023.</p> <p>M/s. Mahmood Ahmad, Shahid Rasool and Saad Asif, Advocates in WP No.6708 of 2023.</p> <p>Mr. Zahid Ateeq Choudhry, Advocate in WP No.6925 of 2023.</p> <p>M/s. Waseem Ahmad Malik, Mahmood Ahmad, Mehmood Arif and Asmar Tariq, Advocates in WP No.9221, 83548, 83549, 75893 of 2023.</p> <p>Mr. Zaheer-ud-Din Babar, Advocate in WP No.11525 of 2023.</p> <p>M/s. Muhammad Younas Khalid and Umer Farooq, Advocates in WP No.12485 of 2023.</p> <p>Syed Zeeshan Ali and Syed Muhammad Baqir Ali, Advocates in WP No.12800 of 2023.</p> <p>M/s. Saad Nusrullah, and Irtiza Shoukat, Advocates in WP No.13276 of 2023.</p> <p>Mirza Mubasher Baig, Advocate in WP No.15958 of 2023.</p> <p>M/s. Hassan Kamran Bashir, Sikandar Ali and Asim Bin Majeed, Advocates in WP No.13154, 16149, 59809, 78738 and 59809 of 2023.</p> <p>Mr. Akmal Inayat Butt, Advocate in WP No.18716 of 2023.</p>
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	<p>M/s. Shehzad A. Elahi, Mussadiq Islam, Salman Zaheer Khan and Ch. Muhammad Ali, Advocates in WPs No.60005 of 2022, 60425, 81376, 81380, 81384, 81390, 68129 of 2023.</p> <p>Malik Faiz Rasool Rajwana, ASC, Barrister Malik Kashif Rajwana, ASC and Malik Asif Rajwana, Advocate in WP No.64130 of 2022.</p> <p>Sheikh Anwar-ul-Haq, Sheikh Naveed Anwaar and Sajjid Ali Baloch, Advocates in WP No.65256 of 2022.</p> <p>Mr. Muhammad Asif, Advocate in WP No.65917 of 2022.</p> <p>M/s Naved A. Andrabi, ASC and Khurram Saleem, Advocate in WP No.66055, 82705, 67781 of 2022.</p> <p>M/s. Ahsan Ahmed Munir, Ghiaze Ahmed and Ramsha Shahid, Advocates in WP No.66883 and 66898 of 2022.</p> <p>Dr. Ilyas Zafar, ASC with Syed Nasir Ali Gillani, Advocates in WP No.67937 of 2022.</p> <p>M/s. Hamad-ul-Hassan Hanjra, Muhammad Nasir Khan and Muhammad Awais, Advocates in WP No.74210 of 2022.</p> <p>Sh. Aqeel Ahmad, Advocate in WPs No. 83411, 83412, 75186 and 83424 of 2022.</p> <p>M/s. Sultan Haider Ali Malik, Usman Khalil, Shahzaib ul Hassan Chattha, Ali Ijaz Shah and Tauqeer Ahmad Ranjha, Advocates in WPs No.75811 and 75861 of 2022.</p> <p>Mr. A.W. Chaddha, ASC with Jahanzaib Ahmad and Raja Ali Feroz, Advocates in WP No.75869 of 2022.</p> <p>Mr. Muhammad Jawad Zafar, ASC with Khawar Shabbir Khan and Muhammad Talha Musthaq, Advocates in WP No.80898 of 2022.</p> <p>Mr. H.M. Majid Siddiqi, Advocate in WPs No.82101, 83062 and 83079 of 2022</p> <p>M/s. Muhammad Afzal, Waqas Ahmad Virk and Waseem Bhatti, Advocates in WP No.82260 of 2022.</p> <p>Barrister Muhammad Abubakar, Advocate in WPs No.82264, 82420 and 82265 of 2022</p> <p>M/s. Muhammad Muqaddam Sukhera, Muhammad Mansha Sukhera and Muhammad Ali Awan, Advocates in W.Ps. No.82221, 82277 of 2022.</p>
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	<p>Mr. Muhammad Ajmal Khan, ASC with Saleem Iqbal Rathor, Omer Wahab, Rana Usman Habib Khan, Muhammad Ahsan Nawaz and Noreen Fouzia, Advocates in WPs No.82305, 82753, 83295 of 2022.</p> <p>Mr. Salman Aslam Butt, ASC with Muhammad Shoaib Rashid, Furqan Naveed and Manahil Khan, Advocates in WPs No.83307, 82791 and 82378 of 2022.</p> <p>Mr. Muhammad Ijaz Lashari, ASC in WP No.82670 of 2022.</p> <p>Mian Abdul Bari Rashid, ASC with Mian Sajid Salam and Asim Mehmood, Advocates in WPs No. 83033, 83035, 82692 of 2022.</p> <p>M/s. Jamshaid Anwar and Muhammad Riaz, Advocates in WP No.82941 of 2022.</p> <p>Mr. Hamad Ul Hassan Hanjra, Advocate in WPs No.83048 and 83051 of 2022.</p> <p>M/s. Muhammad Rafique Ch. and Shahbaz Siddique, Advocates in WP No.83149 of 2022.</p> <p>Barrister Sheharyar Kasuri, ASC, Raza Imtiaz Siddiqui, Jamshid Alam, Muhammad Humza, Sabeel Tariq Mann, Qadeer Kalyar and Fasihur-Rehman, Advocates in WPs No.83181, 82708, 82716, 82131, 82721, 82727 of 2022.</p> <p>Mr. Sumair Saeed Ahmed and Akhtar Ali, Advocates in WPs No.83182, 83185, 83189, 83299, 83289, 83262 and 83318 of 2022.</p> <p>Syed Alamdar Hussain Naqvi, Rana Sajid Rasool and Rai Abdullah Zahid Khan, Advocates in WP No.83217 of 2022.</p> <p>M/s. Yawar Mehdi Naqvi and Shahid Hussain Ch. Advocates in WP No.83224 of 2022.</p> <p>Mr. Muhammad Bilal Pervaiz, Advocate in WP No.83547 of 2022.</p> <p>Mirza Mahmood Ahmad, ASC with Barrister Muhammad Saram Israr, Advocate in WP No.83256 of 2022.</p> <p>Mr. Munawar us Salam, ASC with Muhammad Shoaib Rashid, Advocate in WP No.83294 of 2022.</p> <p>Ch. Babar Waheed, ASC with Jawad Latif Chughtai, Moazzam Jaryal, Hamza Sajid and Akash Gohar, Advocates in WP No.83297 of 2022.</p> <p>M/s. Adil Khalid Tirmizey, Barrister Aun Ali Raza, Rida Aslam Bhatti and Ahmed Nisar Khan, Advocates in WP No.83308 of 2022.</p>
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	<p>M/s. Faisal Naseer Rana and Muhammad Mujahid Arshad Tarar, Advocates in WP No.83310 of 2022.</p> <p>Mr. Tanzil-ul-Rehman Hotiana, Advocate in WP No.83313 of 2022.</p> <p>Mr. Moiz Tariq, ASC with Mian Mansoor Akbar, Advocate in WPs No.83315, 83319, 83332, 83430, 83436 of 2022</p> <p>Mr. Zia Haider Rizvi, ASC with Zahid Imran Gondal, Advocate in WP No.83341 of 2022.</p> <p>M/s. Khuram Ahmed Saeed and Muhammad Javed Arshad, Advocates in WP No.83401 of 2022.</p> <p>M/s. Muhammad Ifan, Asaad Fazil Shaikh, Faisal Ismail and Mian Dawood, Advocates in WP No.83414 of 2022</p> <p>M/s Muhammad Amir Rehman and Shahbaz Siddique, Advocates in WP No.83425 of 2022.</p> <p>Sheikh Aqeel Ahmad, Advocate in WPs No. 83437, 83439, 83442, 83426, 83428, 83434, 83435, 83444 of 2022.</p> <p>Mr. Hassan Shakil, Advocate in WP No.83479 of 2022.</p> <p>M/s. Akhtar Javed, Waseem Ahmed Malik and Mehmood Arif, Advocates in WPs No.83541 and 83546 of 2022.</p> <p>Rana Munir Hussain, ASC with Shahbaz Siddique, Advocate in WP No.83613 of 2022.</p> <p>M/s. Muhammad Ishaq Beryar and Farhan Shahzad, Advocates in WPs No. 83615, 83617, 83619, 83620 of 2022.</p>
Respondent(s) by	<p>Mr. Nasir Javed Ghumman, Deputy Attorney General for Respondent No.1.</p> <p>Mr. Khalid Ishaq, ASC, Nida Aftab, Advocate, Ahmad Pervaiz, ASC, Jawad H. Tarar and Syed Zain-ul-Abidin Bukhari, Advocates for Respondent No.2/FBR.</p> <p>Ms. Asma Hamid, ASC for the Respondent No.3/CIR assisted by Noor Ahsan, Hammad Hussain, Muhammad Bilal Munir and Sana Azhar, Advocates alongwith Mir Badsha Khan Wazir, Chief Commissioner, IR, LTO, Lahore, Mr. Muhammad Majid Chudhary, Commissioner, IR, LTO Lahore and Ms. Laila Ghafoor, Director Law, IR Lahore.</p> <p>Mr. Hussain Ibrahim Muhammad, Assistant Advocate General.</p>

	Dr. Asim Murtaza Cheema, Civil Judge/Research Officer, Lahore High Court, Lahore.
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“Any one may so arrange his affairs that his taxes shall be as low as possible; he is not bound to choose that pattern which will best pay the Treasury; there is not even a patriotic duty to increase one’s taxes.”

(Judge Learned Hand, Chief Judge of US Court of Appeals for the Second Circuit)¹

JAWAD HASSAN, J. Through this judgment, instant writ petition as well as writ petitions mentioned in Schedule “A” shall be decided as common question of law and facts is involved therein. The Petitioners have assailed in these petitions under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (the “**Constitution**”) the retrospective application of Section 4C of the Income Tax Ordinance, 2001 (the “**Ordinance**”) and the vires of the First Proviso to Division IIB of Part I of the First Schedule of the “*Ordinance*”, introduced through the Finance Act, 2022.

I. **CONTEXT OF THE CASE**

2. Precisely, all the Petitioners are taxpayers and for the purpose of regulating their tax affairs, some of the Petitioners operate and opt normal tax year commencing from 1st July and ending on 30th June, while the other Petitioners operate and opt special year commencing 1st January and ending on 31st December. Through these petitions, the Petitioners, at the one hand, have made challenge to retrospective application of Section 4C while on other hand, have called in question the vires of Section 4C First Proviso to Division IIB of Part I of the First Schedule of the “*Ordinance*” being discriminatory in terms of Article 25 of the “**Constitution**” and unlawfully vitiating vested rights accrued in past and closed transactions. This judgment will interpret

¹ Jacob D. Nielsen, *TEXTUALISM WITHOUT TAX SHELTERS: A PROPOSAL FOR INTEGRATING JUDICIAL ANTI-ABUSE DOCTRINES WITH TEXTUALISM*, BOSTON UNIVERSITY LAW REVIEW [Vol. 101, Number 4 (September 2021) P 1471] In this Article the author has written that “to preserve that right, textualists maintain that it must be legitimate for taxpayers to rely on the plain meaning of the tax laws when ordering their affairs. Textualist jurisprudence becomes controversial, however, when taxpayers, through evidently literal compliance with the law, produce results that are unexpected, quite plainly unreasonable, and appear to conflict with congressional intent. In such cases, the government’s interest in the equitable administration of tax law is pitted against the taxpayer’s right to lawfully minimize his tax liability. The resulting tension plays out in opposing theories of statutory interpretation; textualist judges tend to protect the taxpayer’s reliance on the tax laws at the expense of their reasonable and equitable administration, while intentionalist judges do just the opposite”.

the language of Section 4C of the “*Ordinance*” with anatomy of its Chapters and Parts, more specifically its charging provisions under Section 4C, the tax on taxable income under Chapter III read with Procedure under Chapter X, Part I & Part IV. The Court, while hearing the case, directed the parties to file report and parawise comments alongwith supporting documents explaining the basis of inclusion of Section 4C of the “*Ordinance*”. In compliance, the Respondent No.2/FBR filed its reply through Mr. Khalid Ishaq, ASC on 13.10.2022, while Ms. Asma Hamid, ASC filed report and parawise comments on behalf of the Respondent No.3/CIR on 02.11.2022 alongwith supporting documents. In addition, counsel for most of the Petitioners filed written arguments alongwith gist of case laws in their support.

II. PROCEEDINGS BEFORE THIS COURT AND SUPREME COURT OF PAKISTAN

3. During the hearing of the petitions, the judgment of Sindh High Court cited in SHELL PAKISTAN LIMITED through Legal Counsel and others Versus FEDERATION OF PAKISTAN through Secretary Ministry of Finance and others(2023 PTD 607 Sindh) regarding Section 4C of the “*Ordinance*” was challenged before the Supreme Court of Pakistan wherein vide order dated 06.02.2023, interim relief was granted in the following manner:

“In view of the above, the respondents have consented to deposit under protest with the tax authorities 50% of the liability claimed against them under the impugned provisions of Ordinance. However, the amount of such deposit shall be reduced by the amount of any refund that has been determined by the tax authorities in favour of the respondents. Needful to be done within one week from the date of this order.”

4. Pursuant to passing of aforesaid order, an application bearing C.M.No.01 of 2023 was filed on behalf of the Respondent No.3/CIR for modification of interim order granted on 27.12.2022. The Court on 16.02.2023 modified aforesaid order by observing that:

Since the prayer made in this petition is supported with the order of Hon'ble Supreme Court of Pakistan, there is no need to issue notice to the Writ Petitioner (in this petition or the other connected petitions/C.Ms. fixed for today). Keeping in view the afore-quoted directions of the Hon'ble Supreme Court of Pakistan, the interim order dated 27.12.2022 issued in the captioned writ petition and the interim orders issued by this Court from time to time in other connected writ petitions are hereby modified in terms that all the Writ Petitions (in this petition as well as the connected Writ Petitions) will now deposit under protest with the tax authorities 50% of the liability claimed against them under the Income Tax Ordinance, 2001, within seven days. However, the amount of such deposit shall be reduced by the amount of any refund that has been determined by the tax authorities in favour of the said Writ Petitioners. This order be placed in all the connected files and will be read accordingly for all the connected petitions".

5. On 16.02.2023, the Supreme Court of Pakistan heard the appeals and granted interim relief at one point by observing that “according to learned counsel for the petitioner, the accounting year of the respondents ends during the course of Tax Year 2022 to which the provisions of Section 4C are lawfully applicable”. At second point, it was further observed that “the learned counsel for the petitioner submits that the said argument cannot form the basis of altogether striking down the impugned Super Tax because implicitly the respondents’ arguments accepts liability to taxation at the rate of 4%. However, he is not able to explain to us the justification for charging super tax at higher rate for industries specified in the first proviso. We grant him time to prepare his case on that point”. Finally, the following order was passed.

“Insofar as the interim relief is concerned, the respondents which are liable to pay Super Tax at the rate of 10% under the proviso shall deposit the same within one week at the rate of 4% which is applicable

to assessee industries earning incoming exceeding Rs.300 million as provided in Division II B ibid but falling outside the proviso thereto. In the event that the respondents have furnished bank guarantees on the direction of the High Court then the same shall be encashed by the petitioner to the extent of 4% tax”.

6. Thereafter, while arguing the case from 09.03.2023 onward, the Court when confronted to learned counsel for the Respondent/CIR whether there are any document on the basis of which the judgment was passed by the other Courts, Mr. Khalid Ishaq, ASC for the Respondent No.2/FBR and Ms. Asma Hamid, ASC for the Respondent No.3/CIR stated that no such document was filed before other Courts. Consequently, this Court directed the Respondents to justify tax imposed through Section 4C of the “Ordinance” by filing proper documents. On 09.03.2023, Ms. Asma Hamid, ASC for the Respondent No.3/CIR stated that detailed reply has been submitted and requested that same may be treated as replies in all connected petitions. However, when parties again and again agitated illegalities in the documents, Ms. Asma Hamid, ASC sought further time to file supplemental reply. It is noted that when initial reply was filed on the directions of this Court, no proper document was annexed. On 22.03.2023, Ms. Asma Hamid, ASC filed C.M.No.01 of 2023 for placing on record some documents which includes Pakistan Economic Survey in 2021-2022, brief on Budget Making Process, Budget Speech, 2022-2023, policy statement and other documents by giving reasons for imposition of super tax through support of constitutional provisions.

III. PETITIONERS ARGUMENTS

7. Mr. Salman Akram Raja, ASC has mainly argued that the Petitioners' company is a limited company with listed stock exchange and special year has already ended in December, 2021, its AGM was held in April, 2022 and profit was distributed to all the shareholders in May, 2022, therefore, super tax imposed through Section 4C of the “*Ordinance*” is not applicable being past and closed transaction. He

further argued that definition of “income” in Section 4C(2) of the “*Ordinance*” excludes adjustments from current year revenue on account of brought forward depreciation, brought forward business losses and brought forward amortization and for determination of the same, the Petitioners have already acted upon it at the close of tax year 2022. He has relied on “MOLASSES TRADING & EXPORT (PVT.) LTD. Versus FEDERATION OF PAKISTAN etc” (1993 SCMR 1905).

8. Mr. Mansoor Usman Awan, ASC argued that the Petitioners are seeking declaration regarding exemption of super tax on the ground that Section 4C is ultra vires to the “*Ordinance*”. He added that imposition of super tax hit by principle of past and closed transaction because in some companies, special year completed from 1st January to 31st December (the “Special Year”) with cutoff date and in other set of cases the Financial year, which is a normal year starts from 1st July to 30th June (the “Normal Year”). Hence, no tax can be agitated as the Special Year as well as the Normal Years has already been ended. He further argued that imposition of supertax is based on discrimination and thus is not applicable to the case of the Petitioners.

9. Mr. Shazib Masud, ASC and Barrister Waqas Mir, ASC argued that general rates of super tax for all sectors except mentioned in first proviso to Division IIB to Part I of First Schedule to the “*Ordinance*” declaring income over 300 million is 4% whereas proviso to Division IIB states for year 2022, the persons engaged, whether partly or wholly, in the business of airlines, automobiles, beverages, cement, chemicals, cigarette and tobacco, fertilizer, iron and steel, LNG terminal, oil marketing, oil refining, petroleum and gas exploration and production, pharmaceuticals, sugar and textiles the rate of tax shall be 10% where the income exceeds Rs.300 million therefore, applicability of different rates of taxes on different sectors is discriminatory and violative to Article 25 of the “*Constitution*”.

10. Barrister Haroon Dugal, ASC argued that super tax under Section 4C of the “*Ordinance*” is a tax and Section 4B of the

“*Ordinance*” till date has occupied the same field and incidences of both the taxes under above said sections are same therefore, two charging sections for the same tax are neither permissible under the law nor the same can be imposed through two charging sections. He further argued that there is no machinery provision for the collection of super tax as no rules in terms of Section 4C(6) of the “*Ordinance*” have been framed.

11. Mr. Hassan Kamran Bashir, Advocate argued that Section 4C of the “*Ordinance*” was added through the Finance Act, 2022 with effect from 01.07.2022 after the close of Petitioners’ tax year 2022 on 31.12.2021 and 30.06.2022 hence, for the purpose of tax affairs, it becomes a past and closed transaction before the Finance Act, 2022 became effective. He added that Section 4C of the “*Ordinance*” is a charging section, hence cannot be applied retrospectively to transactions that have become past and closed. He next argued that retrospective application of the section ibid would create a new tax obligation for a tax year that has already been closed as the liability of the Petitioners had attained finality on the last date of tax year.

12. Mr. Muhammad Mansha Sukhera, Jahangir Ahmad, Muhammad Zulqarnain, Hassan Kamran Sheikh, Asfandyar Khan Tareen and Zoe K. Khan, Advocates adopted the arguments advanced by above mentioned learned counsels and also filed their written arguments alleging discrimination. Learned counsels in other connected petitions also adopted the same arguments.

IV. RESPONDENTS ARGUMENTS

i. Arguments of Respondent No.2-FBR

13. Mr. Khalid Ishaq, ASC for the Respondent No.2/FBR filed report and parawise comments and objected qua maintainability of the petitions. He argued that the Petitioners are liable to pay tax under Section 4C of the “*Ordinance*” and cannot take advantage of the benefit granted to them under Section 74 of the “*Ordinance*”. He further argued that Section 2(68) of the “*Ordinance*” defines “tax year” as tax year defined in sub-section (1) of Section 74 and in

relation to a person, includes a special tax year or a transitional tax year that the person is permitted to use under Section 74 of the “*Ordinance*”. He pointed out that many a Petitioners adopted a special tax year in terms of Section 74(3) of the “*Ordinance*” which extends from 1st January to 31st December and mere objecting to applicability of Section 4C of the “*Ordinance*” based on doctrine of past and closed transactions is of no avail as payments of dividends and purported investments, do not constitutes as events that render the finalization of accounts therefore, the reliance on the entire doctrine of past and closed transaction is misplaced and has wrongly been stretched by many a Petitioners just to obtain exemption from their tax obligations.

ii. **Arguments of Respondent No.3-CIR**

14. Ms. Asma Hamid, ASC for the Respondent No.3/CIR filed report and parawise comments and objected qua maintainability of the petitions. She argued that most of the Petitioners were permitted to pay their tax liability by using a special year in terms of Section 74 of the “*Ordinance*” which is only a concession and distinct from normal tax year i.e. from 1st July of any given year to 30 June of the next year hence does not alter the liability to be taxed at the rate of tax to be announced through Finance Act, 2022 on 30.06.2022 and its liability to pay tax through filing returns by or on 30.09.2022. She added that audited accounts and paid dividends relate to internal accounting principles and thus have no nexus with liability to pay income tax on its computed taxable income at the rate enacted by the legislature. She argued that previously the Petitioners have been used to pay super tax in terms of Section 4B of the “*Ordinance*” which is identical in language and retrospective in operation and effect than that of Section 4C of the “*Ordinance*” thus the Petitioners are estopped by conduct to challenge it on the ground of retrospectivity when Section 4B of the “*Ordinance*” levies super tax with retrospective effect. She, by relying on a chain of judgments, argued that past and closed transactions can be disturbed through legislation where retrospective

application is expressed through unambiguous, clear language. Moreover, she has also placed on record policy considerations for enactment of Section 4C of the “*Ordinance*”, the competency of the legislature to impose super tax with retroactive and retrospective effect alongwith policy statement of Member (FBR), policy guidelines of Annual Budget Statement 2022.

V. **DETERMINATION BY THE COURT**

i. **History and legal anthropology of Super Tax**

15. From the arguments advanced by learned counsel for the parties alongwith documents and case law, grounds viz.a.viz retrospective application of Section 4C of the “*Ordinance*” based on the past and closed transaction, discrimination with respect to imposing super tax on a particular class of persons and its vires, have been agitated. Before proceeding further, it would be advantageous to highlight brief history and legal anthropology of the super tax. It is an additional tax which is typically levied on high-income individuals or corporations as a means to generate additional revenue and promote income redistribution. The history of super tax can be traced back to various countries and different time periods. During World War-I (1914-1918), several countries including United Kingdom, Australia and Canada introduced super taxes on wealthy individuals and corporations, imposing higher tax rates on their income and profit, with the sole purpose to finance the war efforts and cover the increased government spending. Super taxes were also implemented, during the great depression of 1930s, when many countries faced economic crises and sought ways to address income inequality and fund social welfare program, as a measure to redistribute wealth and support government initiative. For example, the United States introduced the Wealth Tax Act of 1935, imposing a surtax on high-income individuals. After World War II, super taxes continued to be utilized in various forms. In the United Kingdom, a supertax was introduced in 1949 to address post-war economic challenges. The tax primarily targeted high-income individuals and aimed to fund

reconstruction efforts and social welfare programs. In Indian sub-continent, levy of super tax was introduced through Super Tax Act of 1917. Thereafter, the Legislative Council of India enacted the Super Tax Act of 1920 which repealed the Super Tax Act of 1917. Till this period, the impost of tax in addition to income tax (i.e., super tax) was being made through separate legislative enactments until the Legislative Council of India, on the recommendations of the All-Indian Income Tax Committee, consolidated income tax and tax in addition to income tax (i.e., super tax) in the Indian Income Tax Act, 1922. Even though the Income Tax Act, 1922 dealt with both income tax and super tax, it still maintained the distinction and identities of the two categories of taxes, and designated a separate chapter for super tax, i.e., chapter IX of the Indian Income Tax Act, 1922, which contained a distinct charging provision, and specified the definition of income and the exemptions applicable with respect to the computation of super tax. In other words, Chapter IX of the Indian Income Tax Act, 1922 was a self-contained chapter dealing with the charge, assessment, collection, and recovery of super tax. It is also worth noting that even though the Indian Income Tax Act. 1922 defined super tax as tax in addition to income tax, it did not include the same within income tax; the legislature, in its wisdom, clearly kept the separate identity of super tax maintained.

16. After its independence, the Islamic Republic of Pakistan adopted, as is, the Income Tax Act of 1922 as its code on direct taxation. However, from time to time, through parliamentary enactments and ordinances, the charges levied, definitions, and computation and recovery methods were amended. Thereafter, the Income Tax Act of 1992 was repealed by the Income Tax Ordinance 1979 which, with respect to the levy of super tax, adopted a similar scheme and maintained the super tax's distinct and self-contained identity. Thereafter, the promulgation of the "*Ordinance*" repealed the Income Tax Ordinance, 1979 and super tax was reintroduced in the "*Ordinance*" through the Finance Act, 2015, by adding section 4B

(super tax for rehabilitation of Temporarily Displaced Persons) that imposed a super tax on certain persons with retroactive effect on tax year 2015. Recently through the Finance Act of 2022, the Parliament inserted Section 4C in the “*Ordinance*” which imposed a super tax on certain high-earning persons with retroactive effect for the tax year 2022 and onwards; except for the banking companies which were liable to pay super tax from the tax year 2023.

ii. Legality of Section 4C of the “Ordinance”

17. The Petitioners have agitated the applicability of Section 4C of the “*Ordinance*” retrospectively. It has been settled in plethora of judgments by the Superior Court that legislature is competent to give retrospective effect to an Act and can also take away the vested rights of the parties but to provide for such consequences, the Legislature must use words which are clear, unambiguous and not capable of any other interpretation or such interpretation follows as a necessary implication from the words used in the enactment. In order to narrow down the question of retrospectively, it is imperative to reproduce Section 4C of the “*Ordinance*” which reads as follows:

4C. Super tax on high earning persons.— (1) A super tax shall be imposed for tax year 2022 and onwards at the rates specified in Division IIB of Part I of the First Schedule, on income of every person:

Provided that this section shall not apply to a banking company for tax year 2022.

(2) For the purposes of this section, “income” shall be the sum of the following:—

- (i) profit on debt, dividend, capital gains, brokerage and commission;
- (ii) taxable income (other than brought forward depreciation and brought forward business losses) under section 9 of the *Ordinance*, excluding amounts specified in clause (i);
- (iii) imputable income as defined in clause (28A) of section 2 excluding amounts specified in clause (i); and
- (iv) income computed, other than brought forward depreciation, brought forward amortization and brought forward business losses under Fourth, Fifth and Seventh Schedules.

(3) *The tax payable under sub-section (1) shall be paid, collected and deposited on the date and in the manner as specified in sub-section (1) of section 137 and all provisions of Chapter X of the Ordinance shall apply.*

(4) *Where the tax is not paid by a person liable to pay it, the Commissioner shall by an order in writing, determine the tax payable, and shall serve upon the person, a notice of demand specifying the tax payable and within the time specified under section 137 of the Ordinance.*

(5) *Where the tax is not paid by a person liable to pay it, the Commissioner shall recover the tax payable under sub-section (1) and the provisions of Part IV, X, XI and XII of Chapter X and Part I of Chapter XI of the Ordinance shall, so far as may be, apply to the collection of tax as these apply to the collection of tax under the Ordinance.*

(6) *The Board may, by notification in the official Gazette, make rules for carrying out the purposes of this section.]*

***Division IIIB
Super Tax on high earning persons
The rate of tax under section 4C shall be--***

Sr.No.	Income under section 4c	Rate of tax
(1)	(2)	(3)
1.	Where income does not exceed Rs.150 million	0% of the income
2.	Where income exceeds Rs. 150 million but does not exceed Rs. 200 million	1% of the income
3.	Where income exceeds Rs. 200 million but does not exceed Rs. 250 million	2% of the income
4.	Where income exceeds Rs. 250 million but does not exceed Rs. 300 million	3% of the income
5.	Where income exceeds Rs. 300 million	4% of the income

Provided that for tax year 2022 for persons engaged, whether partly or wholly, in the business of airlines, automobiles, beverages, cement, chemicals, cigarette and tobacco, fertilizer, iron and steel, LNG terminal, oil marketing, oil refining, petroleum and gas exploration and production, pharmaceuticals, sugar and textiles the rate of tax shall be 10% where the income exceeds Rs. 300 million:

Provided further that in case of banking companies for tax year 2023, the rate of tax shall be 10% where the income exceeds Rs. 300 million.]

Plain reading of above section reveals that it imposes a super tax for the “tax year 2022 and onward” at the rates specified in above Division IIB on income of every high earning person. While Division IIB of the First Schedule provides the slabs of income brackets that will be put to progressive rates of super tax under section 4C; the proviso to Division IIB provides for a onetime levy of super tax at 10% for the tax year 2022 on those persons involved in specific sectors/businesses subject to their income exceeding Rs.300 million in tax year 2022 only; and the second proviso to Division IIB subjects the banking companies to a one time levy of super tax at rate of 10% for the tax year 2023 subject to their income exceeding Rs. 300 million. The said section also defines “income” as the sum of four heads listed in subsection 2(i) to (iv) of Section 4C of the “*Ordinance*” and proviso to the section ibid excludes the imposition of super tax on banking companies only for the tax year 2022. It further reflects that entire distinct mechanism for assessment, collection and recovery of super tax has been provided within the newly inserted section.

18. Pertinently, the word “person” is defined under Section 2(42) which means a person as defined in Section 80, Chapter V, Part-I, Division-I of the “*Ordinance*” which reads as:

80. Person. —(1) *The following shall be treated as persons for the purposes of this Ordinance, namely:—*

- (a) *An individual;*
- (b) *a company or association of persons incorporated, formed, organised or established in Pakistan or elsewhere;*
- (c) *the Federal Government, a foreign government, a political sub-Division of a foreign government, or public international organisation.*

(2) *For the purposes of this Ordinance —*

- (a) *“association of persons” includes a firm, a Hindu undivided family, any artificial juridical person and anybody of persons formed under a foreign law, but does not include a company;*

(b) “company” means —

- (i) a company as defined in the [Companies Act, 2017 (XIX of 2017)];
- (ii) a body corporate formed by or under any law in force in Pakistan;
- (iii) a modaraba;
- (iv) a body incorporated by or under the law of a country outside Pakistan relating to incorporation of companies;
- (v) a co-operative society, a finance society or any other society;]
- [(va) a non-profit organization;]
- [(vb) a trust, an entity or a body of persons established or constituted by or under any law for the time being in force;]
- (vi) a foreign association, whether incorporated or not, which the [Board] has, by general or special order, declared to be a company for the purposes of this Ordinance;
- (vii) a Provincial Government;
- (viii) a [Local Government] in Pakistan; [or]
- [(ix) a Small Company as defined in section 2;]

(c) “firm” means the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all;

(d) “trust” means an obligation annexed to the ownership of property and arising out of the confidence reposed in and accepted by the owner, or declared and accepted by the owner for the benefit of another, or of another and the owner, and includes a unit trust; and

(e) “unit trust” means any trust under which beneficial interests are divided into units such that the entitlements of the beneficiaries to income or capital are determined by the number of units held.

. A bare reading of above quoted section shows that it has wider amplitude and used in broad sense and all the Petitioners fall within the definition of a ‘person’ under Section 2(42) read with Section 80(1)(b) of the “*Ordinance*” and their liability to pay tax for income tax arises under Chapter II, Section 4 of the “*Ordinance*”. Their liability to pay tax, even if created by charging provision, materialized upon filing of return in terms of Section 114 of the “*Ordinance*” which is treated as an assessment order under Section 120 of the

“*Ordinance*” and procedure and method to file return is provided under Section 118(2) of the “*Ordinance*” which reads as

118. Method of furnishing returns and other documents. — (1) A return of income under section 114, a wealth statement under section 116 [or a foreign income and assets statement under 116A, if applicable] shall be furnished in the prescribed manner.

(2) A return of income [under section 114 of a company shall be furnished —

(a) in the case of a company with a tax year ending any time between the first day of January and the thirtieth day of June, on or before the thirty-first day of December next following the end of the tax year to which the return relates; or

(b) in any other case, on or before the thirtieth day of September next following the end of the tax year to which the return relates.

Underlying for emphasis

19. Plain reading of above section reveals that the Petitioners are at liberty to file their return at any date on or before the thirtieth day of September following the end of the tax year to which the return relates. The word Tax Year is defined in Section 74(1) of the “*Ordinance*” which reads as under:

74. Tax year.— (1) For the purpose of this Ordinance and subject to this section, the tax year shall be a period of twelve months ending on the 30th day of June (hereinafter referred to as ‘normal tax year’) and shall, subject to sub-section (3), be denoted by the calendar year in which the said date falls.

2) Where a person’s income year, under the repealed Ordinance, is different from the normal tax year, or where a person is allowed, by an order under sub-section (3), to use a twelve months’ period different from normal tax year, such income year or such period shall be that person’s tax year (hereinafter referred to as ‘special tax year’) and shall,

subject to sub-section (3), be denoted by the calendar year relevant to normal tax year in which the closing date of the special tax year falls.

(3) A person may apply, in writing, to the Commissioner to allow him to use a twelve months' period, other than normal tax year, as special tax year and the Commissioner may, subject to sub-section (5), by an order, allow him to use such special tax year.

(4) A person using a special tax year, under sub-section (2), may apply in writing, to the Commissioner to allow him to use normal tax year and the Commissioner may, subject to sub-section (5), by an order, allow him to use normal tax year.

(5) The Commissioner shall grant permission under sub-section (3) or (4) only if the person has shown a compelling need to use special tax year or normal tax year, as the case may be, and the permission shall be subject to such conditions, if any, as the Commissioner may impose.

20. Perusal of above provision of law indicates that two types of tax years have been defined; one is normal tax year while the other is special tax year whereas period of both of tax years in terms of above referred section would be twelve months as held in the case of “LOTTE PAKISTAN PTA Ltd. through Chief Financial Officer and Company Secretary Versus FEDERATION OF PAKISTAN through Secretary Ministry of Finance, Islamabad and others” (2011 PTD 2229), where it has been held that “normal tax year shall be a period of twelve months' ending on the 30th day of June and where the tax year of a person changes as a result of subsections (2), (3) or (5), the period between the last full tax year prior to the change and the date on which the changed tax year commences shall be treated as a separate tax year, to be known as the "transitional year". The same view was later on reaffirmed by the Supreme Court of Pakistan in the case of “FBR through Chairman, Islamabad and others Versus

Messrs WAZIR ALI AND COMPANY and others” (2020 SCMR 959) by holding that “*tax year is specifically defined in section 74 of the 2001 Ordinance which means a period of twelve months. This period normally ends on 30th June and may also end on any other date in case the same is allowed by the competent authority to be adopted. Nevertheless, a tax year under section 74 of the 2001 Ordinance has to be of twelve months. It is for this reason that section 114 of the 2001 Ordinance under which return of income is required to be filed covers entire tax year*”.

21. From the aforesaid observation, it would be quite easy to understand that normal tax year denotes a period of twelve months ending on 30th day of June i.e. the financial year and also denoted by the calendar year in which the said date falls. For instance, tax year for the period of twelve months from 01.07.2020 to 30.06.2021 shall be denoted by calendar year 2021 and the period of twelve months from 01.07.2021 to 30.06.2022 shall be denoted by calendar year 2022. Likewise, a special tax year would also mean a period of twelve months and is denoted by the calendar year relevant to the Normal Tax Year in which closing date of the Special Tax Year falls. For instance, Tax Year for the period of twelve months from 01.01.2019 to 31.12.2019 shall be denoted by calendar year 2020 and the period of twelve months from 01.10.2019 to 30.09.2020 shall be denoted by calendar year 2020. The case of many of the Petitioners is that as their normal and special years ended on 30.06.2021 and 31.12.2021 therefore, super tax imposed through Section 4C of the “*Ordinance*” is not applicable under the principle of past and closed transaction. It is an admitted position between the parties that many a Petitioners operate under normal tax year in terms of Section 74(1) of the “*Ordinance*” while others operate under Section 74(3) of the “*Ordinance*” availing special tax year and availing of such special year is subject to applying in writing to the Commissioner to use a twelve months’ period other than normal tax years and that permission is further subject to Section 74(5) of the “*Ordinance*”

therefore, availing any special tax year for payment tax liability is just to accommodate that category of Petitioners and not for the purpose to evade the payment of income tax due in a normal tax year. Moreover, the liability to pay tax crystalizes on the day when the returns are filed while the mode and manner is further specified under Section 137(1) and all provisions of Chapter X of the “*Ordinance*” which states that “*The tax payable by a taxpayer on the taxable income of the taxpayer [including the tax payable under section [113 or] 113A] for a tax year shall be due on the due date for furnishing the taxpayer’s return of income for that year*”. Notably, Section 4C Division IIB was inserted in the “*Ordinance*” through the Finance Act 2022 passed on 30.06.2022 effective from 01.07.2022. The sole ground as agitated by the Petitioners is that this amendment does not apply retrospectively as their tax year 2022 ended on 30.06.2022 and 31.12.2022 thus becomes absolute and past and closed transaction. It is observed that computation of any taxable income as self-assessed and declared by a taxpayer, is subject to scrutiny and assessment in terms of Section 111 and 122 of the “*Ordinance*” and may further be reassessed and amended for a period of five consecutive tax periods/years. In this regard, section 122(2) of the “*Ordinance*” empowered the Respondents to amend taxpayers’ assessment upto five successive years and mere reflecting the internal accounting income that is worked out as per International Accounting Standards and is reported in annual accounts is different from computation of taxable income. Therefore, the return of income can only be considered a past and closed transaction after the lapse of statutory five years limitation period. So, the conclusion can easily be drawn that the effective date of Section 4C of the “*Ordinance*” i.e. 01.07.2022 includes the tax period 01.07.2021 to 30.06.2022 during which the tax liability accrued and same was to be paid till thirtieth day of September as per normal tax year and that of 31st December if availed as concession with regard to special tax year.

22. In view of above, while applying Doctrine of Textualism which envisages a method of statutory interpretation that asserts a statute should be interpreted according to its plain meaning and not according to the intent of the legislature, the statutory purpose, or the legislative history. If we examine Section 4C of the “*Ordinance*”, under the Doctrine of Textualism it clearly means that the intent of Section 4C be looked into rather than the intent of legislature because the wording used are defined under Section 2 and cross-referred to other sections which is very comprehensive with Part, Chapters to the “*Ordinance*”. Keeping in view the plain text of Section 4C of the “*Ordinance*”, supported tax documents, examining of constitutional provisions more specifically Article 80, 140 read with Article 260 which defines “financial year”, the relevant charging sections of the “*Ordinance*” and Chapters and Parts, the policy statement as well as the judgments of Supreme Court of Pakistan, mentioned above, the Petitioners are only liable to pay Super Tax at the rate mentioned in Division IIB of Part I of the First Schedule of the “*Ordinance*”, and 4% as reduced by the Supreme Court in its order dated 16.02.2023. Learned counsel for the Respondents, when confronted with situation, were unable to satisfy the Court regarding 10% rate of super tax.

iii. Discrimination

23. So far as the argument of the Petitioners with regard to discrimination is concerned, it is noted that while imposing super tax under Section 4B of the “*Ordinance*”, it appears that uniform rate of super tax upon the same class of person i.e. (i) Banking Companies @ 4% and (ii) Person, other than a banking Company having income equal to or exceeding to Rs.500 Million (Rupees Five Hundred Million) @ 3% has been imposed without any discrimination within the same class. But from perusal of Division IIB, Column 5, reveals that maximum rate of super was fixed at 4% where the income exceed Rs.300 million while in 1st Proviso, added to Division IIB of Part I of the First Schedule of the “*Ordinance*”, which create a further sub-classification, the persons engaged, wholly/partly, in the businesses of

airlines, automobiles, beverages, cement, chemicals, cigarette and tobacco, fertilizer, iron and steel, LNG terminal, oil marketing, oil refining, petroleum and gas exploration and production, pharmaceuticals, sugar and textiles, were held liable to pay super tax at the rate of 10% where the income exceeds Rs. 300 million which, of course, is more than the double rate as compared to column No.5 of Division IIB of Part I of the First Schedule. Therefore, the said proviso is found to be *prima facie* discriminatory and the learned counsel for the Respondents remained unable to demonstrate any intelligible differentia therein, having rational nexus with the object of classification.

24. It is by now well settled law that although Article 25 of the Constitution allows for differential treatment of persons who are not similarly placed under a reasonable classification but it is also equally settled that in order to justify this difference in treatment the reasonable classification must be based on intelligible differentia that has a rational nexus with the object being sought to be achieved. This means that any distinct treatment meted out to a class of persons can only be sustained under Article 25 if the aforesaid test is satisfied as held by Supreme Court in the case of "HADAYAT ULLAH and others Versus FEDERATION OF PAKISTAN and others" (**2022 SCMR 1691**). Earlier in the case of "Dr. MOBASHIR HASSAN and others Versus FEDERATION OF PAKISTAN and others" (**PLD 2010 Supreme Court 265**) the Supreme Court held that in order to establish a reasonable classification based on intelligible differentia, the differentiation must have been understood logically and there should not be any artificial grouping for specific purpose causing injustice to other similarly placed individuals. Similarly in the case of "Syed AZAM SHAH Versus FEDERATION OF PAKISTAN through Secretary Cabinet Division, Cabinet Secretariat, Islamabad and another" (**2022 SCMR 201**) the Supreme Court observed as follows: "The catchphrase "intelligible differentia" connotes dissimilarity or

disparity capable of being comprehended. The classification must be based on an intelligible differentia which should distinguish the persons that are grouped together from others left out of the group and the differentia or categorization/ cataloguing must have a logical and commonsensical nexus with the object sought to be achieved. The concept of reasonableness is rationally a fundamental component of equality or non-arbitrariness.” It was further held in the case of “GOVERNMENT OF KHYBER PAKHTUNKHWA through Chief Secretary and others Versus Syed SADIO SHAH and others” (**2021 SCMR 747**) that “*It must always rest upon some real and substantial distinction bearing a just and reasonable relation to the object sought to be achieved by the authority. It is now well-established law that persons may be classified or further sub-classified into entities and such entities may be treated differently if there is a reasonable basis for such difference. Article 25 forbids class legislation but it does not forbid classification or differentiation which rests upon reasonable grounds of distinction. The classification however must not be arbitrary, artificial or evasive but must be based on some real and substantial bearing, a just and reasonable relation to the object sought to be achieved by the legislation.*” The Court further held that “*In order to pass the test for permissible classification two conditions must be fulfilled i.e. (i) the classification must be founded on an intelligible differentia which distinguishes persons or things those are grouped together from others left out of the group, (ii) the intelligible differentia must have a rational nexus with the object sought to be achieved. However it must disclose that there must be a substantial basis for making the classification and there should be a nexus between the basis of classification and the object of action under consideration based upon justiciable reasonings.*”

25. Keeping the aforesaid pronouncements of Supreme Court of Pakistan, the said proviso is found to be *prima facie discriminatory*

and the learned counsel for the Respondents remained unable to demonstrate any intelligible differentia therein, having rational nexus with the object of classification. Moreover, the creation of said separate category/sub-classification of persons under the 1st proviso to Division IIB of Part I of the First Schedule of the “*Ordinance*” tantamount to creation of artificial grouping leading to arbitrariness.

26. It is also pertinent to mention here that the super tax imposed for persons other than banking company having income equal to or exceeding Rs.500 million were gradually reduced between years 2018 to 2022 from 3% to 0% as per Division IIA of the “*Ordinance*” while at the same time, a new super tax was imposed through Section 4C of the “*Ordinance*” and as per Division IIB, an exorbitant and sudden increase in super tax @ 10% (which is equal to 250% increase from normal maximum rates of super tax) was imposed which is unreasonable and unjustified as compared to super tax earlier imposed through Section 4B of the “*Ordinance*”. The Sindh High Court in “SHELL PAKISTAN LIMITED through Legal Counsel and others Versus FEDERATION OF PAKISTAN through Secretary Ministry of Finance and others” (**2023 PTD 607 Sindh**) while relying on “Messrs LUCKY CEMENT LTD. through General Manager, Peshawar Versus KHYBER PAKHTUNKHWA through Secretary Local Government and Rural Development, Peshawar and others” (**2022 SCMR 1994**) observed in paragraph No.38 observed that “*So as a consequence of the Proviso, a person subject to tax at the designated rate would automatically become liable to a tax rate two hundred and fifty percent (250%) higher simply because of being partly/wholly engaged in the business listed therein*”. This Court is also in agreement with the observation made by the Supreme Court of Pakistan in the case of “*Lucky Cement*” *supra* whereby the differentiation was struck down on the basis of observation made herein below:

6. Article 25 of the Constitution mandates equality before the law and Article 18 of the Constitution secures the right to conduct any lawful trade or business. If both these Articles are read together and applied to the present case it means that the appellant cannot be made to face a more onerous tax regime than its competitors. It would be appropriate to reproduce applicable extracts from the five-member Bench decision of this Court in the case of I.A. Sharwani v. Government of Pakistan.⁶

- '(i) that equal protection of law does not envisage that every citizen is to be treated alike in all circumstances, but it contemplates that persons similarly situated or similarly placed are to be treated alike;
- (ii) that reasonable classification is permissible but it must be founded on reasonable distinction or reasonable basis;'
- '(v) that a law applying to one person or one class of persons may be constitutionally valid if there is sufficient basis or reason for it, but a classification which is arbitrary and is not founded on any rational basis is no classification as to warrant its exclusion from the mischief of Article 25;
- (vi) that equal protection of law means that all persons equally placed be treated alike both in privileges conferred and liabilities imposed;
- (vii) that in order to make a classification reasonable, it should be based-
 - (a) on an intelligible differentia which distinguishes persons or things that are grouped together from those who have been left out;
 - (b) that the differentia must have rational nexus to the object sought to be achieved by such classification.'

27. Keeping in view the history of super tax, it is observed that although super tax imposed through Section 4A of the "Ordinance" yet it was later on withdrawn, while the rate of super tax imposed under Section 4B, was gradually reduced from 2018 to 2022 as mentioned in Division IIA, hence following the above said disparity regarding imposition of super tax over the recent years, rate of 10% super tax is held to be discriminatory hence is reduced to 4%.

28. When confronted to learned counsel for the Respondents what is the basis of imposing 10% super tax because already the Supreme Court of Pakistan in its order dated 16.02.2023 in paragraph No.4 has reduced the rate of super tax from 10% to 4% and the Sindh High

Court in paragraph No.38 of its judgment also observed the increase in super tax @ 10% i.e. two hundred and fifty percent higher than the ordinary maximum rate of super tax for all other categories, the counsel for the Respondents could not give any satisfactorily reply and the same was the situation before the Supreme Court of Pakistan as is evident from order dated 16.02.2023 whereby it was observed that “*the learned counsel for the Petitioner submits that the said agreement cannot form the basis of altogether striking down the impugned Super Tax because implicitly the respondents' argument accepts liability to taxation at the rate of 4%. However, he is not able to explain to us the justification for charging super tax at a higher rate for industries specified in the first proviso*”.

29. In view of the determination made above and relying on the judgments of the Supreme Court of Pakistan, doctrine of textualism, relevant charging provisions of the “*Ordinance*”, and the documents examined by this court through C.M.No.01 of 2023 including budget speech, policy statement, writ petitions are partially allowed to the extent that First Proviso to Division IIB of Part I of the First Schedule of the “*Ordinance*” is declared to be discriminatory, hence, ultra vires to the “*Constitution*” and thus the rate of super tax is reduced to 4% from 10%. Rest of the prayers made in the petitions are declined being super tax as valid.

(JAWAD HASSAN)
JUDGE

Announced in open Court on 27.06.2023

APPROVED FOR REPORTING

JUDGE

(Schedule-A)

Sr. No.	W.Ps. No.
1.	90/2023
2.	93/2023
3.	108/2023
4.	112/2023
5.	163/2023
6.	200/2023
7.	206/2023
8.	250/2023
9.	304/2023
10.	312/2023
11.	323/2023
12.	379/2023
13.	403/2023
14.	404/2023
15.	436/2023
16.	460/2023
17.	497/2023
18.	518/2023
19.	530/2023
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21.	557/2023
22.	567/2023
23.	571/2023
24.	577/2023
25.	627/2023
26.	653/2023
27.	655/2023
28.	820/2023
29.	829/2023
30.	930/2023
31.	990/2023
32.	1012/2023
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35.	1195/2023
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37.	1285/2023
38.	1339/2023
39.	1404/2023
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386.	27085/2023
387.	42604/2023

(JAWAD HASSAN)
JUDGE

*Usman**