ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

ITRA 529, 530 of 2024
ITRA 357, 385 of 2025
ITRA 44, 45,46,47,48 and 49 of 2026

DATE	ORDER WITH SIGNATURE OF JUDGE(S)

For orders as to non-prosecution

07.05.2026

Messrs. Faheem Raza Khuhro, Irfan Mir Halepota, Munawar Ali Memon, Syed Shohrat Hussain Rizvi, advocates for the applicant

Messrs. Muhammad Tariq Masood, Imran Ahmed Khan, Furqan Mushtaq, Anwer Kashif Mumtaz, Usman Alam and Munawar Ali Memon, advocates for respondent

It is jointly stated that the following question is required to be answered by this Court in all these references.

> "Whether on the facts and circumstances of the case, the learned ATIR has not erred in law by excluding the income from receipts subject to Final Tax (FTR) from charging of Super Tax (a separate charging provision) despite clear and unambiguous provision of law for charging super tax in FTR Income? "

It is demonstrated that the said question has been decided in favour of the department and against the taxpayer vide paragraphs 84 to 87 in judgment dated 27.01.2026 passed by the honourable Federal Constitution Court of Pakistan in the case of DG Khan Cement Company Limited and another vs. The Federation of Pakistan thr. Secretary Revenue Islamabad and others (CA No.1243/2020) and connected matters. Paragraphs 84 to 87 reproduced herein below:

> 84. With this clarification, the reason for placing profit on debt, dividend, brokerage and commission, and capital gains into clause (i) as a distinct head of income under Section 4C becomes clear. Each of these sources is, in one form or another, treated distinctively under the Ordinance: profit on debt under Section 7B may be final in the case of companies but minimum in the case of individuals depending on quantum and identity of the taxpayer; dividend may fall within Section 5 as a final charge, or outside it under Section 39 as income from other sources; brokerage and commission under Section 233 is treated as minimum tax, and thus forms part of taxable income under the normal regime; capital gains under Section 37 is chargeable at normal rates, whereas capital gains on securities under Section 37A is a separate block of income under Division VII. The purpose of clause (i), read with the exclusionary language in clauses (ii) and (iii), is not to tax these sources twice, but to ensure that they are counted once in the sum of "income" liable to super tax, regardless of how they are otherwise treated elsewhere in the ITO 2001. To exclude FTR sources from the Section 4C base, as the Islamabad High Court has done, is to defeat the very uniformity that the composite definition is designed to achieve.

85. We deal now with the imputation mechanism under Section 4C(2)(iii) and Section 28A of ITO 2001. The third clause of Section 4C(2) addresses the distinct problem posed by presumptive income - that of comparability between the FTR exporter and the NTR business taxpayer. By way of illustration: an exporter paying Rs. 1 million as final tax at the rate of 1% under Section 154 is taken to have had gross receipts of Rs. 100 million. If those receipts were brought directly into the Section 4C base, the exporter would be taxed on gross receipts while the normal-regime taxpayer would be taxed only on taxable income, i.e., income net of expenses, losses, and depreciation. The result would be a manifestly unequal Section 4C burden as between the two categories of taxpayer. To address this, Section 4C(2)(iii) reads with Section 28A and provides for the imputation of an income figure that would have been arrived at had the FTR taxpayer been subject to the normal regime. The tax actually paid under FTR is grossed up by reference to the normal rate (approximately 29% for companies) to yield an imputed income of approximately Rs. 3.45 million, which then forms the base for the super tax computation. The mechanism is neither punitive nor arbitrary; it is the legislative device by which exporters are brought to parity with normal-regime taxpayers for Section 4C purposes. In absence of this mechanism, exporters would bear an additional burden, not a reduced one. The contention, advanced before us, that this mechanism transforms the super tax into a tax on receipts, or that it fundamentally alters the character of the FTR levy, proceeds on a misreading of the design.

86. The Finance Act 2023 inserted an amended clause (iv) in Section 4C(2), bringing within the super-tax base amounts computed under the Eighth Schedule (capital gains on listed securities). The deliberate inclusion of these sources in S. 4C(2)(iv) of banking, insurance, petroleum and exploration — each of them governed by a self-contained special regime — is dispositive of any argument that Section 4C was confined to the normal tax regime. Section 100B, as amended through the Finance Act 2023, reinforces the position: capital gains on listed securities, subject to Section 37A and computed under the Eighth Schedule, shall be computed "including super tax under Section 4C."

87. Mr. Rashid Anwar, ASC urged that super tax on exporters falls outside Entry 47 of the Federal Legislative List, since the FTR operates under Entry 52. Elahi Cotton Mills case has already answered this submission. The Court in that case held expressly that Sections 80C and 80CC, the very antecedents of the FTR now at issue, derived their validity from a combined reading of Entries 47 and 52, and that the charge remained throughout a direct tax on income. The submission, if accepted, would require us to depart from that settled position.

In view hereof, the question framed is decided in favour of the department and against the taxpayer. These references are disposed of accordingly.

A copy of this decision may be sent under the seal of this Court and the signature of the Registrar to the learned Appellate Tribunal, as required per section 133(8) of the Income Tax Ordinance, 2001. Office is instructed to place copy of this order in connected matters.

Judge

Judge

Amjad