

JUDGEMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Case No: Writ Petition No. 3223 of 2015

M/s Infotech (Private) Limited

Vs.

Federation of Pakistan and 4 others

Petitioners by: Syed Ali Zafar, Ms. Mehak Ali, Mr. M.S. Babar, Advocates.

Respondents by: Dr. Farhat Zafar, Sheikh Anwar ul Haq & Mr. Saeed Ahmed Zaidi, Advocates.

**Syed Hasnain Ibrahim Kazmi,
Deputy Attorney-General.**

Date of Hearing: 02.05.2016

AAMER FAROOQ, J.- This judgement shall decide the instant petition as well as Writ Petition No.3229/2015, Writ Petition No.3230/2015, Writ Petition No.3233/2015 & Writ Petition No.3234/2015 as common questions of law and facts are involved.

2. The petitioners in all the petitions have challenged the vires of section 153 of Income Tax Ordinance, 2001 (the Ordinance) relating to the imposition of minimum tax. The petitioners are companies engaged in various businesses and are subject to payment of income tax and filing of returns periodically. In this behalf they are, in all the petitions, aggrieved of deduction of tax @ 8% which is to be treated as minimum tax. The referred tax has been made applicable to the petitioners under section 153 of the Ordinance as amended from time to time.

3. Learned counsels for the petitioners *inter alia*

submitted that under section 153(1)(b) of the Ordinance every prescribed person making a payment in full or part including payment by way of advance to a resident person for rendering of or providing services shall at the time of making payment deduct tax from the gross amount payable at the rate specified in Division III of Part-III of First Schedule. In this behalf it was contended that previously companies were exempted from this tax by virtue of Clause (79) of Part (IV) of the Second Schedule in 2001 Ordinance wherein it was mentioned that section 153 was not applicable to the companies. Clause (79) of Part (IV) of the Second Schedule was omitted in 2015, hence 8% turnover tax became applicable on companies. Learned counsels contended that the question before this Court is imposition of tax on the turnover of a person. Learned counsels also submitted that under the Constitution the power to levy tax on income is only available with the Parliament; that Entry No.47 in Schedule IV of the Constitution gives the Federal Government power to impose tax on income other than agricultural income; that Entry No.47 does not allow imposition of income tax on the turnover of a tax payer whereas income tax can only be imposed on the actual income or profit earned by the tax payer after deduction of costs and expenses as permissible under the Ordinance. Learned counsels further contended that under Article 260 of the Constitution of the Islamic Republic of Pakistan, 1973 the scope of the term 'tax on income' has been elaborated and it includes tax in the nature of 'an excess profit tax', therefore, the tax on income cannot mean tax on turnover but mean tax on the profit earned after deducting costs and expenses from the gross

turnover. It was also pointed out that in Entry No.52 of Schedule IV of the Constitution tax can be levied on production capacity of any plant, however, since the petitioners are rendering services of inspection and certification, therefore, the same is not applicable. In support of their contentions learned counsels placed reliance on the case titled *Messrs Elahi Cotton Mills Ltd. and others v. Federation of Pakistan through Secretary M/o Finance, Islamabad and 6 others* (PLD 1997 SC 582). Learned counsels further contended that in light of the above judgement of the Hon'ble Supreme Court of Pakistan the legislature can impose a minimum tax, however, the same is subject to certain checks and balances; that no machinery is provided under section 153 for determination of the tax and levy thereof. Learned counsels further submitted that tax @ 8% of the turnover of the petitioners is confiscatory in nature and is expropriatory, therefore, unconstitutional. In this behalf it was contended that the imposition of tax at such a high rate makes it impossible for the petitioners to survive. It was further submitted that the taxing statute must provide procedural machinery for levy of the tax which in the instant case has not been done; that gross revenue/turnover is not the same as income. In order to tax gross revenue it must be deemed to be income by the taxing statute. It was further contended that the charging section in the Ordinance i.e. section 4 does not allow imposition of minimum tax under section 153 (3) *ibid*. Learned counsels also pointed out that the minimum tax is already applicable to the companies under section 113 of the Ordinance whereby the aggregate of the person's turnover is deemed to be treated as income of the person for the year

chargeable to tax. In this behalf it was contended that income tax charged is at 1% of the turnover from all sources; that section 113 of the Ordinance specifically provides that the aggregate for the person's turnover is deemed to be income of the person chargeable to tax and also provides the machinery for assessment and levy of the tax whereas no such deeming or machinery can be found in section 153 (3) of the Ordinance. Learned counsels also contended that by virtue of Income Tax (Second Amendment) Ordinance, 2015 the rate of minimum tax has been reduced from 8% to 2% and the excess amount of minimum tax can be carried forward and adjusted against tax liability of the subsequent tax years, however, this concession has been made applicable only to a few companies within the service sector, therefore, charging of the minimum tax under the same regime at different rates is discriminatory and in violation of Article 25 of the Constitution.

4. The learned co-counsel for the petitioners i.e. Mr. M. S. Babar, Advocate supplemented the arguments of Syed Ali Zafar, ASC and submitted that the charging section in the Ordinance does not provide for charging minimum tax under section 153 *ibid*; that section 153 is not a charging section as it does not meet with the requirements of a charging section which have been elaborated by the Hon'ble Sindh High Court in case titled *M/s Quetta Textile Mills Limited through Chief Executive v. Province of Sindh through Secretary Excise and Taxation, Karachi and another* (PLD 2005 Karachi 55). Reliance was also placed on the case titled *Syed Imran Ali Shah v. Government of Pakistan through Secretary Human Resources (HR) Division*,

Islamabad and 2 others (2013 PLC 143) & *Capt. (Retd.) Nayyar Islam v. Judge, Accountability Court No.iii and others* (2012 SCMR 669). It was also contended that the tax regime is discriminatory and is expropriatory inasmuch as charging of the minimum tax at such a high rate tantamount to expropriation of capital which is not permissible. Reliance was placed in this regard on the case titled *Messrs Elahi Cotton Mills Ltd. and others v. Federation of Pakistan through Secretary M/o Finance, Islamabad and 6 others* (PLD 1997 SC 582). It was further contended that where there are two possible interpretations, one favourable to the taxpayer must be adopted. Reliance was also placed on the case reported as 2004 PTD 2479 and 1988 CLC 5 Lahore.

5. Learned counsels for respondents No.2 to 5 *inter alia* submitted that no representation was ever filed by the petitioners regarding their grievance; that the case of the petitioners has not been audited so far; that the petitioners have not come up with clean hands; that the provision in question is not discriminatory and confers benefit which is reasonable in the circumstances. In this behalf it was contended that by virtue of amendment made in the law certain service sectors have been provided option to pay tax @ 2%. It was also contended that the tax is not expropriatory. In support of their contentions learned counsels placed reliance on the case reported as PLD 2010 SC 983, 1989 PTD 961 and AIR 1966 SC 1292.

6. Since the vires of Federal statute has been challenged, therefore, notice in terms of Order XXVII (A) C.P.C. was issued to the Attorney-General for Pakistan and in this behalf learned Deputy Attorney-General *inter alia* submitted that the provision in the

Ordinance dealing with levy of tax of turnover as minimum tax is in accordance with the scheme of the Ordinance and is not confiscatory or expropriatory and is in accordance with law.

7. The petitioners in the instant petition as well as above mentioned petitions have challenged vires of section 153 *ibid* relating to deduction of tax at the time of making of payment from gross amount payable at the rate specified in Division III of Part-III of the First Schedule to the Ordinance. This liability for deduction and the status of the same is provided in section 153 of the Ordinance. Under sub section 1 to section 153 every prescribed person making a payment in full or part including payment by way of advance to a resident person *inter alia* for the rendering of or providing of services shall at the time of making the payment deduct tax from the gross amount payable at the rate specified in Division III of Part-III of the First Schedule. In this behalf under Division III of Part-III of the First Schedule of the Ordinance the rate applicable for deduction of the amount is provided in Clause (2)(a) as 8% of the gross amount payable in the case of companies. Under proviso to subsection 3 of section 153 the tax deducted for rendering of or providing of services shall be minimum tax on the transaction in question.

8. The petitioners are since service providers, therefore, aggrieved of the referred levy of tax i.e. the deduction of the amount @ 8% on the payment received by them which deduction has been given the status of minimum tax on the transactions. Initially the said levy/deduction was not applicable to the companies up-till 30.06.2009 and the tax deducted on

rendering or providing of services was treated as final tax. However, through Finance Ordinance, 2009 proviso to section 153 (3) was added whereby deduction made under section 153 (1)(b) was regarded as minimum tax. In the year 2011 by virtue of Finance Act, 2011 the companies were included in minimum tax regime, however, the same was excluded vide notification SRO 1003(I)2011 dated 31.10.2011 whereby Clause 79 to Part IV of Second Schedule of the Ordinance was added and exemption certificates were issued in appropriate cases. In 2015 Clause 79 was deleted by Federal Board of Revenue in anticipation that amendment would be made in the Ordinance whereby the companies shall be excluded from minimum tax regime, however, no such amendment was made. By virtue of deletion of Clause 79 the companies became susceptible to payment of minimum tax @ 8% for rendering or providing of services. In the tax year 2016 by virtue of Income Tax (Second Amendment) Ordinance, 2015 amendment in the Ordinance was made by virtue of which if a company fell within any category mentioned in the Ordinance the minimum tax shall be 2 % provided the company furnishes an irrevocable undertaking by 15.11.2015 to present its accounts to the Commissioner within 30 day of filing of return, for audit, of its income tax.

9. In the above backdrop challenge has been made to the vires of proviso to section 153(3) of the Ordinance. The Hon'ble Supreme Court of Pakistan in case titled *Lahore Development Authority through D.G and others v. Ms. Imrana Tiwana and others* (2015 SCMR 1739) laid down the principles for examining the vires of a statute. The august Apex Court after

exhaustively examining the case law and other text summarized the principles as follows:

“I. There is a presumption in favour of constitutionality and a law must not be declared unconstitutional unless the statute is placed next to the Constitution and no way can be found in reconciling the two;

II. Where more than one interpretation is possible, one of which would make the law valid and the other void, the Court must prefer the interpretation which favours validity;

III. A statute must never be declared unconstitutional unless its invalidity is beyond reasonable doubt. A reasonable doubt must be resolved in favour of the statute being valid;

IV. If a case can be decided on other or narrower grounds, the Court will abstain from deciding the constitutional question;

V. The Court will not decide a larger constitutional question than is necessary for the determination of the case;

VI. The Court will not declare a statute unconstitutional on the ground that it violates the spirit of the Constitution unless it also violates the letter of the Constitution;

VII. The Court is not concerned with the wisdom or prudence of the legislation but only with its constitutionality;

VIII. The Court will not strike down statutes on principles of republican or democratic government unless those principles are placed beyond legislative encroachment by the Constitution;

IX. Mala fides will not be attributed to the Legislature.”

10. Since in the instant petition as well as abovenoted petitions the legality of the Federal statute has been challenged, therefore, the same needs to be examined on the touchstone of the principles laid down by the august Apex Court. The basic principle discerned from the referred judgement of the Hon’ble Supreme Court of Pakistan is that the law is to be saved

rather than destroyed and it is not to be struck down or declared to be invalid unless its invalidity is beyond reasonable doubt. Any doubt must be resolved in favour of the statute being valid. Moreover, where there is more than one interpretation, the one which saves the law, must be adopted.

11. As mentioned above since the vires of statute has been challenged, therefore, it is essential for the sake of convenience that the relevant provisions be reproduced, which are as follows:

*“[153. **Payments 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, other than a contract for the sale of goods or the rendering of or providing of services, shall, at the time of making the payment, deduct tax from the gross amount payable at the rate specified in Division III of Part III of the First Schedule.*

(2) Every exporter or an export house making a payment in full or part including a payment by way of advance to a resident person or permanent establishment in Pakistan of a non-resident person for rendering of or providing services of stitching, dying, printing, embroidery, washing, sizing and weaving, shall at the time of making the payment, deduct tax from the gross amount payable at the rate specified in Division IV of Part III of the First Schedule.

*(3) The tax 1 [deductible] under clauses (a) and (c) of sub-section (1) and under sub-section (2) of this section, on the income of a resident person or [*****], shall be final tax:*

Provided that,---

(a) tax deducted under clause (a) of sub-section (1) shall be adjustable where payments are received on sale or supply of goods, by a, ---
(i) company being a manufacturer of such goods; or
(ii) public company listed on a registered stock exchange in Pakistan;
(b) tax [deductible] shall be a minimum tax on transactions referred to in clause (b) of sub-section (1); and
(c) tax deducted under clause (c) of sub-section (1) shall be adjustable if payments are received by a public company listed on a registered stock exchange in Pakistan, on account of execution of contracts."

12. The bare reading of the provisions relevant for the present controversy is that under section 153 prescribed person is to make deduction @ 8% while making payment to a person for rendering or providing of services; the tax i.e. deducted @ 8% is termed as minimum tax for the purposes of referred transactions. The basic charging provision of tax on income is section 4 of the Ordinance which reads as follows:

"4. Tax on taxable income.— *(1) Subject to this Ordinance, income tax shall be imposed for each tax year, at the rate or rates specified in I [Division I, IB or II] of Part I of the First Schedule, as the case may be, on every person who has taxable income for the year.*

(2) The income tax payable by a taxpayer for a tax year shall be computed by applying the rate or rates of tax applicable to the taxpayer under this Ordinance to the taxable income of the taxpayer for the year, and from the resulting amount shall be subtracted any tax credits allowed to the taxpayer for the year.

(3) Where a taxpayer is allowed more than one tax credit for a tax year, the credits shall be applied in the following order —

(a) any foreign tax credit allowed under section 103; then

(b) any tax credit allowed under Part X of Chapter III; and then

*(c) any tax credit allowed under sections 2 [***] 147 and 168.*

(4) Certain classes of income (including the income of certain classes of persons) may be subject to –

(a) separate taxation as provided in sections 5, 6 and 7; or

(b) collection of tax under Division II of Part V of Chapter X or deduction of tax under Division III of Part V of Chapter X as a final tax on the income 3 [of] the person.”

13. The legislature in the Ordinance also created concept of minimum tax and the same is provided in Chapter IX of the Ordinance. The competence of the legislature to levy minimum tax came up for consideration before the Hon'ble Supreme Court of Pakistan in case titled *Messrs Elahi Cotton Mills Ltd. and others v. Federation of Pakistan through Secretary M/o Finance, Islamabad and 6 others* (PLD 1997 SC 582). The august Apex Court in the referred judgement while discussing the power to levy tax by legislature observed as follows:

“ The power to levy taxes is a sine qua non for a State. In fact it is an attribute of sovereignty of a State. It is mandatory requirement of a State as it generates financial resources which are needed for running a State and for achieving the cherished goal, namely, to establish a welfare State. The Legislature enjoys plenary power to impose taxes within the framework of the Constitution. It has prima facie power to tax whom it chooses, power to exempt whom it chooses, power to impose such conditions as to liability or as to exemption as it chooses, so long as they do not exceed the mandate of the Constitution. The entries in the Legislative List of the Constitution are not powers of legislation but only fields of legislative heads. The allocation of the subjects to the lists is not by way of scientific or logical definition but by way of mere simple enumeration of broad catalogue. A single tax may derive its sanction from one or more entries and many taxes may emanate from one single entry. An entry in the Legislative List must be given a very wide and liberal interpretation. The word "income"

is susceptible as to include not only what is in ordinary parlance it conveys or it is understood, but what is deemed to have arisen or accrued. It is also manifest that income-tax is not only levied in the conventional manner i.e., by working out the net income after adjusting admissible expenses and other items, but the same may also be levied on the basis of gross receipts, expenditure etc. There are new species of income-tax namely, presumptive tax and minimum tax. ”

14. In this behalf in light of the observations made in the judgement of the Apex Court, it is clear that minimum tax is regarded as new species of income tax. The Hon’ble Supreme Court of Pakistan while adverting to the various objections on the minimum tax as well as presumptive tax i.e. tax on turnover observed as follows:

“44. Adverting to the above first reason, it may be observed that it is true that the power to tax cannot be used to embarrass and destroy the business/occupations which are sine qua non for the propriety of the people and the country. The object of the levy and recovery of taxes as pointed out hereinabove is to run the State and to make efforts for creation of an egalitarian society. If the rates of taxes are so high and disproportionate to the actual earnings or earning capacities that they destroy the -tax-payers, the very object of their levy and recovery is defeated. It has, therefore, been held by the superior Courts of the foreign jurisdiction as well as of Pakistani jurisdiction including this Court that the taxes should not be expropriatory and confiscatory in nature and that the same should not be imposed in such a way so as to result in acquiring properties of those to whom the incidence of taxation fell and if that is so, then such legislation would be violative of fundamental rights to carry on business or to hold properties as guaranteed by the Constitution. The learned counsel for the appellants have heavily relied upon the judgment of this Court in the case of Government of Pakistan v. Muhammad Ashraf (supra), in which this Court accepted the above legal proposition that a tax, which is confiscatory in its nature, would be violative of the fundamental rights relating to carrying on business and holding properties, but remanded the case to the High Court to examine the question, as to whether the rate of regulatory duty on Soyabean. Oil imposed was of confiscatory nature. We are inclined to

reiterate the principle of law enunciated in the above report. However, we are unable to agree with the learned counsel for the appellants that the rates of taxes imposed under the impugned sections 80-C, 80-CC and 80-D of the Ordinance are confiscatory and expropriatory in nature. Since there is a presumption in favour of legislative competence as held in a number of judgments referred to hereinabove, the burden to show that the impugned taxes are confiscatory or expropriatory, was on the appellants. In our view, they have failed to bring on record any reliable material on the basis of which it can be concluded that the same are confiscatory or expropriatory. Messrs Dr. Ilyas Zafar and Iqbal Naim Pasha, while arguing Civil Appeal No.478 of 1995, submitted that the appellants in the above appeal declared Rs.6,47,243 as the net profit for the assessment year involved but they were made to pay presumptive tax amounting to Rs.66,00,282. Whereas Mr. Sikandar Hayat, who argued for the appellant (National Construction Company) in Civil Appeal No. 1496 of 1995, contended that the appellant suffered loss of Rs.24,88,18,613 in the assessment year 1992-93 but they were made to pay presumptive tax under section 80-C Rs.1,35,29,726. The above two instances cannot be treated as sufficient for rebutting the presumption in favour of the competency of the Legislature. The question, as to whether a particular tax is confiscatory or expropriatory, is to be determined with reference to the actual earning or earning capacity of an average prudent successful entrepreneur in a particular trade or business. The fact that a particular assessee has suffered loss/losses during certain assessment years, is not germane to the above question. In this regard reference may again be made to the case of the Madurai District Cooperative Bank Ltd. v. Third Income Tax Officer, Madurai (supra), referred to hereinabove in para. 28(x), wherein taxable income of the assessee declared was Rs.51,763; whereas the tax imposed was Rs.76,674.07 including surcharge. Indian Supreme Court sustained the above levy and inter alia held that what is not income under the Income Tax Act can be made income under the Finance Act or exemption granted by the Income Tax Act can be withdrawn by the Finance Act or its efficacy can be reduced."

15. Similarly, in a recent judgement titled *Commissioner of Income Tax Legal Division and others v. Khursheed Ahmed and others* (PLD 2016 SC 545) the august Apex Court acknowledged minimum tax as specie of the income tax as provided in section 113 of

the Ordinance. In view of the referred case law the contention of the learned counsels for the petitioners that the minimum tax does not fall within the scope and ambit of the income tax as provided in section 4 of the Ordinance, is not correct. The minimum tax is specie of income tax and the Parliament has the competence to levy the same under Item 47 of Schedule IV to the Constitution of the Islamic Republic of Pakistan, 1973.

16. It was also contended by the learned counsels for the petitioners that the deduction to be made while making the payment @ 8% (in case of the companies) is regarded as minimum tax is confiscatory in nature. In this behalf it was also contended that no mechanism is provided in the Ordinance i.e. section 153 of the Ordinance for laying down the procedures or mechanism for calculating and working out the minimum tax. Admittedly, in section 153 of the Ordinance nothing is provided regarding the modalities or procedural aspects, however, since the deduction to be made under section 153 (1)(b) is regarded as minimum tax, therefore, the procedure provided in the Ordinance for working out minimum tax and its collection shall be applicable. In this behalf reliance is placed on case reported as PLD 2016 SC 545 *Supra* wherein the august Apex Court observed that where legislature defined in the same statute the meaning of a word used therein such definition must authoritatively express its intent. The deductions which are regarded as minimum tax shall have the same implications which are of minimum tax as provided in the Ordinance. It was vehemently argued by the learned counsels for the petitioners that the tax is confiscatory in nature or expropriatory as its 8% of the gross amount payable.

Learned counsels also contended that this amounts to a tax on the turnover of the petitioners, such contention of the learned counsels is not correct inasmuch as under section 153 (1)(b) the person making payment is to deduct 8% from the gross amount payable to recipient. This deduction is minimum tax. The word turnover has not been defined in section 153 and in order to see whether the same falls within the scope of turnover as provided in section 113 *ibid*. The referred definition shall have to be examined. In the referred section minimum tax is levied on the turnover whereas under section 153 8% is deducted from the payment to be made is minimum tax. The word 'turnover' has been defined in section 113 (3) and it reads as follows:

(3) — "turnover" means,---

(a) the 4 [gross sales or] 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.]"

17. The bare reading of the above provision shows that the definition of turnover is much wider than mere receipt of payment. The Hon'ble Supreme Court of

Pakistan in PLD 1997 SC 582 *Supra* observed that the taxing power is unlimited as long as it does not amount to confiscation and that the legislature does not have the power to tax to the point of confiscation, however, in the instant case the petitioners failed to point out as to how the levy of tax is confiscatory. The august Apex Court in the referred case also observed that if the representatives of the business community take up the question of reasonableness of the rates of tax provided under section 80-C, 80-CC and 80-D with the Government the same would be given due consideration as no Government would like to destroy the industries and business of the country by imposing taxes at the rates which may be confiscatory and expropriatory. As observed above and in respect thereof an objection was also taken by the respondents no representation was filed by the petitioners before the respondents in this behalf.

18. The Government by way of an Ordinance promulgated Income Tax (Second Amendment) Ordinance 2015 and under the same amended sections 153 and 236 (p) as well as Second Schedule to the Ordinance. The amendments made in section 153 of the Ordinance by virtue of the referred 2015 Ordinance are as follows:

"(I) in section 153,-

(a) in sub-section (3), in the proviso, in clause (b), for semicolon and the word"; and" the expression", provided that-" shall be substituted and thereafter the following sub-clauses shall be added, namely:-

"(i) where the aforesaid minimum tax for providing or rendering services in respect of sectors as specified in clause (94) of

Part IV of the Second Schedule is in excess of tax payable under Division II of Part 1 of the First Schedule, the excess amount of tax paid shall be carried forward for adjustment against tax liability under the aforesaid Part of the subsequent tax year;

(ii) where the excess tax is not wholly adjusted, the amount not adjusted shall be carried forward to the following tax year and adjusted against tax liability under the aforesaid Part for that year, and so on, but the said excess shall not be carried forward to more than five tax years immediately succeeding the tax year for which the excess was first paid; and
(iii) the said excess amount shall not be carried forward in case of a company for which provisions of this clause are not applicable under clause (94) of Part IV of the Second Schedule; and";
and

(b) after sub-section (4), the following new sub-section shall be inserted, namely:-

(4A) The Commissioner, on an application made by the recipient of a payment referred to in clause (94) of Part IV of the Second Schedule, in cases where the said recipient has fulfilled the conditions as specified in the said clause, by an order in writing for a period of at least three months, may allow any person to make the payment without deduction of tax in respect of payments as referred to in clauses (b) of sub-section (1) of section 153:

Provided that the recipient of the payment has made advance payment of tax equal to two percent of the total turnover of the corresponding period of the immediately preceding tax year.";

19. In this behalf for certain service sector providers the rate of deduction was made at 2% and the excess amount paid as minimum tax was allowed to be carried forward for adjustment against the tax liability for the subsequent tax year. The excess can be carried forward for maximum of 5 years. The petitioners pleaded discrimination inasmuch as certain service sectors were allowed to deduct 2% of the amount as minimum tax whereas in the case of the petitioners it is 8%. The legislature in its wisdom can classify and the concept of reasonable classification is available as an exception to discrimination under Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973. By virtue of 2015 Ordinance the reasonable classification has been made and the case of the petitioners does not fall within Article 25.

20. In view of above case law and the legal position, the concept of minimum tax is neither in violation of the Ordinance nor falls outside Item 47 of Schedule IV to the Constitution. Moreover, the deductions to be made from the payment made for rendering services @ 8% (in case of the petitioners) are regarded as minimum tax; the petitioners if feel that the same is expropriatory and confiscatory in any manner can approach the respondents for redressal of their grievance by way of representation as observed by the august Apex Court in the case of Messrs Elahi Cotton Mills *Supra*. The provision impugned in all the petitions are not, however, ultra vires the Constitution or any other provision.

21. For the foregoing reasons, the instant petition as well as the petitions mentioned hereinabove are without

merit and are accordingly dismissed.

22. In case the petitioners intend to make representation to the respondents, the latter shall provide them an opportunity of hearing and the matter shall be decided expeditiously.

(AAMER FAROO)
JUDGE

Announced in open Court on the 22nd day of July 2016.

JUDGE

M.Navced

Approved For Reporting

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