

Form No: HCJD/C-121.

ORDER SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Writ Petition No. 246 of 2020

Mari Petroleum Company Limited

VS

The Federation of Pakistan, etc

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
(2)	28.01.2020.	Mr. Barrister Omer Azad Malik, Advocate for the petitioner.

Through the instant petition, the Petitioner Company challenged the Notice dated 07.01.2020, issued by the Additional Commissioner, Inland Revenue, under Section 122(9) read with Section 122(5A) for the tax year 2019 to the extent of charging of Super Tax under Section 4B of Income Tax Ordinance, 2001.

2. At the very outset, learned counsel for the Petitioner submitted that this Hon'ble Court has decided the issue of vires of Super Tax under Section 4B of Income Tax Ordinance, 2001, in W.P. No.394/2019, W.P. No. 111 of 2019, W.P. No. 1991 of 2018, W.P. No. 1946 of 2017 and W.P. No. 2293 of 2016 on 29.04.2019, by relying on the case titled as "*M/s The Attock Oil Co. Ltd. versus Federation of Pakistan, etc (W.P. No.4260/2017)* reported as 2019 PTD 934. The relevant observation is as follows:-

“8. Section 4B was inserted vide Finance Act, 2015, and later amended through Finance Act, 2016. Through the said provision the legislature has imposed “super tax” for rehabilitation of temporarily displaced persons. The liability is required to be discharged by persons who are specified in Division IIA Part I of the First Schedule of the Ordinance of 2001. Sub section 2 of section 4B describes the income for the purposes of computing and recovery of the levy. Section 100 is in respect of those entities which are engaged in production of oil and natural gas, and exploration and extraction of other mineral deposits. For the purposes of computing tax, rules have been incorporated in Part I of the Fifth Schedule of the Ordinance, 2001.

9. A cumulative reading of the above provisions shows that the expression “tax” has a wide scope in the context of the Ordinance of 2001. The legislature in its wisdom and through insertion of section 4B intended the levy of super tax for rehabilitation of displaced persons. The mere incorporation of said levy in the Ordinance of 2001 leaves no doubt that the legislature had intended to treat it as a tax and not a fee. The judgments rendered by the august Supreme Court in cases titled “Federation of Pakistan through Secretary M/o Petroleum and Natural Resources and another Vs. Durrani Ceramics and others” [2014 SCMR 1630] and “Worker’s Welfare Funds Vs. East Pakistan Chrome Tannery (Pvt.) Ltd” [PLD 2017 SC 28] are in respect of statutes other than the Ordinance of 2001. The distinguishing feature is the definition of tax given in the Ordinance of 2001 which, inter alia, includes fee. Section 4B and the levy there-under is covered under the definition of “tax” provided under sub section 63 of section 2 of the Ordinance of 2001. The judgments are, therefore, distinguishable and moreover, the mandatory ingredients for treating a levy as a fee are also not fulfilled in the instant case.

10. The argument raised by the learned Counsels that the levy under section 4B of the Ordinance of 2001 ought to be treated as fee rather than tax is not relevant in the light of above discussion. The learned Counsels despite their able assistance could not

raise any ground so as to strike down the levy imposed under section 4B of the Ordinance 2001. The argument that the Act of 1948 is a special law while the Ordinance of 2001 is of general nature is without force. The latter statute explicitly deals with tax on income while that is not the case with the former. The Ordinance of 2001 is a special law in the context of tax on income and therefore, its provisions would have an overriding effect over the Act of 1948. Special provisions have been incorporated in the Ordinance of 2001. The mechanism for computing tax payable under the law by the companies engaged in the business of production and exploration of petroleum products has been provided in the form of rules which have been incorporated in the Fifth Schedule.

11. This Court is satisfied that section 4B of the Ordinance of 2001 and its insertion was within the competence of the lower House of Majlis-e-Shoora i.e. National Assembly through a Money Bill. It is, therefore, declared that section 4B was validly inserted through the Finance Act, 2015 and that it does not suffer from any illegality nor is violative of any constitutional provision. The argument advanced by the learned Counsels relating to computing tax relating to income derived from other sources is concerned, that too has been dealt in the rules. This Court while exercising jurisdiction under Article 199 of the Constitution cannot undertake an exercise for computing the tax liability of the petitioner Companies. The latter may approach the concerned Commissioner for this purpose. If the latter receives representations from the petitioner Companies, then it is expected that they shall be decided after affording opportunity of hearing.”

3. Learned counsel for the Petitioner also furnished copy of Order dated 27.05.2019, passed by this Court in ICA No. 214/2019, filed against the above judgement of the court wherein observations made by learned Single

Judge in Writ Petition 394/2019 have been affirmed.

4. Learned counsel for the petitioner also submit that the instant issue is pending before Honourable Supreme Court of Pakistan

5. In view of the above judgement of this Hon'ble Court in Writ Petition 394/2019, subsequently affirmed vide ICA No.214/2019, whereby Super Tax for rehabilitation for temporarily disposed persons levied under Section 4B of Income Tax Ordinance, 2001, has been settled by relying on the judgement of Hon'ble Lahore High Court reported as 2018 PTD 287 and 2019 PTD 934 Islamabad High Court, wherein insertion of Section 4B of Income Tax Ordinance, 2001, has been held to be constitutionally valid does not suffer from any illegality.

6. For the above reasons, the instant petition is without merit and is accordingly dismissed in *limine*.

(LUBNA SALEEM PERVEZ)
JUDGE