

**IN THE SUPREME COURT OF PAKISTAN**  
**(APPELLATE JURISDICTION)**

**PRESENT:** MR. JUSTICE MIAN SAQIB NISAR  
MR. JUSTICE IQBAL HAMEEDUR RAHMAN  
MR. JUSTICE TARIQ PARVEZ

**CIVIL APPEALS NO.1084 TO 1098/2008, 1481 TO 1529/2009, 254 AND 255/2011, 310/2012, 1235 TO 1270/2015 AND CIVIL PETITIONS NO. 2595 AND 2596/2009**

*(Against the judgments dated 10.4.2008, 27.5.2009, 17.2.2009, 31.3.2010, 24.12.2014, 19.11.2014, 27.5.2009 of the Lahore High Court, Lahore passed in PTR Nos.12, 13, 14, 15 & 16/2004, ITA Nos. 242, 246 & 601/1999, 268 & 806/2000, 294, 295 & 296/1999, 49/2000, 82/2002, PTR Nos.402/2003, 117/2000, 403 & 404/2003, 216 & 217/2005, 59, 60, 153, 154, 155, 156, 187, 188, 246 & 588/2006, 589, 19, 20, 67, 86, 88, 87, 89, 90, 234, 277, 278, 295, 401, 515, 516 & 621/2007, W.P.No.1654/2009, PTR No.7991/2002, W.P.Nos.8317, 10124 & 10125/2002, PTR Nos.91/2007, 103/2005, 194, 195, 236 & 247/2006, 373, 417, 319, 400, 326 & 327/2007, ITA No.357/1998, PTR Nos.303/2014, 1947, 467, 468, 469, 470, 471, 152, 557, 558, 559, 560, 561, 372, 242, 448, 446, 447, 376, 377, 378, 379 & 380/2012, 202, 324 & 203/2013, 381, 382, 383, 384, 205, 213, 363, 364, 393 & 159/2012 and W.P.Nos.17139 & 17659/2008)*

- C.A.1084/2008: Commissioner of Income Tax Legal Division Lahore Vs. Khurshid Ahmad
- C.A.1085/2008: Commissioner of Income Tax Legal Division Lahore Vs. Khurshid Ahmad
- C.A.1086/2008: Commissioner of Income Tax Legal Division Lahore Vs. Khurshid Ahmad
- C.A.1087/2008: Commissioner of Income Tax Legal Division Lahore Vs. Khurshid Ahmad
- C.A.1088/2008: Commissioner of Income Tax Legal Division Lahore Vs. Khurshid Ahmad
- C.A.1089/2008: Commissioner of Income Tax Legal Division Tax Office Lahore Vs. M/s Punjab Oil Products (Pvt.) Ltd. Faisalabad
- C.A.1090/2008: Commissioner of Income Tax Legal Division Lahore Vs. M/s Madni Ghee Mills (Pvt.) Ltd.
- C.A.1091/2008: Commissioner of Income Tax Legal Division Lahore Vs. M/s Tuff Tiles (Pvt.) Ltd.
- C.A.1092/2008: Commissioner of Income Tax Legal Division Lahore Vs. M/s S. K. Spinning Mills (Pvt.) Ltd.
- C.A.1093/2008: Commissioner of Income Tax Lahore Vs. M/s Ravi Plastic Industry (Pvt.) Ltd.
- C.A.1094/2008: Commissioner of Income Tax (Legal Division) Sialkot Vs. M/s Dawn Sports (Pvt.) Ltd.
- C.A.1095/2008: Commissioner of Income Tax (Legal Division) Sialkot Vs. M/s Anwar Khawaja Industries (Pvt.) Ltd.
- C.A.1096/2008: Commissioner of Income Tax (Legal Division) Sialkot Vs. M/s Grays of Cambridge (Pvt.) Ltd.

- C.A.1097/2008: Commissioner of Income Tax (Legal Division) Lahore Vs. M/s Star Mughal Industries (Pvt.) Ltd.
- C.A.1098/2008: Commissioner of Income Tax (Legal Division) Lahore Vs. M/s Continental Banking Industries (Pvt.) Ltd.
- C.A.1481/2009: Commissioner of Income Tax Lahore Vs. M/s Crescent Sugar Mills & Distillery Ltd. Lahore
- C.A.1482/2009: Commissioner of Income Tax/Wealth Tax, Lahore Vs. M/s Transtel International (Pvt.) Ltd.
- C.A.1483/2009: Commissioner of Income Tax Lahore Vs. M/s Crescent Sugar Mills Ltd.
- C.A.1484/2009: Commissioner of Income Tax Lahore Vs. M/s Crescent Sugar Mills Ltd.
- C.A.1485/2009: Commissioner of Income Tax/Wealth Tax Lahore Vs. M/s Shazor Feed (Pvt.) Ltd.
- C.A.1486/2009: Commissioner of Income Tax/Wealth Tax Lahore Vs. M/s Shazor Feed (Pvt.) Ltd.
- C.A.1487/2009: Commissioner of Income Tax Lahore Vs. M/s Sutlaj Security Services (Pvt.) Ltd.
- C.A.1488/2009: Commissioner of Income Tax Lahore Vs. M/s Sutlaj Security Services (Pvt.) Ltd.
- C.A.1489/2009: Commissioner of Income Tax Lahore Vs. M/s Crescent Jute Products (Pvt.) Ltd.
- C.A.1490/2009: Commissioner of Income Tax Lahore Vs. M/s Crescent Jute Products (Pvt.) Ltd.
- C.A.1491/2009: Commissioner of Income Tax Lahore Vs. M/s Crescent Jute Products (Pvt.) Ltd.
- C.A.1492/2009: Commissioner of Income Tax/Wealth Tax Lahore Vs. M/s Crescent Jute Products (Pvt.) Ltd.
- C.A.1493/2009: Commissioner of Income Tax Lahore Vs. M/s Olympia Textile Mills Ltd.
- C.A.1494/2009: Commissioner of Income Tax/Wealth Tax Lahore Vs. M/s Olympia Textile Mills Ltd.
- C.A.1495/2009: Commissioner of Income Tax Lahore Vs. M/s Imran Spinning Mills Ltd.
- C.A.1496/2009: Commissioner of Income Tax/Wealth Tax Lahore Vs. M/s Hira Textile Mills Ltd.
- C.A.1497/2009: Commissioner of Income Tax Lahore Vs. M/s Hira Textile Mills Ltd.
- C.A.1498/2009: Commissioner of Income Tax/Wealth Tax Lahore Vs. M/s Suleman Spinning Mills Ltd.
- C.A.1499/2009: Commissioner of Income Tax/Wealth Tax Lahore Vs. M/s

Suleman Spinning Mills Ltd.

- C.A.1500/2009: Commissioner of Income Tax Lahore Vs. Pak Kuwait Textile Mills Ltd.
- C.A.1501/2009: Commissioner of Income Tax Lahore Vs. Ramzan Buksh Textile Mills Ltd.
- C.A.1502/2009: Commissioner of Income Tax Lahore Vs. Ramzan Buksh Textile Mills Ltd.
- C.A.1503/2009: Commissioner of Income Tax Lahore Vs. Ramzan Buksh Textile Mills Ltd.
- C.A.1504/2009: Commissioner of Income Tax Lahore Vs. Aruj Textile Mills Ltd.
- C.A.1505/2009: Commissioner of Income Tax Lahore Vs. Aruj Textile Mills Ltd.
- C.A.1506/2009: Commissioner of Income Tax Lahore Vs. Aruj Textile Mills Ltd.
- C.A.1507/2009: Commissioner of Income Tax Lahore Vs. M/s Darson Securities (Pvt.) Ltd.
- C.A.1508/2009: Commissioner of Income Tax Lahore Vs. Ali Akbar Spinning Mills Ltd. etc.
- C.A.1509/2009: Commissioner of Income Tax Lahore Vs. Ali Akbar Spinning Mills Ltd.
- C.A.1510/2009: Commissioner of Income Tax Lahore Vs. M/s Sargodha Mills Ltd.
- C.A.1511/2009: Commissioner of Income Tax Lahore Vs. Haseeb Waqas Sugar Mills Ltd.
- C.A.1512/2009: Commissioner of Income Tax Lahore Vs. M/s Arain Textile Mills Ltd.
- C.A.1513/2009: Commissioner of Income Tax Lahore Vs. M/s Arain Textile Mills Ltd.
- C.A.1514/2009: Commissioner of Income Tax Lahore Vs. M/s Crescent Ujala Ltd.
- C.A.1515/2009: Commissioner of Income Tax Lahore Vs. M/s Yahya Textile Mills Ltd.
- C.A.1516/2009: Commissioner of Income Tax Lahore Vs. M/s Azam Textile Mills Ltd.
- C.A.1517/2009: Commissioner of Income Tax Lahore Vs. M/s Taj Textile Mills Ltd.
- C.A.1518/2009: Commissioner of Income Tax Lahore Vs. M/s Fawad Textile Mills Ltd.
- C.A.1519/2009: Commissioner of Income Tax Lahore Vs. M/s Fawad Textile Mills Ltd.

- C.A.1520/2009: Commissioner of Income Tax Lahore Vs. M/s Kashmir Edible Oils Ltd.
- C.A.1521/2009: Commissioner of Income Tax Lahore Vs. M/s Himont Pharmaceutical (Pvt.) Ltd.
- C.A.1522/2009: Commissioner of Income Tax Lahore Vs. M/s Hilal Dyes (Pvt.) Ltd.
- C.A.1523/2009: Commissioner of Income Tax Lahore Vs. M/s Hilal Dyes (Pvt.) Ltd.
- C.A.1524/2009: Commissioner of Income Tax Lahore Vs. M/s Hira Textile Mills Ltd.
- C.A.1525/2009: Commissioner of Income Tax Lahore Vs. M/s Imran Spinning Mills Ltd.
- C.A.1526/2009: Commissioner of Income Tax Lahore Vs. M/s Arain Textile Mills Ltd.
- C.A.1527/2009: Commissioner of Income Tax Lahore Vs. M/s Margalla Textile Mills Ltd.
- C.A.1528/2009: Commissioner of Income Tax Lahore Vs. Haseeb Waqas Sugar Mills Ltd.
- C.A.1529/2009: Commissioner of Income Tax Lahore Vs. Haseeb Waqas Sugar Mills Ltd.
- C.A.254/2011: Commissioner of Income Tax Vs. M/s Crescent Sugar Mills
- C.A.255/2011: Commissioner of Income Tax Legal Taxpayer Unit Lahore Vs. M/s Crescent Sugar Mills, Lahore
- C.A.310/2012: Commissioner of Income Tax Vs. M/s Babar Flour Mills
- C.A.1235/2015: Commissioner Inland Revenue, Zone, Lahore Vs. Resham Textile Industries Limited, Lahore
- C.A.1236/2015: Commissioner Inland Revenue, Zone-3, LTU, Tax House, Lahore Vs. Imperial Electric Company (Pvt.) Ltd, National Tolwer, Egerton Road, Lahore
- C.A.1237/2015: Commissioner Inland Revenue, Zone-3, LTU, Tax House, Lahore Vs. Total Parco Pakistan Limited
- C.A.1238/2015: Commissioner Inland Revenue, Zone-3, LTU, Tax House, Lahore Vs. Total Parco Pakistan Limited
- C.A.1239/2015: Commissioner Inland Revenue, Zone-3, LTU, Tax House, Lahore Vs. Total Parco Pakistan Limited
- C.A.1240/2015: Commissioner Inland Revenue, Zone-3, LTU, Tax House, Lahore Vs. Total Parco Pakistan Limited
- C.A.1241/2015: Commissioner Inland Revenue, Zone-3, LTU, Tax House, Lahore Vs. Total Parco Pakistan Limited
- C.A.1242/2015: Commissioner Inland Revenue, Zone-3, LTU, Tax House, Lahore Vs. Taj Textile Mills Limited, Lahore

- C.A.1243/2015: Commissioner Inland Revenue, Zone-3, LTU, Tax House, Lahore Vs. Lahore Textile & General Mills Ltd, Monno House, 3-Montgomery Road, Lahore
- C.A.1244/2015: Commissioner Inland Revenue, Zone-3, LTU, Tax House, Lahore Vs. Lahore Textile & General Mills Ltd.
- C.A.1245/2015: Commissioner Inland Revenue, Zone-3, LTU, Tax House, Lahore Vs. Lahore Textile & General Mills Ltd.
- C.A.1246/2015: Commissioner Inland Revenue, Zone-3, LTU, Tax House, Lahore Vs. Lahore Textile & General Mills Ltd, Monno House, 3-Montgomery Road, Lahore
- C.A.1247/2015: Commissioner Inland Revenue, Zone-3, LTU, Tax House, Lahore Vs. Lahore Textile & General Mills Ltd., Lahore
- C.A.1248/2015: Commissioner Inland Revenue, Zone-3, LTU, Tax House, Lahore Vs. Crescent Sugar Mills Ltd., New Lahore Road, Nishatabad, Faisalabad
- C.A.1249/2015: Commissioner Inland Revenue, Zone-3, LTU, Tax House, Lahore Vs. Lahore Textile & General Mills Ltd., Lahore
- C.A.1250/2015: Commissioner Inland Revenue, Zone-1, Regional Tax Office, Lahore Vs. M/s Anmol Textile Mills Limited, 83-A/H, Race View, Jail Road, Lahore NTN.1158022-4
- C.A.1251/2015: Commissioner Inland Revenue, Zone-1, Regional Tax Office, Lahore Vs. M/s Anmol Textile Mills Limited, 83-A/H, Race View, Jail Road, Lahore NTN.1158022-4
- C.A.1252/2015: Commissioner Inland Revenue, Zone-1, Regional Tax Office, Lahore Vs. M/s Anmol Textile Mills Limited, 83-A/H, Race View, Jail Road, Lahore NTN.1158022-4
- C.A.1253/2015: Commissioner Inland Revenue, Zone-1, Regional Tax Office, Lahore Vs. M/s ICC Textile Company (Pvt.) Limited, 242-A, Anand Road, Upper Mall, Lahore NTN.0658194
- C.A.1254/2015: Commissioner Inland Revenue, Zone-1, Regional Tax Office, Lahore Vs. M/s ICC Textile Company (Pvt.) Limited, 242-A, Anand Road, Upper Mall, Lahore NTN.0658194
- C.A.1255/2015: Commissioner Inland Revenue, Zone-1, Regional Tax Office, Lahore Vs. M/s ICC Textile Company (Pvt.) Limited, 242-A, Anand Road, Upper Mall, Lahore NTN.0658194
- C.A.1256/2015: Commissioner Inland Revenue, Zone-1, Regional Tax Office, Lahore Vs. M/s ICC Textile Company (Pvt.) Limited, 242-A, Anand Road, Upper Mall, Lahore NTN.0658194
- C.A.1257/2015: Commissioner Inland Revenue, Zone-1, Regional Tax Office, Lahore Vs. M/s ICC Textile Company (Pvt.) Limited, 242-A, Anand Road, Upper Mall, Lahore NTN.0658194
- C.A.1258/2015: Commissioner Inland Revenue, Zone-1, Regional Tax Office, Lahore Vs. M/s Pak Electron Limited, 17-Aziz Avenue, Canal Bank, Gulberg-V, Lahore
- C.A.1259/2015: Commissioner Inland Revenue, Zone-1, Regional Tax Office, Lahore Vs. M/s Hashir Textile Mills Limited, Main Market,

Gulberg, Lahore

- C.A.1260/2015: Commissioner Inland Revenue, Zone-1, Regional Tax Office, Lahore Vs. M/s Pak Electron Limited, 17-Aziz Avenue, Canal Bank, Gulberg-V, Lahore
- C.A.1261/2015: Commissioner Inland Revenue, Zone-II, Large Taxpayers Unit, Tax House, Syed Mauj-e-Darya Road, Lahore Vs. M/s Kohinoor Mills Limited, 8-KM Manga Riwind Road, Lahore
- C.A.1262/2015: Commissioner Inland Revenue, Zone-II, Large Taxpayers Unit, Tax House, Syed Mauj-e-Darya Road, Lahore Vs. M/s Kohinoor Mills Limited, 8-KM Manga Riwind Road, Lahore
- C.A.1263/2015: Commissioner Inland Revenue, Zone-II, Large Taxpayers Unit, Tax House, Syed Mauj-e-Darya Road, Lahore Vs. M/s Kohinoor Mills Limited, 8-KM Manga Riwind Road, Lahore
- C.A.1264/2015: Commissioner Inland Revenue, Zone-II, Large Taxpayers Unit, Tax House, Syed Mauj-e-Darya Road, Lahore Vs. M/s Kohinoor Mills Limited, 8-KM Manga Riwind Road, Lahore
- C.A.1265/2015: Commissioner Inland Revenue Zone-I, Regional Tax Office, Faisalabad Vs. M/s Chen One Stores Limited c/o Chenab Ltd. Nishatabad Faisalabad
- C.A.1266/2015: Commissioner Inland Revenue Zone-I, Regional Tax Office, Faisalabad Vs. M/s Aizad Corporation (Pvt.) Ltd. Universal House, West Canal Road Farooqabad, Faisalabad
- C.A.1267/2015: Commissioner Inland Revenue Zone-I, Regional Tax Office, Faisalabad Vs. M/s Hamid Textile Mills Limited, 97-N, Model Town, Lahore
- C.A.1268/2015: Commissioner Inland Revenue Zone-I, Regional Tax Office, Faisalabad Vs. M/s Hamid Textile Mills Limited, 97-N, Model Town, Lahore
- C.A.1269/2015: Commissioner Inland Revenue Zone-I, Regional Tax Office, Faisalabad Vs. M/s Hamid Textile Mills Limited, 97-N, Model Town, Lahore
- C.A.1270/2015: Commissioner Inland Revenue, Zone-3, LTU, Tax House, Lahore Vs. M/s Total Parco Pakistan Limited, Lahore etc.
- C.P.2595/2009: Commissioner of Income Tax (Audit Division) RTO Faisalabad Vs. M/s Chen One Stores (Pvt.) Faisalabad & another
- C.P.2596/2009: Commissioner of Income Tax (Audit Division) RTO Faisalabad Vs. M/s Best Exports (Pvt.) Ltd. & another

For the Appellant(s):

Mr. Sarfraz Ahmed Cheema, ASC

*(in C.As.1485, 1486, 1489 to 1492, 1495, 1503, 1515 & 1525/2009)*

Mr. Ibrar Ahmed, ASC

*(in C.As.1235 to 1249, 1258, 1259 & 1270/15, 1488, 1507 & 1520/09)*

Mr. Muhammad Nawaz Waseer, ASC

*(in C.As.1250 to 1257/2015 & 1496 to 1499/2009)*

Mr. Muhammad Aamir Malik, ASC

*(in C.As.1501, 1502, 1493 to 1495 & 1527/2009 & 1084 & 1089/08)*

Dr. Ishtiaq Ahmed, Commissioner Inland Revenue  
Mr. Muhammad Iqbal Bhawana, Chief Legal, FBR  
Mr. Habib Qureshi, ASC

For the Respondent(s): Mr. Salman Akram Raja, ASC  
(in C.A. 1089/2008)

Mr. M. Iqbal Hashmi, ASC  
(in C.As. 1493, 1494/2009 & 1235/2015)

Mr. M. Ajmal Khan, ASC  
(in C.As. 1507, 1521 & 1527/2009)

On Court's call: Dr. Ikramul Haq, ASC

Date of hearing: 26.01.2016 & 27.01.2016

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### JUDGMENT

**MIAN SAQIB NISAR, J:-** These appeals, by leave of the Court, and petitions involve similar question(s) of law, hence are being disposed of together. The key questions involved herein are:-

- (i) whether the minimum tax payable under Section 80D of the Income Tax Ordinance, 1979 (*Ordinance of 1979*) is leviable on the aggregate of declared turnover from **all sources** including receipts covered by Sections 80C and 80CC of the Ordinance of 1979;
- (ii) whether the minimum tax payable under Section 113 of the Income Tax Ordinance, 2001 (*Ordinance of 2001*), as it existed prior to its omission by the Finance Act, 2008, is leviable on the aggregate turnover from **all sources** including receipts covered by the Presumptive Tax Regime or upon which the tax payable/paid is a final discharge of tax liability (*note:- the subsequent Section 113 re-inserted vide Finance Act, 2009 has no bearing on the present matters as no tax year after re-insertion of the said section is involved thus all references to the 'Ordinance of 2001' are to as it existed prior to the amendments brought by the Finance Act, 2008, unless stated otherwise*);

- (iii) whether 'services rendered' pursuant to execution of a contract would fall within the Presumptive Tax Regime by virtue of Section 80C(2)(a)(i) of the Ordinance of 1979, whereas Section 50(4)(a) deals with 'services rendered' and 'execution of contracts' as separate categories alongwith 'supply of goods'; and
- (iv) whether cash purchase and/or purchase of raw material falls within the purview of 'supply of goods' as envisaged by Section 50(4)(a) of the Ordinance of 1979?

Out of the total of 105 cases (*103 civil appeals and 2 civil petitions*), 53 cases (*Civil Appeals No.1481 to 1529/2009, 254 and 255/2011 and Civil Petitions No.2595 and 2596/2009*) pertain to question No.(i); 36 cases (*Civil Appeals No.1235 to 1270/2015*) relate to question No.(ii); 5 cases (*Civil Appeals No.1084/L to 1088/L/2008*) pertain to question No.(iii); and 10 cases (*Civil Appeals No.1089 to 1098/2008*) pertain to question No.(iv). During the analysis portion of this opinion, questions No.(i) and (ii) shall be dealt with together as they are interlinked.

2. For the sake of convenience and brevity, one case for each of the categories shall be taken to be the lead case for the purposes of explaining the factual background. With respect to question No.(i), the brief facts of Civil Appeal No.1482/2009 are that the Deputy Commissioner of Income Tax assessed the total income and determined the tax payable by the respondent-company under Section 80D without taking into consideration Section 80C. The assessment order was challenged by the respondent which (*appeal*) was accepted by the Commissioner of Income/Wealth Tax (Appeal) holding that income even though liable to tax under Section 80C should be taken into consideration by the Income Tax Officer while calculating the turnover for the purposes of Section 80D. Aggrieved, the appellants approached the Income Tax Appellate Tribunal which *vide* order dated 18.11.1999



dismissed the appeal. Thereafter the appellants challenged such order before the learned High Court in an Income Tax Appeal which was dismissed *vide* order dated 27.5.2009 for the same reasons as enunciated in the judgment reported as **Commissioner of Income Tax/Wealth Tax Companies Zone, Faisalabad Vs. Messrs Masood Textile Mills Ltd., Faisalabad (2009 PTD 1707)** after which they approached this Court.

For the purposes of question No.(ii) the facts of Civil Appeal No.1235/2015, are that the respondent-company filed its Income Tax Return for the Tax Year 2006 which was treated to be an assessment in terms of Section 120 of the Ordinance of 2001. The amended assessment order passed under Section 122 of the said Ordinance and the subsequent order dated 23.10.2012 passed by the Commissioner of Inland Revenue, Appeals were successfully challenged by the respondent before the Appellate Tribunal Inland Revenue which *vide* order dated 15.9.2014 held that the minimum tax under Section 113 of the Ordinance of 2001 was to be calculated and charged on the basis of the aggregate turnover from all sources, including export receipts. Aggrieved, the appellants filed a reference petition under Section 133 of the said Ordinance before the Lahore High Court which upheld the decision of the Appellate Tribunal Inland Revenue *vide* order dated 24.12.2014 and decided it in the same terms as the judgment reported as **Commissioner Inland Revenue Vs. Imperial Electric Company (Pvt.) Ltd. (2015 PTD 884)**. The order dated 24.12.2014 has been impugned before this Court.

In respect of question No.(iii), the concise facts of Civil Appeal No.1084/L/2008 are that the respondent was a sanitation contractor of the Capital Development Authority, Islamabad (CDA) who filed a return under Section 55 of the Ordinance of 1979 which though initially assessed under Section 59A, was subsequently revised and an order was

passed by the Additional Commissioner under Section 66A to the effect that the payments received by the respondent from CDA were to be governed by the Presumptive Tax Regime of Section 80C which would be full and final discharge of tax liability. The order was successfully challenged by the respondent before the Income Tax Appellate Tribunal, subsequently the appellant filed applications under Section 136(1) of the said Ordinance before the Income Tax Appellate Tribunal which (*applications*) were dismissed. Thereafter, the appellant's tax reference before the learned High Court was also dismissed while holding, inter alia, that income derived from 'services rendered' was not subject to the Presumptive Tax Regime of Section 80C which stands specifically excluded from such section, hence the instant appeal.

Finally with regard to question No.(iv), the facts of Civil Appeal No.1089/2008 are that the respondent was deriving income from the manufacturing and sale of vegetable oil and *ghee* items. The Assessing Officer found the respondent to be in default under Section 52 of the Ordinance of 1979 on the basis that the respondent failed to deduct tax under Section 50(4) on account of certain purchases. The respondent's appeal before the Commissioner Income Tax (Appeals) was accepted after which the appellant's appeal before the Income Tax Appellate Tribunal and their reference before the learned High Court were both dismissed primarily on the ground that on-the-spot cash purchases did not fall within the term 'supply of goods' as used in Section 50(4)(a) of the said Ordinance, thus the respondent was not in default in terms of Section 52, thus the appellants approached this Court.

3. Dr. Ishtiaq Ahmed, Commissioner Inland Revenue, appearing on behalf of the appellants/petitioners argued against the impugned judgments. With respect to questions No.(i) and (ii), he submitted that the phrases 'turnover from all sources' and 'aggregate of

declared turnover' provided in Section 80D encompass income from **all sources**. He bifurcated the tax law regimes into the Presumptive Tax Regime and the Normal Tax Regime. The crux of his argument was that tax under the Presumptive Tax Regime is a final discharge of the tax liability of the taxpayer and thus should not be included for the purposes of calculation of 'turnover' in terms of Section 80D of the Ordinance of 1979. To bolster the above submission, he drew our attention to the fact that a statement under Section 143B is to be filed regarding income chargeable *inter alia* under Sections 80C and 80CC, i.e. the Presumptive Tax Regime, as opposed to a return under Section 55 which is for the Normal Tax Regime. He also made reference to Sections 168 and 169 of the Ordinance of 2001 to support his arguments. He referred to and read out extensively the relevant provisions of the Ordinance of 1979 and quoted numerous practical examples as illustrations of tax calculation.

4. On the other hand, the crux of the submissions of the learned counsel for the respondents was that the income taxable under Sections 80C and 80CC should not be excluded from 'turnover' under Section 80D which (*word*) has been specifically defined in the explanation to Section 80D(2) to mean gross receipts derived from the sale of goods, or from rendering, giving or supplying services or benefits or from execution of contract; and that there is nothing in Section 80D which allows for tax on income under Sections 80C and 80CC to be adjusted or for such income to be excluded from the 'aggregate of declared turnover', so far as it falls within the definition of 'turnover'.

Learned *amicus curiae*, Dr. Ikramul Haq, provided written submissions upon the Court's request and his arguments shall reflect in the course of this opinion. However, it may be briefly mentioned at this stage that he argued to the same effect as the respondents with respect to the interpretation of Sections 80C, 80CC and 80D. He further

submitted that it was not the intention of the Legislature to include sales made to walk-in customers within the purview of 'supply of goods' as contemplated by Section 50(4)(a) of the Ordinance of 1979, as evidenced by Section 153(1)(a) of the Ordinance of 2001.

5. Heard. We intend to address questions No.(i) and (ii) *(together)* first. Under tax law, there are various taxation methods, including the two involved in the instant matters, i.e. presumptive and minimum tax. The nature, scope and raison d'être of the said two types of tax find apt and elaborate mention in the judgment reported as **Messrs Elahi Cotton Mills Ltd and others Vs. Federation of Pakistan through Secretary M/o Finance, Islamabad and 6 others** (PLD 1997 SC 582) a relevant extract from which is reproduced herein below, in order to appreciate the analysis in the later part of this opinion:-

*“34. ....In our view, sections 80-C and 80-CC of the Ordinance fall within the category of presumptive tax as under the same the persons covered by them pay a pre-determined amount of presumptive tax in full and final discharge of their liability in respect of the transactions on which the above tax is levied. Whereas section 80-D of the Ordinance is founded on the theory of minimum tax which has been elaborately dealt with in the treatises, the relevant portions of which have been quoted in extenso hereinabove.*

*40. Adverting to the impugned newly-added section 80-D, it may be stated that we have already pointed out hereinabove that sections 80-C and 80-CC cannot be equated with section 80-D as the same is founded on different basis. It may again be observed that section 80-D is based on the theory of minimum tax. It*

*envisages that every individual should pay a minimum tax towards the cost of the Government.....”*

*(Emphasis added)*

The above quoted passage makes it clear that the taxes under Section 80D on the one hand and Sections 80C and 80CC on the other are distinct from each other. In order to answer questions No.(i) and (ii), the meaning and scope of the term ‘turnover’ needs to be examined. ‘Turnover’ as mentioned in the provisions of Section 80D of the Ordinance of 1979 and Section 113 of the Ordinance of 2001 has not been defined in the definition clause of the Ordinances. However, in the Ordinance of 1979, ‘turnover’ has been assigned a meaning in the explanation to Section 80D itself. Section 80D of the Ordinance of 1979 reads as follows:-

**“80D. Minimum tax on income of certain persons. (1)**  
*Notwithstanding anything contained in this Ordinance or any other law for the time being in force, where no tax is payable or paid by a company or a registered firm, an individual, an association of persons, an unregistered firm or a Hindu undivided family which, not being a company, does not qualify for assessment under the self assessment scheme under sub-section (1) of section 59 resident in Pakistan or the tax payable or paid is less than one-half per cent of the amount representing its turnover from all sources, the aggregate of the declared turnover shall be deemed to be the income of the said company or a registered firm, an individual, an association of persons, an unregistered firm or a Hindu undivided family which, not being a company, does not qualify for assessment under the self assessment scheme under sub-section (1) of section 59 and tax thereon shall be charged in the manner specified in sub-section (2).*

*Explanation.- For the removal of doubt, it is declared that the expression "where no tax is payable or paid" and "or the tax payable or paid" apply to all cases where tax is not payable or paid for any reason whatsoever including any loss of income, profits or gains or set off of loss of earlier years, exemption from tax, credits or rebates in tax, and allowances and deductions (including depreciation) admissible under any provision of this Ordinance or any other law for the time being in force.*

*(2) The company or a registered firm, an individual, an association of persons, an unregistered firm or a Hindu undivided family which, not being a company, does not qualify for assessment under the self assessment scheme under sub-section (1) of section 59 referred to in sub-section (1) shall pay as income tax-*

- (a)

*an amount, where no tax is payable or paid equal to one-half per cent of the said turnover; and*
- (b)

*an amount, where the tax payable or paid is less than one-half per cent of the said turnover, equal to the difference between the tax payable or paid and the amount calculated in accordance with clause (a).*

*Explanation: **For the removal of doubt it is declared that "turnover" means the gross receipts, exclusive of trade discount shown on invoices or bills, derived from the sale of goods or from rendering, giving or supplying services or benefits or from execution of contracts.***

(3)

.....”

(Emphasis supplied)

What is the worth of an explanation to a section in a statute and how is it to be interpreted? An explanation is appended to a section of an enactment to stipulate the meaning of a word, term, or phrase, and becomes part and parcel of the enactment. Its function is to clear the ambiguity and explain the meanings of the words used in the section to which it is appended.<sup>1</sup> It is an intrinsic aid available to the reader to understand and appreciate the statute and particularly the section to which such explanation has been affixed. A plain reading of the meaning assigned to 'turnover' in the explanation to Section 80D of the Ordinance of 1979 clearly indicates that it (*turnover*) **means** gross receipts derived from: (i) the sale of goods; or (ii) rendering, giving or supplying services or benefits; or (iii) execution of contracts, and **nothing more**. That the meaning assigned to 'turnover' is **comprehensive** and does not include anything beyond what has been specified therein is bolstered by the fact that the explanation begins with the phrase "*For the removal of doubt it is declared...*" rendering the explanation a declaratory provision, and it is well-established that the very purpose of declaratory provisions or declaratory statutes is to remove doubts which exist, or may exist, in the meaning or effect of a provision or statute, as the case may be. Thus the phrases 'turnover from all sources' and 'aggregate of declared turnover' in Section 80D are to be necessarily read in conjunction with the explanation to Section 80D(2) of the Ordinance of 1979 for the purposes of determination of minimum tax liability.

We find it relevant at this juncture to refer to the judgment reported as **Nazir Hussain Shah Vs. The State (PLD 1965 SC 139)** wherein, dilating upon the explanation appended to Section 6(5) of the Pakistan Criminal Law (Amendment) Act (XL of 1958), a five member

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<sup>1</sup> *Naveed Textile Mills Ltd. Vs. Assistant Collector (Appraising) Custom House, Karachi and others* (PLD 1984 SC 92), *Chief Administrator of Auqaf, Punjab, Lahore Vs. Koura alias Karam Ilahi and another* (PLD 1991 SC 596).

bench of this Court held that it was not open to the Court to read into the said section a limitation which was not there by reference to extraneous circumstances. In similar vein, we are of the view that the word 'turnover' specifically defined in Section 80D cannot be interpreted in a way so as to widen or enlarge the scope of the said section by interpreting 'turnover' to include income from **all sources** as has been argued by the appellants/petitioners.

6. Now advertent to the meaning of 'turnover' in Section 113 of the Ordinance of 2001, which (*meaning*) has neither been provided in the definition clause of the said Ordinance or by way of explanation to the said section, instead a separate and exclusive sub-section, i.e. (3) of Section 113 has been dedicated to it, which (*section*) reads as under:-

***“113. Minimum tax on the income of certain persons.-***

*(1) This section shall apply to a resident company where, for any reason whatsoever, including the sustaining of a loss, the setting off of a loss of an earlier year, exemption from tax, the application of credits or rebates, or the claiming of allowances or deductions (including depreciation and amortisation deductions) allowed under this Ordinance or any other law for the time being in force, no tax is payable or paid by the person for a tax year or the tax payable or paid by the person for a tax year is less than one-half per cent of the amount representing the person's **turnover from all sources** for that year.*

*(2) Where this section applies—*

*(a) **the aggregate of the person's turnover for the tax year shall be treated as the income of the person** for the year chargeable to tax;*



(b) .....  
.....

(c) .....  
.....

Provided  
that.....

(3) In this section, “turnover” means–

- (a) the gross receipts, exclusive of sales tax and Federal excise duty or any trade discounts shown on invoices or bills, derived from the sale of goods;
- (b) the gross fees for the rendering of services or giving benefits, including commissions;
- (c) the gross receipts from the execution of contracts; and
- (d) the company’s share of the amounts stated above of any association of persons of which the company is a member.”

(Emphasis supplied)

Where the legislature defines, in the same statute, the meaning of a word used therein, such definition most authoritatively expresses its intent which definition and construction is binding on the courts.<sup>2</sup> When a word has been defined to **mean** such and such, the definition is *prima facie* restrictive and exhaustive.<sup>3</sup> Upon a plain reading of the definition of ‘turnover’ provided in Section 113(3) of the Ordinance of 2001 it is manifest that it (*turnover*) **means:** (i) gross receipts derived from the sale of goods; (ii) gross fees for the rendering of services or giving benefits,

<sup>2</sup> Interpretation of Statutes (11<sup>th</sup> Ed.) by N. S. Bindra.

<sup>3</sup> Vanguard Fire & General Insurance Co. Ltd., Madras Vs. Fraser & Ross (AIR 1960 SC 971).

including commissions; (iii) gross receipts from the execution of contracts; and (iv) the company's share of the amounts stated above of any association of persons of which the company is a member. The meaning in the said sub-section has been assigned to the word 'turnover' used in Section 113 and therefore the phrase 'turnover from all sources' in sub-section (1) is to be read in conjunction with such definition which is **exhaustive** in nature and nothing further can be added thereto, thus the argument of the appellants/petitioners' that 'turnover' covers **all sources** under various heads of income is not tenable in law.

7. In light of the above discussion, the aggregate of the declared turnover as defined in Section 80D of the Ordinance of 1979 from the sale of goods, rendering, giving or supplying of services or benefits or execution of contracts has to be taken into account for determining the minimum tax liability of 0.5% of the turnover. If no tax, for whatever reason, is payable/paid, then the amount worked out at the rate of 0.5% of the turnover will be the minimum tax payable. If the tax payable/paid is less than 0.5% of the turnover, then the minimum tax payable will be the difference/balance between the tax payable/paid and 0.5% of the turnover. A similar analysis will apply to Section 113 of the Ordinance of 2001, where the aggregate of the taxpayer's turnover from the sale of goods, rendering of services or giving of benefits including commissions and the execution of contracts has to be taken into account in order to determine the minimum liability of 0.5% of the turnover for each tax year *(or 1% of the turnover for each tax year, depending on the tax year involved; as Section 113 was subsequently amended vide Finance Act, 2013 and the percentage of minimum liability prescribed therein was increased to 1%)*.

8. We now move on to consider the argument of the appellants/petitioners that tax payable/paid upon income under the Presumptive Tax Regime is a final discharge of tax liability and thus such

income is liable to be excluded from the aggregate turnover under Sections 80D and 113 of the Ordinance of 1979 and 2001 respectively (*collectively referred to as the Ordinances*). As mentioned in the earlier portion of this opinion, 'turnover' has been **clearly** and **comprehensively** defined in the explanations to Section 80D(2) and Section 113(3) *ibid*. It is well settled that a strict and literal approach is to be adopted while interpreting fiscal or taxing statutes, and that the Court cannot read into or impute something when the provisions of a taxing statute are clear. These principle(s) have been reiterated by this Court in a number of judgments reported as Pearl Continental Hotel and another Vs. Government of N.W.F.P. and others (PLD 2010 SC 1004), Star Textile Ltd. and 5 others Vs. Government of Sindh through Secretary Excise and Taxation Department, Sindh Secretariat, Karachi and 3 others (2002 SCMR 356), Aslam Industries Ltd., Khanpur Vs. Pakistan Edible Corporation of Pakistan and others (1993 SCMR 683), Messrs Mehran Associates Limited Vs. The Commissioner of Income-Tax, Karachi (1993 SCMR 274), A & B Food Industries Limited Vs. Commissioner of Income-Tax/Sales, Karachi (1992 SCMR 663), Collector of Customs (Preventative) and 2 others Vs. Muhammad Mahfooz (PLD 1991 SC 630) and Messrs Hirjina & Co. (Pakistan) Ltd., Karachi Vs. Commissioner of Sales Tax Central, Karachi (1971 PTD 200). A five member bench of this Court in Hirjina & Co. (*supra*) while interpreting the definition of 'Provincial Excise Duty' held:-

*“Apart from this, we are unable to read the earlier definition in the manner suggested by the Department. It was said in the course of argument that notwithstanding the amendment it must be assumed that the previous definition of ‘sale price’ included Provincial Excise Duty. The previous definition however, does not*

*expressly say so. We may here observe that interpreting the taxing statute the Courts must look to the words of the statute and interpret it in the light of what is clearly expressed. It cannot imply anything which is not expressed, it cannot import provisions in the statute so as to support assumed deficiency. On the other hand the fact that the Legislature made an express provision for including the excise duty indicates that the unamended definition of the 'sale price' did not include the provincial excise duty."*

*(Emphasis supplied)*

At the cost of repetition, Section 80D of the Ordinance of 1979 includes within its ambit receipts, exclusive of trade discount shown on invoices or bills, derived from the sale of goods or from rendering, giving or supplying services or benefits or from execution of contracts, **whether or not** such receipts fall under the Presumptive Tax Regime or Normal Tax Regime. In similar vein, Section 113 of the Ordinance of 2001 includes within its ambit receipts, exclusive of sales tax and Federal excise duty or any trade discounts shown on invoices or bills, derived from the sale of goods, rendering of services or giving of benefits including commissions, or from the execution of contracts, **whether or not** such receipts fall under the Presumptive Tax Regime or Normal Tax Regime. There is nothing in the wording of Sections 80D and 113 of the respective Ordinances to suggest that for the purposes of calculating the turnover for the said sections receipts of income subject to the Presumptive Tax Regime are excluded. Furthermore, Section 153(1)(c) of the Ordinance of 2001 provides that receipts from the execution of contracts would be subject to presumptive tax which would be final, and at the same time Section 113(3)(c) of the said Ordinance clearly includes gross receipts from the execution of contracts within 'turnover' for the purposes of

determination of minimum tax under Section 113. Thus it certainly cannot be said that receipts of income subject to presumptive tax would automatically fall outside the scope of Section 113 (*for the tax years up to 2009, prior to re-insertion of Section 113 by the Finance Act, 2009*).

9. In furtherance of the above analysis, there was nothing to prevent the Legislature from expressly providing that such receipts (*under the Presumptive Tax Regime*) would be excluded while calculating the aggregate turnover under the said sections. This interpretation is augmented by the fact that the new Section 113 of the Ordinance of 2001, as re-inserted by the Finance Act, 2009 (*new Section 113*)<sup>4</sup>, specifically excluded from its domain the amounts subjected to the Presumptive Tax Regime, which (*section*) reads as below:-

***“113. Minimum tax on the income of certain persons.-***

*(1) This section shall apply to a resident company where, for any reason whatsoever allowed under this Ordinance, including any other law or for the time being in force–*

- (a) loss for the year;*
- (b) the setting off of a loss of an earlier year;*
- (c) exemption from tax;*
- (d) the application of credits or rebates; or*
- (e) the claiming of allowances or deductions (including depreciation and amortization deductions) no tax is payable or paid by the person for a tax year or the tax payable or paid by the person for a tax year is less than one-half per cent of the amount representing the person’s turnover from all sources for that year:*

*Provided*  
*that.....*

*(2) Where this section applies:*

<sup>4</sup> The new Section 113 reproduced in this opinion is as it was **originally** re-inserted by the Finance Act, 2009.

- (a) .....
- (b) .....
- (c) .....
- Provided that.....

(3) “turnover” means,-

- (a) the gross receipts, exclusive of Sales Tax and Federal Excise duty or any trade discounts shown on invoices, or bills, derived from the sale of goods, and also excluding any amount taken as deemed income and is assessed as final discharge of the tax liability for which tax is already paid or payable;
- (b) the gross fees for the rendering of services for giving benefits including commissions; except covered by final discharge of tax liability for which tax is separately paid or payable;
- (c) the gross receipts from the execution of contracts; except covered by final discharge of tax liability for which tax is separately paid or payable; and
- (d) the company’s share of the amounts stated above of any association of persons of which the company is a member.”

(Emphasis supplied)

The underlined portions in the new Section 113(3) show the additions made to the said sub-section specifically excluding from its purview the amounts treated as deemed income and assessed as final discharge of tax liability for which tax is paid/payable, i.e. those falling under the Presumptive Tax Regime. These additional phrases inserted into the new Section 113 (*underlined above*) are missing from the earlier Sections 80D and

113 of the respective Ordinances which patently suggests that the minimum tax payable under Section 80D is leviable on the aggregate of declared turnover from all sources including receipts covered by Sections 80C and 80CC of the Ordinance of 1979, and that the minimum tax payable under Section 113 is leviable on the aggregate turnover from all sources including receipts and tax under the Presumptive Tax Regime of the Ordinance of 2001. The above analysis also draws support from the insertion of the explanation to the new Section 113(1) of the Ordinance of 2001 by the Finance Act, 2012 which reads as follows:-

*“Explanation.- For the purpose of this sub-section, the expression “tax payable or paid” does not include tax already paid or payable in respect of deemed income which is assessed as final discharge of the tax liability under section 169 or under any other provision of this Ordinance.”*

The absence of this explanation from the old Section 113 (*prior to its omission by the Finance Act, 2008*) clearly suggests that the Legislature did not intend that tax already paid/payable in respect of deemed income which was assessed as final discharge of the tax liability under section 169 or under any other provision of the Ordinance of 2001 would be excluded from the purview of ‘tax payable or paid’, because the Legislature did not expressly provide so and as mentioned above, fiscal statutes are generally to be interpreted strictly, without imputing anything that is not manifest from the express wording of such statute.

Thus in light of the *ratio decidendi* of **Hirjina & Co.** (*supra*) it is clear that the exclusion of amounts treated as deemed income and assessed as or covered by final discharge of tax liability for which tax is separately paid/payable from the term ‘turnover’ cannot be implied in the

provisions of Sections 80D and 113 of the respective Ordinances, as the same has not been so expressed. The appellants/petitioners' argument that failure to exclude amounts which are covered by final discharge of tax liability from the 'turnover' results in numerous taxpayers essentially crossing the threshold provided in the said sections thereby rendering them not liable to payment of minimum tax as envisaged by the said sections, and thus depriving the appellants/petitioners of well-deserved revenue, is not a justification to read into the provisions of Sections 80D and 113 something which is not there "*so as to support assumed deficiency*"<sup>5</sup>, as there can be no equitable construction of taxing statutes.<sup>6</sup>

10. With regard to the appellants/petitioners' reference to the statement under Section 143B of the Ordinance of 1979, suffice it to say that mere filing of a statement under the said section (*as opposed to a return under Section 55 which is for the Normal Tax Regime*) for income falling under the Presumptive Tax Regime (*i.e. Sections 80C, 80CC etc.*) is not a reason to bring them out of the definition of 'turnover' when the law, i.e. the explanation to Section 80D(2), expressly provides otherwise. The same applies to the corresponding provisions of the Ordinance of 2001, in that mere filing of a statement under Section 115(4) of the Ordinance of 2001, which (*section*) is *pari materia* to Section 143B of the Ordinance of 1979, does not mean that the income contained in such statement would automatically fall outside the scope of 'turnover' provided by Section 113. If such income falling under the Presumptive Tax Regimes of both the Ordinances was to be excluded from the ambit of 'turnover' as provided in Sections 80D and 113 of the respective Ordinances, the Legislature would have explicitly mentioned it, as it had done by excluding amounts/receipts which are

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<sup>5</sup> *Hirjina & Co. (supra) and Bindra (supra note 2).*

<sup>6</sup> *Understanding Statutes (2008 Ed.) by S. M. Zafar; see also the case of Star Textile Ltd. And 5 others Vs. Government of Sindh through Secretary Excise and Taxation Department, Sindh Secretariat, Karachi and 3 others (2002 SCMR 356).*



final discharge of tax liability in the new Section 113 re-inserted into the Ordinance of 2001 by the Finance Act, 2009.

11. The appellants/petitioners have relied upon Section 168(3) of the Ordinance of 2001 to contend that income subject to the Presumptive Tax Regime falls outside the scope of Section 113 of the said Ordinance. Section 168(3) opens with the phrase “*no tax credit shall be allowed for any tax collected or deducted that is a final tax...*”; suffice it to say that **tax credit** has no role whatsoever to play in determining the minimum tax liability with respect to the term ‘turnover’ as defined in Section 113 of the Ordinance of 2001. We fail to understand how Section 168(3) *supra* can be construed to mean that the receipts of income falling under the Presumptive Tax Regime are to be excluded from the purview of ‘turnover’ for the purposes of determination of minimum tax under Section 113.

12. In light of the foregoing, we are of the view that given the definition of ‘turnover’ provided in Sections 80D and 113 of the Ordinances, the minimum tax payable is leviable on the aggregate of turnover from all sources including receipts covered by Sections 80C and 80CC of the Ordinance of 1979, and by the Presumptive Tax Regime under the Ordinance of 2001, respectively. We do not find any infirmity in the impugned judgments relating to this issue calling for interference by this Court, and therefore, these appeals and petitions are accordingly dismissed.

13. Now adverting to question No.(iii), the relevant provisions (*parts*) of Sections 50(4) and 80C of the Ordinance of 1979 read as follows:-

**“50. Deduction of tax at source.- (4) Notwithstanding anything contained in this Ordinance,-**

(a) any person responsible for making any payment in full or in part (including a payment by way of an advance) to any person, being resident, (hereinafter referred to respectively as "payer" and "recipient"), on account of the **supply of goods** or **for service rendered** to, or the **execution of a contract** with the Government, or a local authority, or a company or a registered firm, or any foreign contractor or consultant or consortium shall, deduct advance tax, at the time of making such payment, at the rate specified in the First Schedule.....

80C. ***Tax on income of certain contractors and importers.***- (1) Notwithstanding anything contained in this Ordinance or any other law for the time being in force, where any amount referred to in sub-section (2) is received by or accrues or arises or is deemed to accrue or arise to any person, the whole of such amount shall be deemed to be income of the said person and tax thereon shall be charged at the rates specified in the First Schedule.

(2) The amount referred to in sub-section (1) shall be the following namely:-

(a) Where the person is a resident,-

(i) the amount representing payments on which tax is deductible under sub-section (4) of section 50, **other than payments on account of services rendered;**"

(Emphasis supplied)

A plain reading of Section 50(4)(a) of the Ordinance of 1979 clearly provides for deduction of tax at source in three situations: (i) **supply of goods**; (ii) for **service rendered**; and (iii) **execution of a contract**. Whereas Section 80C(2)(a)(i) provides that the income of a person for the

purposes of tax under the said section, shall include payments on which tax is deductible under Section 50(4) **excluding** payments on account of **services rendered**. Logic suggests that all services rendered would necessarily be pursuant to execution of a contract, i.e. as long as there is a meeting of the minds or *consensus ad idem*. Thus to say (*as is the appellants' stance*) that though services are being rendered, since it is pursuant to execution of a contract, it would not fall within the exception contained in Section 80C(2)(a)(i) and instead the income derived from such execution of contract would be liable to be charged with presumptive tax under Section 80C would, in our opinion, render the exception in Section 80C(2)(a)(i) completely superfluous and redundant. Such intention cannot be attributed to the Legislature and neither can we, while following the salutary and well-established principles of statutory interpretation, construe the said section in such a way. In fact, the very selection of words, i.e. 'supply of goods', 'service rendered' and 'execution of contract' suggests that the wide phraseology of 'execution of contract' pertains to **residual** contracts, **other** than those (*contracts*) involving supply of goods and/or rendering of services. This interpretation is strengthened by clause (i) of Section E of Part I of the First Schedule to the Ordinance of 1979 which reads follows:

*“E. Rate for collection of income tax under sub-section (4) of section 50,-*

*(i) Where the payment is made to a resident assessee holding a National Tax Number, on account of-*

*(a) execution of contracts, other than those mentioned in sub-clauses (b), (c) and (d) ...*

*(i) where the value of the contract                      five per cent of  
Does not exceed thirty million                      such income.*

- rupees,*
- |      |   |  |
|------|---|--|
| (ii) | <i>Where the value of contract exceeds thirty million rupees,</i>             | <i>six per cent of such income.</i>                          |
| (b)  | <i>supply of rice, cotton, cotton seed or edible oils;</i>                    | <i>one and one-half per cent of the amount of payment.</i>   |
| (c)  | <i>supply of goods other than those referred to in sub-paragraph (b); and</i> | <i>three and one half per cent of the amount of payment.</i> |
| (d)  | <b><u>services rendered.</u></b>  | <i>five per cent of the amount of payment.”</i>              |

*(Emphasis supplied)*

We would like to point out here that a schedule to a statute can be used as an intrinsic aid to interpret its (*statute's*) provisions, which (*schedule*) is as much a part of the statute, and is as much an enactment as any other part.<sup>7</sup> Thus the above extract of the said schedule also indicates that services rendered necessarily flow from execution of a contract, but execution of a contract would not necessarily result in rendering of services. In other words, where services are being rendered, prior execution of a contract would not *per se* attract the presumptive tax under Section 80C, rather it would be excluded by virtue of the exception in Section 80C(2)(a)(i). Thus there can be no question of taxing the same under the Presumptive Tax Regime. Hence, we are inclined to answer question No.(iii) in the negative, thereby affirming the view point of the learned High Court in the impugned judgments in this regard.

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<sup>7</sup> Zafar (*supra* note 6).

14. Finally, with respect to question No.(iv), in which the issue relates to the meaning and connotation of the word 'supply', and whether or not it encompasses on-the-spot cash purchases. The learned High Court in the impugned judgments in this regard has held that 'supply of goods' as used in the said Ordinance does not include on-the-spot cash purchases which fall within 'sale' as opposed to 'supply', the latter being associated with a continuing relationship existing over a certain period of time. In order to resolve the fourth proposition, the term 'supply of goods' as provided for in Section 50(4)(a) needs elucidation. Since the said term has not been specifically defined in the Ordinance of 1979, as per the settled canons of statutory interpretation, the ordinary and natural meaning of the phrase needs to be examined. However, 'supply of goods' also qualifies as a technical term as it is part of a statute falling within the special technical subject of taxation which is associated with business, economics and accounts, therefore its contextual parlance and phraseology needs to be examined. Before embarking upon such examination, we would like to expound certain rules of statutory interpretation in this regard. First, where an enactment uses a term which has both an ordinary and a technical meaning, the question as to which meaning the term is intended to have is determined by the context. If the context is technical, the presumption is that the technical meaning of the term is intended to be used; otherwise the ordinary meaning is taken as meant.<sup>8</sup> Secondly, words used in a statute relating to a particular trade, business or transaction are to be construed as having the meaning which everybody conversant with that trade, business or transaction knows and understands.<sup>9</sup> This is particularly so in construing the meaning of words in taxing statutes, as has been held

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<sup>8</sup> *Statutory Interpretation (4<sup>th</sup> Ed.)* by F. Bennion.

<sup>9</sup> *Messrs Asbestos Cement Industries Ltd Vs. Lahore Municipal Corporation and others* (1994 SCMR 262).

by the Indian Supreme Court,<sup>10</sup> which (view) we have no hesitation in subscribing to:-

*“...in determining the meaning or connotation of words and expressions describing an article in a tariff Schedule, one principle which is fairly well-settled is that those words and expressions should be construed in the sense in which they are understood in the trade by the dealer and the consumer. The reason is that it is they who are concerned with it, and, it is the sense in which they understand it which constitutes the definitive index of the legislative intention.”*

In ordinary parlance, 'supply' means to *“make (something needed) available to someone; provide with something needed; the act of supplying”*,<sup>11</sup> *“to provide or furnish (something believed to be necessary)”*<sup>12</sup> and *“to provide something that is wanted or needed, often in large quantities and over a long period of time”*<sup>13</sup>, whereas 'sale' has been defined as *“the act or practice of selling; the exchange of anything for a specified amount of money”*<sup>14</sup> and *“the exchange of a commodity for money; the process of selling something”*.<sup>15</sup> Applying the contextual approach to meaning, 'supply' is associated with a 'supplier' and 'sale' with 'seller/vendor'. A supplier is one who supplies goods (or services) to another, the latter often is not the end-consumer. The consumer is directly associated with the seller/vendor who sells/vends goods to customers. In the supply chain, the supplier more often than not appears somewhere in the beginning or middle, whereas the seller/vendor is often the last person involved and is therefore at the end of the supply chain who obtains goods from a supplier and sells/vends them to consumers/clients. Every supply

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<sup>10</sup> *Indian Aluminium Cables Ltd. Vs. Union of India and others (AIR 1985 SC 1201).*

<sup>11</sup> *Concise Oxford English Dictionary (11<sup>th</sup> Ed.).*

<sup>12</sup> *Chambers 21<sup>st</sup> Century Dictionary (1999 Ed.).*

<sup>13</sup> *Cambridge Dictionaries Online.*

<sup>14</sup> *Chambers (supra note 12).*

<sup>15</sup> *Oxford (supra note 11).*

involves a sale (*as there is provision of goods in exchange for consideration*), however every sale does not necessarily involve supply, for e.g. a shopkeeper/seller/vendor selling goods at his shop to walk-in customers cannot be described as the equivalent of 'supplying'. Thus in technical terms, 'supply' as understood in its proper milieu would not encompass on-the-spot cash purchases.

15. The above interpretation is supported by the fact that the term 'supply of goods' was dispensed with in Section 153(1)(a) of the Ordinance of 2001 which is *pari materia* to Section 50(4) of the Ordinance of 1979, and instead the phrase 'sale of goods' was used. The relevant provisions of Section 153 read as follows:-

***“153. Payment for goods, services and contracts.– (1)***

*Every prescribed person making a payment in full or part including a payment by way of advance to a resident person or –*

*(a) for the **sale of goods**;*

*(b) for the rendering of or providing of services;*

*(c) on the execution of a contract, including contract signed by a sportsperson but not including a contract for the sale of goods or the rendering of or providing services,*

*shall, at the time of making the payment, deduct tax from the gross amount payable (including sales tax, if any) at the rate specified in Division III of Part III of the First Schedule.*

*(Emphasis added)*

The departure in the wording of Section 153(1) from that of Section 50(4) is significant, as established above, the words 'sale' and 'supply' are neither synonymous nor interchangeable. This divergence speaks volumes to the intent of the Legislature, which was that sales by

sellers/vendors to their walk-in customers or on-the-spot cash purchases were not to be included within the purview of 'supply of goods', thereby subjecting such walk-in/on-the-spot cash purchases to the withholding provisions. This intention is also manifest from a bare reading of Section 50(4)(a) of the Ordinance of 1979 (*reproduced in the earlier part of this opinion*) which can in no way be said to be designed to levy such a tax on consumers for payments made on the spot or window purchases. However, an explanation was inserted into Section 50(4)(a) of the Ordinance of 1979 through the Finance Act, 1998 which reads as under:-

*“Explanation.- For the purposes of clause (a) the expression “supply of goods” includes both cash and credit purchases of goods by the payer, whether under a contract or not, on credit or in cash;”*

The Peshawar High Court in **Al-Khair Gadoon Ltd Vs. Commissioner of Income-Tax** [2004 PTD 2467] and the High Court of Sindh in **Commissioner of Income-Tax, Karachi Vs. Messrs Nazir Ahmed and Sons (Pvt.) Ltd., Karachi** (2004 PTD 921) have interpreted the explanation to Section 50(4)(a) to determine whether or not it (*explanation*) would have retrospective effect. However, the controversy involved in those cases was not related to sales to walk-in customers or on-the-spot cash purchases, nevertheless their *ratio* may effectively mean that **any** purchase, be it on-the-spot, would fall within the purview of 'supply of goods'. As established above, 'supply' necessarily includes a purchase, and in our opinion, the said explanation was included to clarify that such purchase would not only be those made in cash, but also by way of credit payment. As highlighted in the earlier part of this opinion, an explanation cannot be read so as to extend the scope of the provision to



which it is appended, thus we are not inclined to extend 'supply of goods' in Section 50(4) to include 'sale of goods' by sellers/vendors **at their retail outlets** to walk-in customers merely by virtue of the use of the word 'purchase' in the said explanation. In this respect, we find it expedient to reproduce an extract from a judgment of the Lahore High Court reported as **Commissioner of Income Tax/Wealth Tax Vs. Messrs Ellcot Spinning Mills Ltd.** (2008 PTD 1401) which reads as follows:-

*“For all practical purpose it is the definition of ‘supply of goods’ which would decide or clinch the issue. The term supply has not been defined in Income Tax Ordinance at all. However, it has already been considered as a part of sale but every sale is not a supply. Supply presupposes the existence of a regular arrangement based upon some permanence involving order identification and determination of the items, its quality and the considerations. It can obviously be cash as well as a credit and this did not require any further explanation as has been added in section 50(4) above. The fear of the respondents and the claim of the department that the explanation after proviso in subsection (a) of section 50(4) which defines supply of goods has not brought anything new, is baseless. The explanation in fact has confused the situation as it says that the purchase of goods by the payer whether under a contract or not, on credit or in cash shall be a part of the supply. However, the same does not add anything new except that it can be either under a contract or not under a contract. The draftsman is totally ignorant that once a transaction is done the existence of a contract is obvious. However, the term supply even after the above explanation would not cover a window purchase of casual sale purchase transactions like of daily goods in open market.”*

The judgment reported as Messrs Bilz (Pvt.) Ltd Vs. Deputy Commissioner of Income-Tax, Multan and another (2002 PTD 1) relied upon by the appellants has no relevance to the precise question of law at hand, thus needs no further discussion.

In light of the above, question No.(iv) is answered in the negative, in that, on-the-spot cash purchases do not fall within the purview of 'supply of goods' as envisaged by Section 50(4)(a) of the Ordinance of 1979. In light of the above discussion, the appeals of the department in this regard are dismissed and the impugned judgment(s) of the learned High Court are sustained.

16. To recapitulate, in light of the above, all the appeals (*excluding Civil Appeal No.310/2012*) and petitions are dismissed. As far as Civil Appeal No.310/2012 is concerned, the same involves the question regarding lease and buyback, and since the related matters were dismissed as withdrawn by the department *vide* order dated 27.1.2016, therefore we have refrained from commenting on the merits of the said case which is accordingly dismissed. Before valediction, we would like to express our gratitude towards the invaluable assistance rendered by the learned *amicus curiae*, Dr. Ikramul Haq.

JUDGE

JUDGE

JUDGE

Announced in open Court  
on **5.4.2016** at **Islamabad**  
**Approved For Reporting**  
*Ghulam Raza/\**