

## **IN THE HIGH COURT OF SINDH, KARACHI**

### Present

Mr. Justice Aqeel Ahmed Abbasi

Mr. Justice Abdul Maalik

|     |                     |   |            |
|-----|---------------------|---|------------|
| 1.  | C.P. No.D-1849/2016 | M/s. HBL Stock Fund                               | Petitioner |
| 2.  | C.P. No.D-1850/2016 | M/s. Atlas Money Market Fund                      | Petitioner |
| 3.  | C.P. No.D-1851/2016 | M/s. Al Meezan Mutual Fund                        | Petitioner |
| 4.  | C.P. No.D-1852/2016 | M/s. Meezan Sovereign Fund                        | Petitioner |
| 5.  | C.P. No.D-1853/2016 | M/s. Metrobank Pakistan                           | Petitioner |
| 6.  | C.P. No.D-1854/2016 | M/s. MCB Dynamic Cash                             | Petitioner |
| 7.  | C.P. No.D-1855/2016 | M/s. MCB Cash Management                          | Petitioner |
| 8.  | C.P. No.D-1856/2016 | M/s. NIT Income Fund                              | Petitioner |
| 9.  | C.P. No.D-1857/2016 | M/s. NIT State Enterprises Fund                   | Petitioner |
| 10. | C.P. No.D-1858/2016 | M/s. NIT Government Bond Fund                     | Petitioner |
| 11. | C.P. No.D-3575/2016 | Metro Bank Pakistan Sovereign Fund                | Petitioner |
| 12. | C.P. No.D-5766/2016 | Al-Falah GHP                                      | Petitioner |
| 13. | C.P. No.D-7086/2016 | ICTSI Mauritius Ltd.                              | Petitioner |
| 14. | C.P. No.D-7144/2016 | M/s. Al-Futtaim Industries Co. (LLC)              | Petitioner |
| 15. | C.P. No.D-80/2017   | M/s. Arif Habib Corp. Ltd.                        | Petitioner |
| 16. | C.P. No.D-98/2017   | Advance telecom                                   | Petitioner |
| 17. | C.P. No.D-388/2017  | M/s. Al-Futtaim Ind. Co. (LLC)                    | Petitioner |
| 18. | C.P. No.D-1532/2017 | M/s. ICTSI Mauritius Ltd.                         | Petitioner |
| 19. | C.P. No.D-1940/2017 | Sher Muhammad Mugheri                             | Petitioner |
| 20. | C.P. No.D-2004/2017 | M/s. Citigroup Global Markets                     | Petitioner |
| 21. | C.P. No.D-3726/2017 | Manzoor Ahmed Allawala                            | Petitioner |
| 22. | C.P. No.D-8551/2017 | Danish Iqbal                                      | Petitioner |
| 23. | C.P. No.D-8552/2017 | Natasha Iqbal                                     | Petitioner |
| 24. | C.P. No.D-8553/2017 | Saad Iqbal  | Petitioner |
| 25. | C.P. No.D-113/2018  | M/s. Citigroup Global Markets Mauritius Pvt. Ltd. | Petitioner |
| 26. | C.P. No.D-177/2018  | Chawla International                              | Petitioner |
| 27. | C.P. No.D-178/2018  | Chawla International                              | Petitioner |
| 28. | C.P. No.D-179/2018  | Chawla International                              | Petitioner |
| 29. | C.P. No.D-499/2018  | M/s. Bulk Management Pakistan (Pvt.) Ltd.         | Petitioner |
| 30. | C.P. No.D-655/2018  | M/s. Detergent Products SARL                      | Petitioner |
| 31. | C.P. No.D-678/2018  | M/s. Usman Steel (Pvt.) Ltd.                      | Petitioner |
| 32. | C.P. No.D-774/2018  | M/s. Khaadi (SMC-Pvt.) Ltd.                       | Petitioner |
| 33. | C.P. No.D-1941/2018 | Yaqoob Ahmed                                      | Petitioner |

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| 34. | C.P. No.D-2140/2018 | M/s. Sardar Muhammad Ashraf D. Baloch (Pvt.) Ltd. | Petitioner |
| 35. | C.P. No.D-2141/2018 | M/s. Sardar Muhammad Ashraf D. Baloch (Pvt.) Ltd. | Petitioner |
| 36. | C.P. No.D-2142/2018 | M/s. Sardar Muhammad Ashraf D. Baloch (Pvt.) Ltd. | Petitioner |
| 37. | C.P. No.D-2219/2018 | M/s. ICTSI Mauritius Ltd.                         | Petitioner |
| 38. | C.P. No.D-2335/2018 | Imtiaz Hussain                                    | Petitioner |
| 39. | C.P. No.D-2692/2018 | Gold Trade International Ltd.                     | Petitioner |
| 40. | C.P. No.D-3303/2018 | M/s. Hinopak Motors Ltd.                          | Petitioner |
| 41. | C.P. No.D-3319/2018 | M/s. Novatex                                      | Petitioner |
| 42. | C.P. No.D-3334/2018 | Mrs. Franey N Irani                               | Petitioner |
| 43. | C.P. No.D-3343/2018 | M/s. International Complex Ltd.                   | Petitioner |
| 44. | C.P. No.D-3413/2018 | Shahnawaz (Pvt.) Ltd.                             | Petitioner |
| 45. | C.P. No.D-3414/2018 | Shahnawaz (Pvt.) Ltd.                             | Petitioner |
| 46. | C.P. No.D-3472/2018 | M. Munir M. Ahmed Khanani Securities (Pvt.) Ltd.  | Petitioner |
| 47. | C.P. No.D-3507/2018 | Golden Arrow Selected Stocks Fund Ltd.            | Petitioner |
| 48. | C.P. No.D-3555/2018 | Mrs. Mariyam Dawood                               | Petitioner |
| 49. | C.P. No.D-3556/2018 | Bashir Dawood                                     | Petitioner |
| 50. | C.P. No.D-3606/2018 | Advance Telecom                                   | Petitioner |
| 51. | C.P. No.D-3688/2018 | Eastern Textile (Pvt.) Ltd.                       | Petitioner |
| 52. | C.P. No.D-3696/2018 | M/s. Pacific Exim (Pvt.) Ltd.                     | Petitioner |
| 53. | C.P. No.D-3784/2018 | Mr. Sultan Ahmed                                  | Petitioner |
| 54. | C.P. No.D-3785/2018 | Mrs. Naeema Begum                                 | Petitioner |
| 55. | C.P. No.D-3786/2018 | Mrs. Chaman Begum                                 | Petitioner |
| 56. | C.P. No.D-3807/2018 | DP World Qasim Ltd.                               | Petitioner |
| 57. | C.P. No.D-3850/2018 | Mehran Sugar Mills                                | Petitioner |
| 58. | C.P. No.D-3905/2018 | JS Bank Ltd.                                      | Petitioner |
| 59. | C.P. No.D-3953/2018 | Awan Trading Co. (Pvt.) Ltd.                      | Petitioner |
| 60. | C.P. No.D-3961/2018 | IGI Holdings Ltd.                                 | Petitioner |
| 61. | C.P. No.D-3965/2018 | Attock Cement Pak. Ltd.                           | Petitioner |
| 62. | C.P. No.D-3967/2018 | Continental Global Holding                        | Petitioner |
| 63. | C.P. No.D-4047/2018 | Nighat Tariq                                      | Petitioner |
| 64. | C.P. No.D-4059/2018 | M/s. Century Engineering Ind. (Pvt.) Ltd.         | Petitioner |
| 65. | C.P. No.D-4175/2018 | Afaq Ahmed Khan                                   | Petitioner |
| 66. | C.P. No.D-4331/2018 | Muhammad Akbar Khan                               | Petitioner |
| 67. | C.P. No.D-4912/2018 | TIMF LP   | Petitioner |
| 68. | C.P. No.D-5571/2018 | Packages Ltd.                                     | Petitioner |
| 69. | C.P. No.D-5572/2018 | Packages Ltd.                                     | Petitioner |

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| 70.  | C.P. No.D-5573/2018 | Packages Ltd.                                     | Petitioner |
| 71.  | C.P. No.D-5614/2018 | Engro Foods Ltd.                                  | Petitioner |
| 72.  | C.P. No.D-5615/2018 | Engro Polymar & Chemicals Ltd.                    | Petitioner |
| 73.  | C.P. No.D-5669/2018 | Engro Energy Ltd.                                 | Petitioner |
| 74.  | C.P. No.D-5670/2018 | Engro Energy Ltd.                                 | Petitioner |
| 75.  | C.P. No.D-6066/2018 | United Agro Chemical                              | Petitioner |
| 76.  | C.P. No.D-6139/2018 | Liberty Mills (Pvt.) Ltd.                         | Petitioner |
| 77.  | C.P. No.D-6140/2018 | Muhammad Ashraf                                   | Petitioner |
| 78.  | C.P. No.D-6232/2018 | P.D.O.H.A.  | Petitioner |
| 79.  | C.P. No.D-6477/2018 | Ghandhara Nissan Ltd.                             | Petitioner |
| 80.  | C.P. No.D-6497/2018 | A.G.P. Limited                                    | Petitioner |
| 81.  | C.P. No.D-6744/2018 | China Ocean Engineering Constructions<br>General  | Petitioner |
| 82.  | C.P. No.D-6780/2018 | Engro Corp. Ltd.                                  | Petitioner |
| 83.  | C.P. No.D-7036/2018 | Dawood Hercules Corp. (Pvt.) Ltd.                 | Petitioner |
| 84.  | C.P. No.D-7041/2018 | M/s. Orient Energy System (Pvt.) Ltd.             | Petitioner |
| 85.  | C.P. No.D-7405/2018 | Jawed Ahmed                                       | Petitioner |
| 86.  | C.P. No.D-7557/2018 | M/s. Top Line Securities Ltd.                     | Petitioner |
| 87.  | C.P. No.D-7611/2018 | Hydrochina International Engineering Co.<br>Ltd.  | Petitioner |
| 88.  | C.P. No.D-7694/2018 | M/s. DRE (Pvt.) Ltd.                              | Petitioner |
| 89.  | C.P. No.D-7953/2018 | Dawood Hercules Corp. Ltd.                        | Petitioner |
| 90.  | C.P. No.D-8139/2018 | M/s. Coronet Foods (Pvt.) Ltd.                    | Petitioner |
| 91.  | C.P. No.D-8140/2018 | M/s. English Biscuit Manufacturers (Pvt.)<br>Ltd. | Petitioner |
| 92.  | C.P. No.D-8275/2018 | Freeport Shipping (LLC)                           | Petitioner |
| 93.  | C.P. No.D-12/2019   | CMA CGM Pakistan                                  | Petitioner |
| 94.  | C.P. No.D-212/2019  | Shaikh Wajahat Ali                                | Petitioner |
| 95.  | C.P. No.D-229/2019  | National Investment Trust Ltd.                    | Petitioner |
| 96.  | C.P. No.D-237/2019  | Advance Telecom                                   | Petitioner |
| 97.  | C.P. No.D-260/2019  | Packages Ltd.                                     | Petitioner |
| 98.  | C.P. No.D-294/2019  | Liberty Mills                                     | Petitioner |
| 99.  | C.P. No.D-299/2019  | Shirazi Investment Pvt. Ltd.                      | Petitioner |
| 100. | C.P. No.D-300/2019  | Shirazi Trading Co. Pvt. Ltd.                     | Petitioner |
| 101. | C.P. No.D-301/2019  | Indus Motor Co. Ltd.                              | Petitioner |
| 102. | C.P. No.D-302/2019  | Efert Agritrade Pvt. Ltd.                         | Petitioner |
| 103. | C.P. No.D-303/2019  | Engro Fertilizers Ltd.                            | Petitioner |
| 104. | C.P. No.D-304/2019  | Engro Corporation Ltd.                            | Petitioner |
| 105. | C.P. No.D-305/2019  | Tapal Tea Pvt. Ltd.                               | Petitioner |
| 106. | C.P. No.D-306/2019  | Bayer Pakistan (Pvt.) Ltd.                        | Petitioner |

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| 107. | C.P. No.D-340/2019  | M/s. Lucky Textile Mills Ltd.           | Petitioner |
| 108. | C.P. No.D-344/2019  | Thal Limited                            | Petitioner |
| 109. | C.P. No.D-345/2019  | Qasim Intl. Container Terminal Pak. Ltd | Petitioner |
| 110. | C.P. No.D-346/2019  | Engro Vopak Termina Ltd.                | Petitioner |
| 111. | C.P. No.D-376/2019  | M/s. Shahnawaz Pvt. Ltd.                | Petitioner |
| 112. | C.P. No.D-439/2019  | Orix Leasing Pakistan Ltd.              | Petitioner |
| 113. | C.P. No.D-440/2019  | Orix Leasing Pakistan Ltd.              | Petitioner |
| 114. | C.P. No.D-441/2019  | Oriz Leasing Pakistan Ltd.              | Petitioner |
| 115. | C.P. No.D-442/2019  | Orix Leasing Pakistan Ltd.              | Petitioner |
| 116. | C.P. No.D-461/2019  | Syed Nadeem Hussain                     | Petitioner |
| 117. | C.P. No.D-466/2019  | Mrs. Zaitun H. Jan Muhammad             | Petitioner |
| 118. | C.P. No.D-477/2019  | Naveena Exports Ltd.                    | Petitioner |
| 119. | C.P. No.D-497/2019  | Jahangir Siddiqui & Co.                 | Petitioner |
| 120. | C.P. No.D-498/2019  | Franklin Templeton Investment Funds     | Petitioner |
| 121. | C.P. No.D-543/2019  | Ahmed Ullah                             | Petitioner |
| 122. | C.P. No.D-557/2019  | M/s. Gatron (Ind.) Ltd.                 | Petitioner |
| 123. | C.P. No.D-558/2019  | M/s. Novatex Ltd.                       | Petitioner |
| 124. | C.P. No.D-574/2019  | M/s. Garibsons (Pvt.) Ltd.              | Petitioner |
| 125. | C.P. No.D-617/2019  | Agven (Pvt.) Ltd.                       | Petitioner |
| 126. | C.P. No.D-625/2019  | Altas Honda Ltd.                        | Petitioner |
| 127. | C.P. No.D-664/2019  | Arif Habib Corp. Ltd.                   | Petitioner |
| 128. | C.P. No.D-685/2019  | Atlas Battery Ltd.                      | Petitioner |
| 129. | C.P. No.D-699/2019  | M/s. Hinopak Motors Ltd.                | Petitioner |
| 130. | C.P. No.D-703/2019  | Global Brands Marketing                 | Petitioner |
| 131. | C.P. No.D-724/2019  | ENI Pakistan (M) Ltd.                   | Petitioner |
| 132. | C.P. No.D-748/2019  | Searle Pharmaceuticals (Pvt.) Ltd.      | Petitioner |
| 133. | C.P. No.D-753/2019  | Umair Amanullah                         | Petitioner |
| 134. | C.P. No.D-768/2019  | Aurangzeb Firoz                         | Petitioner |
| 135. | C.P. No.D-819/2019  | Reckitt Benkiser Pakistan Ltd.          | Petitioner |
| 136. | C.P. No.D-890/2019  | Engro Foods Ltd.                        | Petitioner |
| 137. | C.P. No.D-1039/2019 | United Agro Chemicals                   | Petitioner |
| 138. | C.P. No.D-1052/2019 | Kohinoor Textile Mills                  | Petitioner |
| 139. | C.P. No.D-1083/2019 | Faisal Private Bureau                   | Petitioner |
| 140. | C.P. No.D-1086/2019 | Hercules Enterprises Ltd.               | Petitioner |
| 141. | C.P. No.D-1149/2019 | Muhammad Irfan Ghazi                    | Petitioner |
| 142. | C.P. No.D-1157/2019 | Pakistan Beverages Ltd.                 | Petitioner |
| 143. | C.P. No.D-1308/2019 | M/s. Isra Islamic Foundation            | Petitioner |
| 144. | C.P. No.D-1313/2019 | Shamimuddin Ahmed & Others              | Petitioner |

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| 145. | C.P. No.D-1379/2019 | Maqbool Associates (Pvt.) Ltd.  | Petitioner |
| 146. | C.P. No.D-1614/2019 | Taousif Paracha                 | Petitioner |
| 147. | C.P. No.D-1615/2019 | Taousif Paracha                 | Petitioner |
| 148. | C.P. No.D-1633/2019 | M/s. Al Feroz Pvt. Ltd.         | Petitioner |
| 149. | C.P. No.D-1637/2019 | Premier System (Pvt.) Ltd.      | Petitioner |
| 150. | C.P. No.D-1699/2019 | Overseas Pakistan Investors     | Petitioner |
| 151. | C.P. No.D-1726/2019 | Y. B. Holding (Pvt.) Ltd.       | Petitioner |
| 152. | C.P. No.D-1783/2019 | M/s. ICTSI Mauritius Ltd.       | Petitioner |
| 153. | C.P. No.D-1798/2019 | Habib Metro Pakistan Pvt. Ltd.  | Petitioner |
| 154. | C.P. No.D-1801/2019 | M/s. Usman Steel (Pvt.) Ltd.    | Petitioner |
| 155. | C.P. No.D-1803/2019 | Jamaluddin and Co.              | Petitioner |
| 156. | C.P. No.D-1848/2019 | JS Bank Ltd.                    | Petitioner |
| 157. | C.P. No.D-1895/2019 | AGP Ltd.                        | Petitioner |
| 158. | C.P. No.D-1896/2019 | Niaz Muhammad Khan & Brothers   | Petitioner |
| 159. | C.P. No.D-1919/2019 | Faisal Pvt. Bureau              | Petitioner |
| 160. | C.P. No.D-2099/2019 | Dewan Motor (Pvt.) Ltd.         | Petitioner |
| 161. | C.P. No.D-2117/2019 | Al-Meezan Investment Management | Petitioner |
| 162. | C.P. No.D-2120/2019 | Mumtaz Hassan Khan              | Petitioner |
| 163. | C.P. No.D-2121/2019 | Mumtaz Khan Khan                | Petitioner |
| 164. | C.P. No.D-2206/2019 | Sabic Industrial Investment Co. | Petitioner |
| 165. | C.P. No.D-2306/2019 | Deewan Cement Ltd.              | Petitioner |
| 166. | C.P. No.D-2307/2019 | Dewan Cement Ltd.               | Petitioner |
| 167. | C.P. No.D-2542/2019 | Coats South Asia Holding B.V.   | Petitioner |
| 168. | C.P. No.D-2550/2019 | Shahzad Rahim                   | Petitioner |
| 169. | C.P. No.D-2551/2019 | Shahid Rashid Soorty            | Petitioner |
| 170. | C.P. No.D-2572/2019 | Engro Polymar & Chemicals Ltd.  | Petitioner |
| 171. | C.P. No.D-2578/2019 | Freeport Shipping (LLC)         | Petitioner |
| 172. | C.P. No.D-2837/2019 | DHL International GmbH          | Petitioner |
| 173. | C.P. No.D-2856/2019 | Agven (Pvt.) Ltd.               | Petitioner |
| 174. | C.P. No.D-3047/2019 | ICI Pakistan Ltd.               | Petitioner |
| 175. | C.P. No.D-3048/2019 | ICI Pakistan Ltd.               | Petitioner |
| 176. | C.P. No.D-3049/2019 | ICI Pakistan Ltd.               | Petitioner |
| 177. | C.P. No.D-3362/2019 | M/s. Blessed Textile Ltd.       | Petitioner |
| 178. | C.P. No.D-3965/2019 | Fecto Cement Ltd.               | Petitioner |
| 179. | C.P. No.D-5291/2019 | Tariq Rafi                      | Petitioner |
| 180. | C.P. No.D-5292/2019 | Tariq Rafi                      | Petitioner |
| 181. | C.P. No.D-5293/2019 | Tariq Rafi                      | Petitioner |
| 182. | C.P. No.D-5445/2019 | Maple Leaf Cement Factory       | Petitioner |

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| 183. | C.P. No.D-5575/2019 | IGI Holdings Ltd.                   | Petitioner |
| 184. | C.P. No.D-6617/2019 | CMA CGM Pakistan (Pvt.) Ltd.        | Petitioner |
| 185. | C.P. No.D-6700/2019 | Abdul Wahid Abdul Majid (Pvt.) Ltd. | Petitioner |
| 186. | C.P. No.D-6701/2019 | Abdul Wahid Abdul Majid (Pvt.) Ltd. | Petitioner |
| 187. | C.P. No.D-1358/2020 | M/s. EY Ford Rhodes Ltd.            | Petitioner |
| 188. | C.P. No.D-1359/2020 | M/s. EY Ford Rhodes Ltd.            | Petitioner |
| 189. | C.P. No.D-1360/2020 | M/s. EY Ford Rhodes Ltd.            | Petitioner |
| 190. | C.P. No.D-1361/2020 | M/s. EY Ford Rhodes Ltd.            | Petitioner |
| 191. | C.P. No.D-1598/2020 | M/s. Coronet Foods Pvt. Ltd.        | Petitioner |
| 192. | C.P. No.D-1691/2020 | Advance Telecom                     | Petitioner |
| 193. | C.P. No.D-1721/2020 | M/s. Fecto Cement Ltd.              | Petitioner |
| 194. | C.P. No.D-1765/2020 | Atlas Honda Ltd.                    | Petitioner |
| 195. | C.P. No.D-1913/2020 | Franklin Templeton Investment Funds | Petitioner |
| 196. | C.P. No.D-1916/2020 | M/s. Orient Energy System Pvt. Ltd. | Petitioner |
| 197. | C.P. No.D-1917/2020 | M/s. Orient Energy System Pvt. Ltd. | Petitioner |
| 198. | C.P. No.D-1918/2020 | M/s. Orient Energy System Pvt. Ltd. | Petitioner |
| 199. | C.P. No.D-1919/2020 | M/s. Orient Energy System Pvt. Ltd. | Petitioner |
| 200. | C.P. No.D-1920/2020 | M/s. Jaffer Brothers Pvt. Ltd.      | Petitioner |
| 201. | C.P. No.D-1955/2020 | Be Energy Ltd.                      | Petitioner |
| 202. | C.P. No.D-1956/2020 | Be Energy Ltd.                      | Petitioner |
| 203. | C.P. No.D-1957/2020 | JS Global Capital Ltd.              | Petitioner |
| 204. | C.P. No.D-1958/2020 | Oil Processors & Refiners Pvt. Ltd. | Petitioner |
| 205. | C.P. No.D-1975/2020 | Searle Co. Ltd.                     | Petitioner |
| 206. | C.P. No.D-1976/2020 | Searle Co. Ltd.                     | Petitioner |
| 207. | C.P. No.D-2001/2020 | Shujabad Agro Industries Pvt. Ltd.  | Petitioner |
| 208. | C.P. No.D-2039/2020 | M/s. Hino Motors Ltd. (Japan)       | Petitioner |
| 209. | C.P. No.D-2050/2020 | Engro Vopak Terminal Ltd.           | Petitioner |
| 210. | C.P. No.D-2280/2020 | M/s. Yunus Textile Mills Ltd.       | Petitioner |
| 211. | C.P. No.D-2621/2020 | Shirazi Investment Pvt. Ltd.        | Petitioner |
| 212. | C.P. No.D-2655/2020 | M/s. Novatex Ltd.                   | Petitioner |
| 213. | C.P. No.D-2656/2020 | M/s. Gatron (Industries) Ltd.       | Petitioner |
| 214. | C.P. No.D-2914/2020 | Gasco Engineering Pvt. Ltd.         | Petitioner |
| 215. | C.P. No.D-2936/2020 | A.F. Ferguson & Co.                 | Petitioner |
| 216. | C.P. No.D-2937/2020 | A.F. Ferguson & Co.                 | Petitioner |
| 217. | C.P. No.D-2938/2020 | A.F. Ferguson & Co.                 | Petitioner |
| 218. | C.P. No.D-2939/2020 | A.F. Ferguson & Co.                 | Petitioner |
| 219. | C.P. No.D-2940/2020 | A.F. Ferguson & Co.                 | Petitioner |

Versus

| FEDERATION of PAKISTAN & Others |                    |  | Respondents |
|---------------------------------|--------------------|--|-------------|
| 1.                              | Suit No.2181/2015  | M/s. Yunus Textile Mills Ltd.          | Plaintiff   |
| 2.                              | Suit No.2182/2015  | M/s. IGI Insurance Ltd.                | Plaintiff   |
| 3.                              | Suit No.2183/2015  | M/s. Lucky Cement Ltd.                 |             |
| 4.                              | Suit No.2211/2015  | Faysal Bank Limited                    | Plaintiff   |
| 5.                              | Suit No.2316/2015  | Reckitt Benckiser Pakistan Limited     | Plaintiff   |
| 6.                              | Suit No.2329/2015  | Qasim Intl. Container Terminal Ltd.    | Plaintiff   |
| 7.                              | Suit No.2330/2015  | Bank AlFalah Limited                   | Plaintiff   |
| 8.                              | Suit No.2393/2015  | Dubai Islamic Bank Pakistan Ltd.       | Plaintiff   |
| 9.                              | Suit No.2374/2015  | M/s. Jaffer Brothers (Pvt.) Ltd.       | Plaintiff   |
| 10.                             | Suit No.2371/2015  | Habib Metro Pakistan (Pvt.) Ltd.       | Plaintiff   |
| 11.                             | Suit No.2370/2015  | AuVitronics Limited                    | Plaintiff   |
| 12.                             | Suit No.2367/2015  | Indus Motor Co. Ltd.                   | Plaintiff   |
| 13.                             | Suit No.2368/2015  | Thal Limited                           | Plaintiff   |
| 14.                             | Suit No.2369/2015  | Agriauto Industries Ltd.               | Plaintiff   |
| 15.                             | Suit No.2475/2015  | M/s. Lucky Textile Mills Ltd.          | Plaintiff   |
| 16.                             | Suit No.2476/2015  | M/s. ICI Pakistan Limited              | Plaintiff   |
| 17.                             | Suit No.2477/2015  | M/s. Y.B. Holding (Pvt.) Ltd.          | Plaintiff   |
| 18.                             | Suit No.2494 /2015 | Cherat Cement Co. Ltd.                 | Plaintiff   |
| 19.                             | Suit No.2495/2015  | Cherat Packaging Ltd.                  | Plaintiff   |
| 20.                             | Suit No.2496/2015  | M/s. Colgate Palmolive (Pakistan) Ltd. | Plaintiff   |
| 21.                             | Suit No.2497/2015  | International Terminal Holding Ltd.    | Plaintiff   |
| 22.                             | Suit No.2498/2015  | DP World Overseas                      | Plaintiff   |
| 23.                             | Suit No.2499/2015  | M/s. National Foods Ltd.               | Plaintiff   |
| 24.                             | Suit No.2525/2015  | Iqbal Ali Muhammad                     | Plaintiff   |
| 25.                             | Suit No.2526/2015  | National Refinery Ltd.                 | Plaintiff   |
| 26.                             | Suit No.2546/2015  | Archroma Pakistan Ltd.                 | Plaintiff   |
| 27.                             | Suit No.2558/2015  | Nutrico Pakistan (Pvt.) Ltd.           | Plaintiff   |
| 28.                             | Suit No.2568/2015  | M/s. Gul Ahmed Textile Mills           | Plaintiff   |
| 29.                             | Suit No.2570/2015  | Hinopak Motors Ltd.                    | Plaintiff   |
| 30.                             | Suit No.2571/2015  | Tapal Tea (Pvt.) Ltd.                  | Plaintiff   |
| 31.                             | Suit No.2572/2015  | Pakistan Petroleum Ltd.                | Plaintiff   |
| 32.                             | Suit No.2574/2015  | Pakistan Beverage Ltd.                 | Plaintiff   |
| 33.                             | Suit No.2575/2015  | The4 Searle Co. Ltd.                   | Plaintiff   |
| 34.                             | Suit No.2601/2015  | Sapplhire Textile Mills Ltd.           | Plaintiff   |
| 35.                             | Suit No.2602/2015  | Saphlhire Fibres Ltd.                  | Plaintiff   |
| 36.                             | Suit No.2605/2015  | M/s. International Industries Ltd.     | Plaintiff   |
| 37.                             | Suit No.2614/2015  | Atlas Honda Limited                    | Plaintiff   |

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| 38. | Suit No.2615/2015  | Atlas Battery Limited                   | Plaintiff  |
| 39. | Suit No.2616/2015  | Shirazi Capital (Pvt.) Ltd.             | Plaintiff  |
| 40. | Suit No.2617/2015  | Shrazi Investment (Pvt.) Limited        | Plaintiff  |
| 41. | Suit No.2618/2015  | Hum Network Limited                     | Plaintiff  |
| 42. | Suit No.2619/2015  | Pakistan State Oil Co. Ltd.             | Plaintiff  |
| 43. | Suit No.2634/2015  | Pakistan Intl. Container Terminal Ltd.  | Plaintiff  |
| 44. | Suit No. 2635/2015 | Karachi Intl. Container Terminal Ltd.   | Plaintiff  |
| 45. | Suit No.42/2016    | United Agro Chemicals                   | Plaintiff  |
| 46. | Suit No.43/2016    | The Paracha Textile Mills Limited       | Plaintiff  |
| 47. | Suit No.141/2016   | Attock Cement Pakistan Limited          | Plaintiff  |
| 48. | Suit No.522/2016   | A.G.P. (Private) Limited                | Plaintiff  |
| 49. | Suit No.1468/2016  | Digicom Trading (Pvt.) Ltd.             | Plaintiff  |
| 50. | Suit No.2748/2016  | Vision Holdings Middle East Limited     | Plaintiff  |
| 51. | Suit No.2768/2016  | Habib Metro Pakistan (Pvt.) Ltd.        | Plaintiff  |
| 52. | Suit No.2772/2016  | Overseas Pakistan Investors AG          | Plaintiff  |
| 53. | Suit No.2/2017     | National Investment Trust Limited       | Plaintiff  |
| 54. | Suit No.40/2017    | Mujahid Oil Refinery (Pvt.) Limited     | Plaintiff  |
| 55. | Suit No.188/2017   | Hinopak Motors Limited                  | Plaintiff  |
| 56. | Suit No.340/2017   | CMA CGM & Another                       | Plaintiffs |
| 57. | Suit No.854/2017   | M/s. Umer Jan & Company                 | Plaintiff  |
| 58. | Suit No.2208/2017  | Franklin Templeton Investment Funds     | Plaintiff  |
| 59. | Suit No.2223/2017  | Engro Powergen Limited & Another        | Plaintiffs |
| 60. | Suit No.2245/2017  | Abbott Laboratories (Pakistan) Limited  | Plaintiff  |
| 61. | Suit No.2267/2017  | Reckitt Benckiser Pakistan Limited      | Plaintiff  |
| 62. | Suit No.2277/2017  | Pateck (Pvt) Limited                    | Plaintiff  |
| 63. | Suit No.2378/2017  | Maersk Pakistan (Pvt.) Limited          | Plaintiff  |
| 64. | Suit No.2530/2017  | Shirazi Investment (Private) Limited    | Plaintiff  |
| 65. | Suit No.2542/2017  | Pakistan Intl. Container Terminal Ld.   | Plaintiff  |
| 66. | Suit No.2604/2017  | Pakistan Cables Limited                 | Plaintiff  |
| 67. | Suit No.2674/2017  | National Investment Trust Ltd.          | Plaintiff  |
| 68. | Suit No.2674/2017  | National Investment Trust Ltd.          | Plaintiff  |
| 69. | Suit No.2689/2017  | Franklin Templeton Investment Fund      | Plaintiff  |
| 70. | Suit No.71/2018    | International Terminal Holdings Limited | Plaintiff  |
| 71. | Suit No.72/2018    | International Terminal Holdings Limited | Plaintiff  |
| 72. | Suit No.73/2018    | Vision Holdings Middle East Limited     | Plaintiff  |
| 73. | Suit No.276/2018   | Yunus Textile Mills Limited             | Plaintiff  |
| 74. | Suit No.300/2018   | International Terminal Holdings Limited | Plaintiff  |
| 75. | Suit No.884/2018   | Attock Cement Pakistan Limited          | Plaintiff  |



## VERSUS

Pakistan &amp; Others

Defendants

Date of hearing : 11.11.2019, 25.11.2019 and  
06.07.2020

Date of Judgment : 21.07.2020

M/s. Naveed A. Andrabi, Anwar Kashif Mumtaz, Khalid Javed Khan, Mansoor-ul-Arfin, Rashid Anwar, Abid H. Shaban, Arshad Siraj, Hyder Ali Khan, Ali Aziz along with Sami-ur-Rehman, Pooja Kalpana, Munawar Hussain, Jawaid Farooqi, Lubna Pervez, Qazi Umair Ali, Shafqat Zaman, Ovais Ali Shah, Kashif Hanif, Ali Almani, Jam Zeeshan Ali, Iqbal Salman Pasha, Mushtaq Hussain Kazi, Atir Aqeel Ansari, Mariam Riaz, Taimoor Ahmed Qureshi, Taimoor Ali Mirza, A. Rahim Lakhani, A. Jabbar Mallah, Atta Muhammad Qureshi, Shahzad Rahim, Faiz Durrani, Samiya F. Durrani, Emadul Hassan, Gazain Zafar Magsi, Zain A. Jatoi, Zeeshan Merchant, Faraz Merchant, Muhammad Aleem, S. Ahsan Ali Shah, Fazle Rabbi, Khawaja Aizaz Hassan, Aijaz A. Zahid, Ijaz Ahmed, Rabia Khan, Muhammad Ramzan, Mansoor Usman Awan, Suffiyan Zaman, Ajmal Khan, Darvesh K. Mandhan, S. Mohsin Ali, Arshad Shehzad, Imran Iqbal Khan, Waleed ur Rehman Khanzada, Shafqat Zaman, Sattar Muhammad, Dilkhurram Shaheen, Adnan Ahmed, Fasih-uz-Zaman, Mukesh G. Karara, Ghulam Hyder Shaikh, Irfan Ali, Ameen M. Bandukda, Kashan Ahmed and Ghulam Nabi Shar, advocates for the Petitioners/Plaintiffs.

M/s. Amjad Jawaid Hashmi, Ameer Bakhsh Metlo, Dr. Shahnawaz Memon, Kashif Nazeer, Muhammad Bilal Bhatti, Khalid Mehmood Rajpar, S. Asif Ali, S. Mohsin Imam, Masooda Ssiraj, Muhammad Aqeel Qureshi, M. Taseer Khan, Atif Awan, Afsheen Aman, Irfan Mir Halepota, Z.A. Khan Jalbani, Sarfaraz Khan, advocates for the respondents/Defendants.  
Mr. Muhammad Ameenullah Siddiqui, Asstt. Attorney General.

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**J U D G M E N T**

Above captioned petitions have been filed to challenge the imposition of super tax by inserting Section 4B Division IIA of Part I of the First Schedule of the Income Tax Ordinance, 2001, through Section 9(2) of the Finance Act, 2015, introduced through Money Bill under Article 73 (2) of the Constitution of Islamic Republic of Pakistan, 1973, for being ultra-vires to the Constitution. Section 4B Division IIA of Part I of the First Schedule of the Income Tax Ordinance, 2001, which reads as follows:-

**“4B. Super tax for rehabilitation of temporarily displaced persons.—**

(1) A super tax shall be imposed for rehabilitation of temporarily displaced persons, for tax year 2015, at the rates specified in Division IIA of Part I of the First Schedule, on income of every person specified in the said Division.

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

- (i) profit on debt, dividend, capital gains, brokerage and commission;
- (ii) taxable income under section (9) of this Ordinance, if not included in clause (i);
- (iii) imputable income as defined in clause (28A) of section 2 excluding amounts specified in clause (i); and
- (iv) income computed under Fourth, Fifth, Seventh and Eighth Schedules.

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

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

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

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

"Division IIA"

RATES OF SUPER TAX

| PERSON   | RATE OF SUPER TAX |
|--|-------------------|
| Banking Company  | 4% of the income  |
| Person, other than a banking Company, having income equal to or Exceeding Rs.500 million | 3% of the income  |

2. In addition to challenging the vires, petitioners have also challenged various notices issued under Section 122(5A) of the Income Tax Ordinance, 2001, by the Tax Authorities, by raising other ground as well. However, almost in all these petitions, the proposed addition under Section 4B of the Income Tax Ordinance, 2001, has been the common ground of challenge, therefore, all the learned counsel for the petitioners were directed to make their submissions in support of their challenge to the legislative competence to impose super tax under Section 4B of the Income Tax Ordinance, 2001, through Section 9(2) of the Finance Act, 2015, along with Money Bill in terms of Article 73(2) of the Constitution of Islamic of Pakistan, 1973. Since large number of Advocates shown appearance and argued their case on behalf of the petitioners, however, their submissions can be summarized in the following terms:-

3. Learned counsel for the petitioners have mainly argued that the impugned levy has been introduced for specific purpose i.e. Rehabilitation of Temporarily Displaced Persons, whereas, it is not meant for the purpose of general revenue and therefore, is not a common burden, hence does not fall within definition of tax. According to learned counsel, since super tax does not qualify to be a tax, therefore, could not have been introduced through Finance Act under Article 173(2) of the Constitution. Learned counsel for the petitioners have argued that test to examine as to whether a levy is a tax or otherwise two basic conditions are to be collaterally met, firstly the levy has to be a compulsory exaction, and secondly, the purpose of levy should not be a specific, rather it should be contribution to the general revenue. It has been argued that in terms of Entry 47 of the 4<sup>th</sup> Schedule to the Constitution of Islamic Republic of Pakistan, 1973, income tax can be imposed, the proceeds whereof are meant to go into general revenue. However, per learned counsel, super tax is a levy for a specific purpose i.e. Rehabilitation of the Temporarily Displaced Persons, whereas, income tax by its nature is not meant for any particular purpose rather it is meant for the contribution into general revenue i.e. being part of the common burden. Therefore, according to learned counsel, super tax could not be introduced pursuant to Entry 47 of the fourth schedule to the Constitution of Islamic Republic of Pakistan, 1973. While referring to Entry

54 of the fourth schedule to the Constitution, it has been contended by the learned counsel for the petitioners that the above entry authorizes the legislation to impose a **fee**, however, a fee can be imposed if an element of **quid pro quo** is present against the services provided, whereas, in the instant case, according to petitioners, there is no element of providing services to the persons, who are charged to pay super tax under Section 4B of the Income Tax Ordinance, 2001. Moreover, if the subject levy is treated as fee then it would not have been imposed through Finance Act under Article 73(2) of the Constitution of Islamic Republic of Pakistan, 1973. According to learned counsel for petitioners, that the very language of the charging provision while imposing super tax under Section 4B of the Income Tax Ordinance, 2001, through Finance Act, 2015, shows that it is a social welfare legislation covered under Entry 25 of the concurrent list of the Constitution of Islamic Republic of Pakistan, 1973 and such levy has been imposed for the Rehabilitation of Temporarily Displaced Persons for tax year 2015, however, according to learned counsel, after 18<sup>th</sup> amendment to the Constitution of Islamic Republic of Pakistan, 1973, the concurrent list was omitted, therefore, no Federal Legislation can be made in respect of social welfare by the Federation, except having recourse to Article 144(1) of the Constitution of Islamic of Pakistan, 1973. It has been further contended that in view of Article 142(c) of the Constitution there are only three subject matter upon which both the Provincial Assembly and Majlis-e-Shoora have simultaneous power to make laws, the same being (i) Criminal Laws, (ii) Criminal procedure, and (iii) Evidence, whereas, social welfare law is an exclusive domain of the Provincial Assembly after 18<sup>th</sup> amendment to the Constitution.

4. Without prejudice to hereinabove submissions, it has been further contended by the learned counsel for petitioners that imposition of super tax under Section 4B of the Income Tax Ordinance, 2001, through Finance Act, 2015 along with Money Bill is a colourable legislation, therefore, illegal, void, ab-initio as the Federation is not competent to enact any law relating to social welfare after 18<sup>th</sup> amendment to the Constitution. In addition to hereinabove submissions relating to the legislative competence of the Federation in the instant case, reference to Finance Minister's Speech

while introducing Finance Bill for 2015-16 in the National Assembly relating to imposition of Section 4B of the Income Tax Ordinance, 2001, and Circular No.02 of 2015 issued by the FBR has been made, whereas, the relevant extract of the budget speech has also been provided, which reads as under:-

**“Extract of the Budget speech of the Finance Minister of Pakistan while introducing Finance Bill 2015-16 in the National Assembly of Pakistan.”**

Revenue Measures

3. I will not give a brief summary of the Revenue measures proposed in the budget:

a.

b.

c.

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k. **Revenue for Rehabilitation of Temporarily Displaced Persons:**

The terrorism and counter-terrorism efforts have resulted in displacement of hundreds of thousands of people of FATA and Khyber Pakhtunkhwa from their homes. The vulnerable sections of the population, women, children, elderly and sick have suffered the most. The host communities have also taken a toll. The cost of rehabilitation of these displaced persons has been estimated at 80 billion rupees. These direct affectees of the war on terror deserve the full support and facilitation of the Nation. To meet enhanced revenue needs for the rehabilitation of Temporarily Displaced Persons in a dignified and befitting manner, it is proposed to levy a one-time tax on the affluent and rich individuals, association of persons and companies earning income above Rs.500 million in tax year 2015 at a rate of 4% of income for banking companies and 3% of income for all others. It is expected that the provinces will also contribute their due share in this national cause and the entire receipts from this source shall be utilized for rehabilitation of TDPs.”

C) Federal Board of Revenue (FBR) issued Circular No.2 of 2015 in which the FBR clearly stated while explaining the amendments brought about in Income Tax Ordinance 2001 vide Finance Act 2015 that Super Tax for Rehabilitation of Temporarily Displaced Persons that:

‘Through Finance Act, 2015 a new section 4B has been introduced in the Ordinance according to which super tax has been imposed for tax year 2015.’

Moreover, super tax is a one time levy on income as defined in section 4B for tax year 2015. Since super tax is payable for tax year 2015.'

Few facts emerge from the above paragraph of the Speech of the Finance Minister, the section 4B and the FBR Circular Number 2 of 2015:

- 1) This was to be a ONE TIME LEVY ie for Tax Year 2015 (FM speech, section 4B, FBR Circular 2 of 2015)
- 2) The levy was for a specific purpose viz "needs for the rehabilitation of Temporarily Disposal Persons" ( FM Speech )
- 3) Further "the entire receipts from this source shall be utilized for rehabilitation of TDP." (FM Speech)"

5. In addition to hereinabove submissions made by the learned counsel for the petitioners, the summary of the written synopsis of arguments along with gist of case laws relied upon by the learned counsel for the petitioners and plaintiffs in Suits can be summarized in the following terms:-

- Under section 4-B Super tax has been imposed on the income of persons i.e. taxpayers which are mentioned in Division IIA of Part 1 of the First Schedule. In other words, section 4-B by itself is a charging section; for this attention is invited to the case of ***Mumtaz Hussain Khan v. Additional Commissioner (2016 PTD 1667 (PARA 10) (Annex A)***, which holds at p.1674 of the said law report that the section imposing super tax, is a charging section.
- In ***Iqbal Zafar Jhagra v. Federation of Pakistan (2014 SCMR 220) S & BB (Annex – B)***, it was held that in matters of fiscal laws there can only be one charging section. The charging section in the 2001 Ordinance is section 4 of the said statute. It is respectfully submitted that on this count along section 4-B is ultra vires, the law, Constitution and the very charging section i.e. section 4 of the 2001 Ordinance.
- In ***Iqbal Zafar Jhagra*** case (supra) section 3(8) of the Sales Tax Act, 1990 was struck down on the ground that no extra/additional tax can be charged over and above the tax imposed under the charging section i.e. section 3(1). Subsequently, section 3(8) was

re-enacted, which was challenged in the case of ***Shakeel Ahmed v. Federation of Pakistan (2016 PTD 577) at para 4 & p.581A (Annex C)***, the ground that when Section 3(8) of the Sales Tax Act, 1990, was struck down, enactment of a similar provision i.e. the new Section 3(8) amounted to nullifying the judgment of the Supreme Court. This Honourable Court was pleased to observe to the effect that the newly inserted subsection 3(8) did not impose an additional tax, over and above the tax fixed under section 3(1) i.e. @ 17%, rather the effect of section 3(8) was only to charge sales tax from CNG stations at one stage (instead of two). In other words, after the judgment of Iqbal Zafar Jhagra, an additional/extra tax is no longer permissible in law.

- Historically, in name and also in substance 'Super Tax' is an additional income tax (see section 55 of the Income Tax Act, 1922).  
In this regard attention is invited to the following judgments:
  - Pakistan Industrial Development Corporation v. Pakistan (1992 SCMR 891 (pp. 909, 910) (Annex: D)
  - Anup Prabha Bai v. CIT (1962) 44 ITR 237 (pp. 240-241) (Annex. E).
- In *Sohail Jute Mills Ltd. and others vs. Federation of Pakistan* (PLD 1991 SC 329) (Annex F), the levy of iqra surcharge by the Federal Government on imported goods was challenged. The august Supreme Court found that since iqra surcharge was an additional customs duty imposed on the existing customs duty, it fell within the purview of entry 43 of the 4<sup>th</sup> Schedule of the Constitution; hence found to be legal. The principle held in the *Sohail Jute Mills* further confirms that the super tax is an additional income tax. The *Sohail Jute Mills* case does not deal with the proposition that there can or cannot be an extra charging section. The said judgment is only an authority for the proposition that iqra surcharge was an additional custody duty.
- The Federal Legislative List, contained in the 4<sup>th</sup> Schedule to the Constitution consists of entries 43 to 53 pertaining to 'taxes', whereas entry 54 is in relation to 'fee'. Super tax is nothing but an additional income tax, which can only fall within entry 47 of the Federal Legislative List.

- It is respectfully submitted that it is clear from the language of section 4B that the impugned super tax is legislated for a specific purpose i.e. **rehabilitation of temporarily displaced persons**. In other words, the impugned levy is not meant for the purposes of general revenue. Attention is invited to a recent judgment of the Apex Court in the case of **Workers Welfare Funds v. East Pakistan Chrome (PLD 2017 SC 28 (a) & (i), at pp 45A and 51P) (Annex. G)**, wherein it was held that a 'tax' is basically a compulsory exaction of monies by public authorities, to be utilized for public purposes, whereas 'fee' is for a specific purpose and possess element of quid pro quo. However, the distinguishing feature of 'tax' is that it imposes a common burden for raising revenue for a general as opposed to a specific purpose. Most pertinently, in para 22 at page 51, it was further held that if a levy is not a tax, the same cannot be introduced through a money bill. Since the said para 22 is most important, for convenience the relevant excerpt is underscored as follows:

“We would like to point out at this juncture that the word 'finance' used in Finance Act undoubtedly is a term having a wide connotation, encompassing tax. However not everything that pertains to finance would necessarily be related to tax. Therefore, merely inserting amendments, albeit relating to finance but which have no nexus to tax, in a Finance Act does not mean that such Act is a Money Bill as defined in Article 73(2) of the Constitution. The tendency to tag all matters pertaining to finance with tax matters (in the true sense of the word) in Finance Acts must be discouraged, for it allows the legislature to pass laws as Money Bills by bypassing the regular legislative procedure under Article 70 of the Constitution by resorting to Article 73 thereof which must only be done in exceptional circumstances as and when permitted by the Constitution. The special legislative procedure is an exception and should be construed strictly and its operation restricted. Therefore, we are of the candid view that since the amendments relating to the subject contributions/ payments do not fall within the parameters of Article 73(2) of the Constitution, the impugned amendments in the respective Finance Acts are declared to be unlawful and ultra vires the Constitution.”

- On the point that Tax is imposed as a common burden for raising revenue for general purposes, as opposed to specific purposes, whereas Fee is for a specific purpose and possesses element of quid pro quo, attention is invited to the following judgment:-



- Federation of Pakistan v. Durrani Ceramics (2014 SCMR 1630 (a) and (b), at pp. 1634 to 1645) (Annex. H).
  - Collector of Customs v. Sheikh Spinning Mills (1999 SCMR 1402 (a), pp. 1414, 1417 and 1418) (Annex. "I")
  - Sheikh Muhammad Ismail v. Chief Cotton Inspector (PLD 1966 SC 388, at p. 440) (Annex. J)\
  - Pakcom Limited vs. Federation of Pakistan (PLD 2011 SC 44(i) Annex: K)
  - Flying Cement Co. V. Federation of Pakistan (PLD 2016 Lah. 35(d), p. 601 and para 40 at p. 61 (Annex: L)
  - Shell Pakistan Limited v. Capital Development Authority (PLD 2015 Isl. 36 (g) (Annexure "M")
  - Builders Association of India vs. Union of India (129 (2007) DLT 578 (Annex: N).
  - Fatima Enterprises v. Federation of Pakistan (1999 MLD 2889(C) Annexure "O")
  - Cocacola Beverages Pakistan v. City District Govt. (2014 CLC 1135(a)(b) (Annexure "P").
- Furthermore, on the point that provisions in Finance Act, which are not tax, are void, as they cannot be made part of money bill, attention is invited to the following:
    - Federation of Pakistan v. Durrani Ceramics (2014 SCMR 1630 (a) and (b), at pp. 1634 to 1645) (Annex. H).
    - Sindh High Court Bar Association & Another vs. Federation of Pakistan (PLD 2009 SC 879 (pp. 896, 897, 112, 113) (Annex: Q)
    - Mir Muhammad Idris v. Federation of Pakistan (PLD 2011 SC 213(a)(Annex:R)
    - Federation of Pakistan v. Durrani Ceramics (PLD 2015 SC 354 Annexure "S")
  - The impugned levy is not a fee as it lacks the prerequisite of quid pro quo. It is an admitted fact that no services are being rendered to the plaintiffs/payer of super tax.
  - Without prejudice to the above, even if the impugned levy is construed as fee, again it is not a tax, therefore, the same cannot be introduced through money bill. On the point that fee cannot be introduced through a money bill, attention is invited to the following:
    - Federation of Pakistan v. Durrani Ceramics (2014 SCMR 1630[A] at P.1657[N]&[O], Annexure "H")
    - Federation of Pakistan vs. Durrani Ceramics (2015 SC 354[A](Annexure "S")
    - Flying Cement Co. V. Federation of Pakistan (PLD 2016 Lah. 35(d), p. 601 and para 40 at p. 61 (Annex: L)
    - Fatima Enterprises v. Federation of Pakistan (1999 MLD 2889(C) Annexure "O")
  - In the cases of Durrani Ceramics (supra), GIDC Act, 2011 was challenged as unconstitutional on the ground that it did not fall within the definition of money bill. The Supreme Court concluded that the imposition was not a tax but a fee. Accordingly, it could not

have been imposed through a money bill, and on this ground the GIDC Act, 2011 was struck down.

- In **Sheikh Spinning Mills (1999 SCMR 1402)**, the Honourable Supreme Court struck down the imposition of pre-shipment inspection service charge under the Customs Act, 1969 as unconstitutional, on the ground that it was neither tax nor fee, therefore, was beyond the Federal Legislative Powers. It was also observed that the impugned service charge was not a fee, as it was meant for the benefit of only two companies, and not for the advantage of the payers/importers on which it was imposed.
- After the 18<sup>th</sup> Amendment, all the residuary legislative powers vest with the Provincial Legislature. Without prejudice to the arguments mentioned in paras above, the impugned levy being a 'cess' can only be legislated by the Provincial Legislature. In the case of **Shahtaj Sugar Mills v. Province of Punjab (1998 CLC 1912)** which was affirmed by the Supreme Court in **Shahtaj Sugar Mills v. Province of Punjab (1998 SCMR 2492) Annexure T**, it was held at Page 2501 that the Sugarcane Development Cess being levied for a specific purpose was not covered under the Federal or Concurrent Legislative Lists, hence the same (i.e. the cess) was within legislative power of the Provincial Legislature.
- A bare reading of section 4B read with Division IIA of Part I to the First Schedule would reveal that the said super tax is only imposable on two types of taxpayers i.e. firstly banking companies and secondly, persons, other than banking companies, who have an income equal to or over Rs.500 million (i.e. Rs.50 Crores).
- It is respectfully submitted that the said super tax is meant for the rehabilitation of temporarily displaced persons. The obligation, if any, to contribute towards the rehabilitation of temporarily displaced persons in on every Pakistani. Any person who would earn Rs.1 or Rs.49.99 crores would equally be under any obligation to provide for and contribute his/her/its share, as a Pakistani, to the rehabilitation of temporarily displaced persons, as any person or entity which is a banking company or earns more than Rs.50

crores. Why only extend the impugned tax to Companies mentioned in the impugned law, is nothing but hostile discrimination and arbitrary. In fact for Banking Companies there is no threshold. Therefore, the impugned super tax militates against Article 25 of the Constitution, as there is no rational basis to exclude persons other than the ones which are mentioned in the said Division IIA of Part-I to the First Schedule of the 2001 Ordinance from the ambit of super tax. In this regard reliance is placed upon the following judgments:

- Syed Nasir Ali v. Pakistan (2010 PTD 1924, at pp. 1958, 1959 and 1960 (Annexure “U”)
  - Salim Raza v. Federation of Pakistan (2012 PTD 302, at pp. 305[B] and 308[E] Annexure V)
  - Inam-ur-Rehman v. Federation of Pakistan (1992 SCMR 563[B] Annexure “W”)
- The judgment in **Syed Nasir Ali** (supra) is only an authority for the purposes of striking down law on the touchstone of hostile discrimination. The said judgment does not deal with the validity of the levy on the ground of being earmarked for a specific purpose and whether the same could be legislated through a money bill.
  - Leave to appeal has been granted in the case of **Syed Nasir Ali** (supra), however, it is a settled principle of law that a leave granting order is not a binding precedent:
    - Haji Farmanullah v. Latif-ur-Rehman (2015 SCMR 1708[C] Annexure X)
    - Muhammad Amin v. Muhammad Yasin (2002 CLC 231[D] Annexure Y).
  - Most importantly, the feudals, who derive agricultural income are exempt from income tax under section 41 of the 2001 Ordinance read with entry 47 of Part I to the Fourth Schedule of the Constitution. The said powers, who derive agricultural income are also under an obligation to contribute towards rehabilitation of temporarily displaced persons of Pakistan. Admittedly, super tax is not payable by persons deriving agricultural income. Therefore, the said super tax is discriminatory in terms of Article 25 of the Constitution and is liable to be struck down. Even the learned Finance Minister in his speech reported in The News dated 13.01.2015 has confirmed that the impugned burden of tax shall be

borne by only 200 companies out of many taxpayers. The discrimination thus is hostile and without any objective criteria. Copies of the newspapers are already attached to the plaints.

- The arguments of the respondents that the impugned levy in any event goes to the General Revenue / Federal Consolidated Fund, is of no consequence. In fact a similar argument was raised in the **Durrani Ceramics case (2016 SCMR 1630, in para 11 at P. 1642) (Annexure H)** that despite GIDC have not been statutorily expressed to be for a specific purpose, found its way to the General Revenue / Federal Consolidated Fund, hence the same was a tax and could be imposed through a Money Bill. This argument was rejected by the Supreme Court in para 18 at pp 1644 and 1645 of the **Durrani case**. For this Supreme Court in the case of **The Secretary, Government of Madras v. Zenith Lamp and Electrical Ltd. AIR 1973 SC 724 Annexure Z**, wherein in para 33 at P. 730, it was held as follows:

“.....the fact that one item of revenue is credited to the Consolidated Fund is not conclusive to show that the item is a Tax.”

- Furthermore, if the impugned levy is actually used for a general purpose i.e. other than the specific purpose for which this levy has been imposed, it is firstly a fraud on the people and the Constitution, and secondly it does not change the nature and character of the levy for the purpose of its validity.
- Therefore, it is now a settled proposition of law that whatever is statutorily expressed is relevant for the purpose of determining the nature of the levy and just because by way of tactics the proceeds of the levy would find their way into General Revenue or the Federal Consolidated Fund, will not be relevant and shall not alter the nature and character of the levy. In this case a levy thus is not a tax and cannot be brought about through a Money Bill.
- According to learned counsel for the petitioners, it is settled legal position that a charging provision has to be construed strictly in accordance with the plain language used in the statute itself and therefore, nothing can be deduced from the language of provision

of Section 4B of the Income Tax Ordinance, 2001 to bring it within the definition of a tax, as it is a distinct levy for a special purpose i.e. Rehabilitation of Temporarily Displaced Persons, which is subject of a social welfare, therefore, could not be introduced through money bill. Reliance in this regard is made in the case of ***Collector of Customs v. Haji Mehmood Essa Co. (2017 SCMR 884)*** and ***Chairman, Federal Board of Revenue v. Al-Technique Corporation of Pakistan Ltd. (PLD 2017 SC 99)***.

- The provisions in all previous Income Tax legislations and the Indian Income Tax Act (Tab 9) introduced the charge of super tax with the words “In addition to the income tax charged for any year, there shall be charged...”. The provisions therefore did not impose a new and separate tax called the “super tax”, but simply a levy over and above the charge of income tax which could be referred to as ‘super tax’.
- Section 4B of 2001 Ordinance is, however, different. It starts with “A super tax shall be imposed...”. The legislature could have simply copied the language of the previous legislation but chose not to. The intent of the legislature was, therefore, to introduce a new and entirely separate levy. A levy which is not simply over and above the income tax, but a new and distinct charge.
- Social welfare was part of the Concurrent Legislative List (CLL) at Entry 25. However, the CLL was abolished through the 18th amendment to the Constitution and the authority to legislate and exercise executive authority (and also to impose fee) in respect of the same has devolved and vests solely in the Provincial Legislatures. The fact that the subject of social welfare falls in the exclusive domain of the Provincial legislature has been confirmed by the SHC in ***Shafiquddin v. Federation of Pakistan (2018 CLC 1088)*** (SHC/DB), Tab 7, P. 15.
- In the fiscal statutes there can only be one charging section. Reliance is placed on Human Rights Case No. 14392 of 2013: in the matter of 2014 SCMR 220 (“Human Rights Judgment), Tab 21, P. 254S. The charging section in the 2001 Ordinance is Section 4,

which sets out the levy of income tax. Through the Finance Act 2015, however, the Federal Government has introduced another charging section in the 2001 Ordinance i.e. Section 4B. The provision imposes a charge of “super tax.”. The SCP has held that there can only be one charging section in a fiscal statute. Section 4B is, therefore, liable to struck down because there can only be one charging section in the 2001 Ordinance which is section 4 of the Ordinance.

6. Conversely, M/s. Dr. Shahnawaz Memon & Ameer Bukhsh Metlo Advocates, learned counsel for the respondents have also furnished the written synopsis of arguments along with gist of case laws relied upon by the learned counsel for the respondents in support of their submissions, which contention can be summarized in the following terms:-

The petitioners have challenged the constitutionality of super tax on the following grounds:-

- A. **Super Tax has a special purpose which is characteristic of fee or cess. Therefore, it is not a tax and cannot be levied through money bill** in view of judgment in case of Workers' Welfare Funds, M/O Human Resources Development, Islamabad versus East Pakistan Chrome Tannery (Pvt.) Ltd. (Workers' Welfare Fund Case) Reported in **PLD 2017 SC 28**.
- B. **Supper Tax does not go into Federal Consolidated Fund to be used for general expenditure of the state. Therefore, super tax is not a tax.**
- C. **Super Tax is not a common burden as it has not been imposed across the board but has been levied on specific class of person. Therefore, it is discriminatory.**
- D. **Super Tax amounts to double taxation on same income which has already suffered Income Tax. As such the taxpayer cannot be subjected to double taxation by way of super tax.**
- E. **There cannot be two charging sections in one statute. Therefore, section 4B is ultra vires the section 4 of Income**

**Tax Ordinance. Reliance is made on Iqbal Zafer Jhagra case reported in 2014 PTD 243.**

**A. Super Tax has a special purpose which is characteristic of fee or cess. Therefore, it is not a tax and cannot be levied through money bill:**

**B. Supper Tax does not go into Federal Consolidated Fund to be used for general expenditure of the state. Therefore, super tax is not a tax.**

(1) Ground A and B are interconnected and therefore, rebutted together. Primary question is whether there can be a special tax under the framework of the Constitution? Answer to this question is Article 260 which defines the “**taxation**” includes the imposition of any tax or duty, whether **general, local or special**, and taxation shall be construed accordingly. In view of article 260 of the constitution, it is submitted that the constitution itself provides that the tax can be general, local, and special tax. As such there is no room for an argument that there cannot be special tax. It is most respectfully submitted that the attention of the Hon’ble Supreme Court was not invited to article 260 of the constitution and there is no discussion of the article 260 of the constitution in the **Workers’ Welfare Fund Case**, which is passed in ignorance to article 260 of the constitution. Therefore, according to decision of the Hon’ble Supreme Court in case of **Member Board of Revenue/Chief Settlement Commissioner, Punjab, Lahore Versus Abdul Majeed (PLD 2015 SC166)** such judgment does not bind any court and does not require compliance. Reliance is also made on **PLD 2009 SC 879 (Sindh High Court Bar Association Vs Federation of Pakistan)**.

(2) **Alternative argument:** To determine whether super tax is a tax and it has all ingredients of a tax and to understand overlapping concepts of fee and cess we may refer to definition of tax. The Hon’ble Supreme Court in case of Durrani Ceramics has held as follows:

“19. Upon examining the case-law from our own and other jurisdictions it emerges that **the ‘Cess’ is levied for a particular**

**purpose. It can either be 'tax' or 'fee' depending upon the nature of the levy.** Both are compulsory exaction of money by public authorities. **Whereas tax is a common burden for raising revenue and upon collection it becomes part of public revenue of the State, 'fee' is exacted for a specific purpose and for rendering services or providing privilege to particular individuals or a class or a community or a specific area.** However, the benefit so accrued may not be measurable in exactitude. So long as the levy is to the advantage of the payers, consequential benefit to the community at large would not render the levy a "tax".

The distinguishing feature of a tax is that, tax is a common burden for raising revenue and upon collection it becomes part of public revenue of the state. Super tax is a common burden upon a certain class of persons and upon collection it becomes part of public revenue of the state. In case of **Workers' Welfare Fund** the question was whether the levies/contribution/payments under different laws amended through different Finance Acts were in nature of tax or not. It was held the none of the statutes had the distinguishing features of a tax. It was found that such contributions were not in control of the government and they were kept and managed by separate boards and were specifically used for specific purposes as provided by the statutes. The contributions did not become part of general revenue of the State. As such, the contributions were not tax and the amendments relating to the contributions did fall within the parameters of Article 73(2) of the Constitution. **It is clear from reading Workers' Welfare Fund judgment as a whole that the contributions were for specific purposes and they were meant to be utilized for that specific purposes as mandated by the respective statutes and they were not part of public revenue of the state because it was kept, managed and utilized separately by separate bodies. Specific purpose cannot be read in isolation. It has to be read holistically in view of the facts of the case and not in isolation to check validity of any tax.** whereas the super tax is a common burden on a certain class of persons and upon collection it becomes part of public revenue of the State.



There is no separate account for keeping super tax neither there is any separate body to control and utilize it separately as was the case in Workers' Welfare Fund. **Super Tax is deposited in Federal Consolidated Fund. (receipt of deposit of super tax is annexed as A-1).** It is submitted that in case of **Sohail Jute Mills Ltd. and others versus Federation of Pakistan and others** reported in **PLD 1991 SC 329 relevant page 337 para 12 and 13** the Hon'ble Supreme Court has held that it is not possible, therefore, to relate the proposed expenditure with the levy **or to make the proposed expenditure the test for examining the validity of the levy.** It is submitted that the purposed expenditure of levy cannot be a determining factor for examining validity of a levy. When it is put in the consolidated fund it loses its test and color and becomes part of general fund for expenditure of the government. It is also submitted that Hon'ble Lahore High Court in **ICA No. 134758 of 2018 relevant Para 5 and 14 re. D.G. Khan Cement Company Ltd. & another versus Federation of Pakistan and others** (copy is annexed as B) while upholding the super tax as valid tax has held that federation has used more amount than the amount collected under section 4B for rehabilitation of displaced persons in FATA.

1. It is further submitted the Hon'ble Supreme Court in case of **Elahi Cotton Mills Ltd. Vs. Federation of Pakistan** (PLD 1997 SC 582) **Relevant Page 681 Para 34 (Elahi Cotton Mills case)** has held that the power to levy taxes is a *sina qua non* for a State. It is an attribute of sovereignty of a State. It is a 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. In view of the matter, 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. It is also apparent that 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 single entry.** It is needless to reiterate that it is well settled proposition of law that an entry in the Legislative List must be given **a very wide and liberal interpretation.** In view of above finding of the Hon'ble Supreme Court, it is submitted that super tax is independent tax which is levied, in addition to income tax, on income of a certain class of persons. **entry 47 of the 4<sup>th</sup> Schedule of Federal Legislative List** provides that federal government may levy '**Taxes on income**'. This categorically empowers to impose different/multiple taxes on income. The entry has to be given as widest as possible interpretation as held in Elahi Cotton Mills Case. The legislature in its wisdom has chosen a certain class of persons who shall pay super tax in addition to and over and above the income tax. The super tax is compulsory exaction of money on a certain class of persons for public purposes and upon collection it becomes part of public revenue of the State. Therefore, super tax when read as whole, keeping in view the intention of legislature, it is clear that the legislature intended to generate additional resources to meet additional expenses for rehabilitation of temporarily displaced persons and mentioning purpose of tax legislature does not become incompetent who is otherwise competent to levy a tax. It is, therefore, submitted that super tax is intra vires the constitution. Reliance is also made on **Fauji Foundation versus Central Board of Revenue and others reported as 1987 MLD 106 [Karachi] Relevant Para 12 & 13** (*Flood Surcharge was specific purpose surcharge and was uphold*); **Lotte Pakistan PTA Ltd. Versus Federation of Pakistan and 4 others reported as 2011 PTD 2229 [Sindh High Court] relevant para 7&8** (*Flood Surcharge levied for rehabilitation of flood affectees was special purpose surcharge and was uphold*); **Syed Nasir Ali and 33 others versus Federation of Pakistan and 3 others reported as 2010 PTD 1924 [Karachi] relevant para 14 and 30** (*Internally Displaced persons tax was special purpose tax and it was also uphold*)

C. **Super Tax is not a common burden as it has not been imposed across the board but has been levied on specific class of person. Therefore, it is discriminatory.**

2. It is stated by respondents that article 25 of the constitution requires the state to treat similarly placed persons similarly. It allows reasonable classification based on intelligible differentia which distinguishes persons or things that are grouped to gather from those which are left out and that differentia must have rational nexus to the object sought to be achieved by the classification. Super tax has distinguished persons who are taxed and those who are left out based on reasonable classification and no discrimination is made within a class. The Hon'ble Supreme Court in **Elahi Cotton Mills** case at page 675 para 31 (v) has held that "a State does not have to tax every thing in order to tax something. It is allowed to pick and choose districts, objects, persons, methods and even rates for taxation if it does so reasonably". Further, it has held in **Elahi Cotton Mills** case at **Para 46** "..... It may be observed that reasonable classification does not imply that every person should be taxed equally. It may be pointed out that reasonable classification is permissible provided it is based on an intelligible differentia which distinct persons or things that are grouped to gather from those who have been left out and that the differentia must have rational nexus to the object to be achieved by such classification. It may be observed that different laws can be validly enacted for different sexes, persons in different age groups, persons having different financial standing and that no standard of universal application to test reasonableness of a classification can be laid down as what may be reasonable classification in particular set of circumstances, may be unreasonable in other set of circumstances. The requirement of reasonable classification is fulfilled if in a taxing statute the Legislature has classified persons or properties into different categories which are subject to different rates of taxation with reference to income or property and such classification would not be open to attack on the ground of inequality or for the reason that the total burden resulting from such a classification is unequal. The question, as to whether a particular classification is valid or not, cannot be decided on the basis of advantages and disadvantages to individual assesseees which are accidental and inevitable and are inherent in every taxing statute as it has to draw a line somewhere and some cases necessarily may fall on other side of the line."

Division IIA of the First Schedule of the Ordinance of 2001 prescribes the rates of super tax for different years for a banking company and persons other than banking company, having income equal to or exceeding Rs 500 million, which itself creates a different class based on intelligible differentia. As such question of discrimination does not arise. Reliance is also placed on **ICA No. 134758 of 2018 re. D.G. Khan Cement Company Ltd. & another versus Federation of Pakistan and others.** Para 17.

**D. Super Tax amounts to double taxation on same income which has already suffered Income Tax. As such the taxpayer cannot be subjected to double taxation by way of super tax.**

3. It has been further stated that legislature has plenary power to impose a tax on whom it chooses to impose and exclude to whom it chooses to exclude. The legislature has plenary power to tax except as it is limited or restrained by constitutional provisions it is absolute and unlimited. There is nothing, in absence of any express or implied constitutional prohibition against double taxation, to prevent the imposition of more than one tax on property within the jurisdiction as the power to tax twice is as simple as power to tax once. The legislature clearly intended to impose super tax on income in addition to income tax levied. There is no constitutional prohibition on imposing double taxation. As such, the argument is without any merit. *Super Tax was uphold in case of Pakistan Industrial Development Corporation versus Pakistan (PICD) reported as 1992 SCMR 891 relevant Para 13, 14 &15.* Reliance is also placed on **ICA No. 134758 of 2018 re. D.G. Khan Cement Company Ltd. & another versus Federation of Pakistan and others.** Para 18 and 19.

**E. There cannot be two charging sections in one statute. Therefore, section 4B is ultra vires the section 4 of Income Tax Ordinance. Reliance is made on Iqbal Zafer Jhagra case reported in 2014 PTD 243 by the petitioners.**

4. According to learned counsel for respondents, Section 4 of the Ordinance of 2001 starts with the words “subject to this ordinance.....” and section 4B starts with words “A super tax shall be imposed .....” It

is clear that there is no conflict between the two provisions and the contrary the make space for each other. The super tax is levied over and above the income tax paid by a certain class of persons on income. Entry 47 of the 4<sup>th</sup> schedule to the Constitution provides for “taxes on income” and not just one income tax on income. Moreover, super tax is a separate tax which leviable on income of certain class of persons. As per the entry 47, there can be multiple taxes on income. Unless there is constitutional bar on multiple taxes, bar cannot be placed on plenary power of legislature to tax. The facts of the Iqbal Zafer Jhagra case are different and scheme of the sales tax is also different from income tax and super tax. It was observed that the charging section was section 3(1) and there can be no two charging sections. It is submitted that super tax is not income tax. Super tax is a tax on income which separate and distinct from income tax and it is leviable on income of certain class of persons so its base is income but it is not income tax. Therefore, Iqbal Zafer Jhagra case is not applicable on the facts of this case which are distinguishable.

5. It is further submitted that Hon’ble Supreme Court in case of **Tandliawala Sugar Mills Ltd Versus Federation of Pakistan reported as 2001 SCMR 1398 at Para 5** has held that additional tax levied by section 3(1A) at the rate of 1 per cent, in addition to sales tax levied under section 3(1) at the rate of 12.50 percent was valid. Therefore, as held by the Hon’ble Supreme Court, unless there is a constitutional bar it cannot be said that there cannot be two charging sections in a taxing statute. As held in **PIDC case that** power to tax twice is as simple as power to tax once. Similarly, power to create two charging sections is as simple as power to create one charging section. Taxing power of legislature cannot be limited unless legislative power is restrained or limited by the constitution.

6. While concluding their submissions, learned counsel for respondents submitted that where more than one interpretation is possible, one which would make the law valid and other void, the court must prefer the interpretation which favors the validity. Reliance is placed on **2015 SCMR 1739 and on Elahi Cotton Mills Ltd case para 31 (i, ii, iii, iv, v, vi, vii, viii, ix,)** It is submitted that the Hon’ble Court may be pleased to

hold that super tax is intra vires the constitution and dismiss the petitions. While concluding their arguments, learned counsel for the respondents have also placed reliance on two recent judgments of Lahore High Court in the case of **D.G. Khan Cement v. Federation of Pakistan and others (2018 PTD 287)** and Peshawar High Court in the case of **M/s. Saif Holding Limited v. Federation of Pakistan and others in W.P.No.1982P/2017**, whereby, according to learned counsel for respondents, it has been held that super tax under Section 4B of the Income Tax Ordinance, 2001, introduced through Finance Act, 2015, is intravires to the Constitution. It has been prayed by the learned counsel for the respondents that all the petitions and the Suits filed to challenge the vires of Section 4B of the Income Tax Ordinance, 2001, are devoid of any merits, the same may be dismissed accordingly, whereas, it may be declared that Section 4B of the Income Tax Ordinance, 2001, is intravires to the Constitution of Islamic Republic of Pakistan, 1973.

7. We have heard the learned counsel for the parties, examined the relevant constitutional provisions and the provisions of Section 4B of the Income Tax Ordinance, 2001, as well as the case laws relied upon by the learned counsel in this regard. Before we may proceed to examine the vires of Section 4B of the Income Tax Ordinance, 2001, introduced through Finance Act, 2015, along with Money Bill on the touchstone of the constitutional provisions, and the legislative competence of the Federal Government to impose taxes as per Federal Legislative List provided under fourth schedule to the Constitution of Islamic Republic of Pakistan, 1973, it is pertinent to mention that along with aforesaid Constitutional Petitions, number of Suits filed before the learned Single Judge of this Court have also been taken for hearing and to be decided through common judgment along with these petitions, by consent of all the learned counsel for the parties, as vires of Section 4B of the Income Tax Ordinance, 2001, has been challenged in all these cases, whereas, all such suits pending before the learned Single Judge were referred to this bench pursuant to order of the Hon'ble Chief Justice dated 03.12.2018 in terms of Rule 10 of the Sindh Chief Court (Original Side) Rules.

8. The common ground of challenge to the vires of super tax imposed under Section 4B of the Income Tax Ordinance, 2001, through Finance Act, 2015, along with Money Bill, is based on the argument that super tax is not a tax as it has been imposed for specific purpose i.e. Rehabilitation of Temporary Displaced Persons, and the money so collected is not meant for the purpose of general revenue nor does it create any common burden, therefore, could not be introduced through Finance Act along with Money Bill under Article 73 of the Constitution of Islamic Republic of Pakistan, 1973. It has been further argued that subject levy is in the nature of the social welfare legislation covered under Entry 25 to the concurrent list to the Constitution, however, after 18<sup>th</sup> amendment to the Constitution, it has become Provincial subject, and the Federation cannot legislate on the subject relating to social welfare. The ground of discrimination has also been agitated, as according to petitioners, while imposing super tax, only a particular class of person has been selected for imposition and recovery of super tax, which amounts to discrimination and unequal treatment, therefore, in violation of Article 25 of the Constitution of Islamic of Pakistan, 1973. The ground of double taxation has also been agitated in these cases, as according to petitioners, income of the assessee, which has already been subjected to income tax under Section 4 of the Income Tax Ordinance, 2001, has been subjected to double taxation while imposing the super tax on the same income, therefore, it is a colourable legislation, which is not permissible under the law. In addition to hereinabove objections, it has been further argued that in a taxing statute there can be one charging Section, therefore, while introducing Section 4B of the Income Tax Ordinance, 2001, an additional charge has been created over and above the charge of income tax under Section 4 of the Income Tax Ordinance, 2001, which is not permissible in law.

9. We have already dealt in detail the fundamental principles relating to legislative competence to impose taxes, however, subject to constitutional mandate, in a recent judgment of Divisional Bench of this Court in the case of **Imran Ahmed v. Federation of Pakistan through Ministry of Law and 3 others (2014 PTD 225)**, in the following terms:-

“12. There is no cavil to the proposition that legislature has vast powers to levy and impose tax on the income of a person pursuant to Entry No.47 of the Federal Legislative List of the Fourth Schedule to the Constitution of Islamic Republic of Pakistan, 1973 and to prescribe the tax rates thereon by introducing the Bill in terms of Article 73 of the Constitution of Islamic Republic of Pakistan, 1973. However, such legislation has to undergo the test of constitutional constraints. Similarly, the legislative competence of imposing taxes is also subject to the scrutiny by this Court under Article 199 as well as by the Hon’ble Supreme Court under Article 185 of the Constitution of Islamic Republic of Pakistan, 1973, particularly, if a levy or enactment has been challenged for being discriminatory, confiscatory or violative of the fundamental rights as guaranteed under the constitution.

13. The concept of absolute authority to impose tax by rulers on their subjects, without having any representation of the people in such legislation, is no more available under the Modern Democratic System of Governments, which are run by the elective representative of the people under their respective Constitutions. The unbridled powers and authority to impose tax arbitrarily, without having any rationale or reasonableness, is now being regulated under the Constitutional restraints, whereby, taxes are to be imposed reasonably, without discrimination and in such a manner that those may not encroach upon the fundamental rights of a person as guaranteed under the Constitution. The art of taxation is regarded as the **art of plucking a goose so as to gather the largest amount of feather by causing least squealing. Adam Smith**, who is regarded as Father of Modern Economic System, in 18<sup>th</sup> Century in his book “The Wealth of Nations” (1776), has defined following four cannons of taxation i.e. **(i) equality, (ii) certainty, (iii) convenience of payment and (iv) economy in collection**. While explaining the first two cannons of taxation as referred to hereinabove i.e. equality and



certainty, the Author has propounded that the “*subjects of every state ought to contribute towards the support of the government, as nearly as possible, in proportion of their respective abilities; that is, in proportion to the revenue which they respectively enjoy under the protection of the state*”. In other words, the incidence of tax must fall equally on all subjects with particular reference to their class without any discrimination amongst them. Similarly, it has been further propounded that “*the tax which each individual is bound to pay ought to be certain, and not arbitrary. The time of payment, the manner of payment, the quantity to be paid, ought all to be clear and plain to the contributor, and to every other person. The uncertainty of taxation encourages the insolence and favours the corruption of an order of men who are naturally unpopular, even where they are neither insolent nor corrupt. The certainty of what each individual ought to pay is, in taxation, a matter of so great importance, that a very considerable degree of inequality, it appears, is not so great an evil as a very small degree of uncertainty*”.

10. In order to appreciate the legislative intent while imposing super tax under Section 4B of the Income Tax Ordinance, 2001, introduced through Finance Act, 2015, along with Money Bill, we would first examine the plain language of the provision of Section 4B, which reads as follows:-

**“4B. Super tax for rehabilitation of temporarily displaced persons.—**

(1) **A super tax shall be imposed** for rehabilitation of temporarily displaced persons, for tax year 2015, at the rates specified in Division IIA of Part I of the First Schedule, **on income of every person** specified in the said Division.

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

- (i) profit on debt, dividend, capital gains, brokerage and commission;
- (ii) taxable income under section (9) of this Ordinance, if not included in clause (i);
- (iii) imputable income as defined in clause (28A) of section 2 excluding amounts specified in clause (i); and

(iv) income computed under Fourth, Fifth, Seventh and Eighth Schedules.

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

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

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

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

Perusal of hereinabove provisions of law, shows that a levy, with the nomenclature of super tax has been imposed on income of every person at the rates specified in Division IIA of Part I of the First Schedule, however, by disclosing the purpose of imposing such tax as well i.e. "rehabilitation for temporarily displaced persons". It has been further observed that the super tax so imposed is in addition to charge of income tax created under Section 4 of the Income Tax Ordinance, 2001, on every person who has taxable income for each tax year, whereas, Section 4B also provide complete mechanism to charge, assess, collect and recover super tax from a particular class of person i.e. Banking Company and persons other than Banking Company having income equal to or exceeding Rs.500 Million, the Hon'ble Supreme Court of Pakistan in the case of **Pakistan Industrial Development Corporation v. Pakistan through the Secretary, Ministry of Finance (1992 SCMR 891)**, while examining the vires of super tax

charged under Section 55 of the Income Tax Act, 1922, has been pleased to hold as under:-

“ Section 55 clearly provides that super-tax will be in addition to the income-tax on the total income of the previous year at the rate laid down for that year by the `Central Act'. According to section 56 total income as assessed for the purposes of income-tax shall be the total income for purposes of super- tax. Section 58 applies the provisions of Income Tax Act relating to charge, assessment, collection and recovery of income-tax to super-tax as well. Super -tax is, therefore, independent, separate and-quite distinct from income-tax. It is a tax in addition to income-tax on the total income of the assessee. It is not an income-tax levied again on the free reserve treating it to be an income. Super -tax can be levied even without declaring or treating free reserve as an income.”

11. The real test to examine the vires of any enactment, particularly, imposition, abolition, remission, alteration or regulation of any tax through Finance Act as a Money Bill under Article 73 of the Constitution of Islamic Republic of Pakistan, 1973, is to see as to (i) whether National Assembly has the **Legislative Competence to impose such tax** in terms of Federal Legislative List provided under the Fourth Schedule to the Constitution of Islamic Republic of Pakistan, 1973, and as to whether (ii) such imposition does not violate the Fundamental Rights of citizens as guaranteed under the Constitution, and also to see as to whether (iii) such imposition is not **Discriminatory** and/or based on **unreasonable classification**. If it is established that the impugned imposition does not suffer from above constitutional defects, and qualifies the criteria as set out through pronouncements by Superior Courts, then Courts do not interfere with the Sovereign Right of the Legislature mandated under the Constitution, to impose taxes while creating common burden to generate revenue to be used for general purpose. Careful perusal of provisions of Section 4B depicts that super tax imposed through Section 4B is, independent, separate and distinct from the income tax charged under Section 4 of the Income Tax Ordinance, 2001, whereas, it has been imposed on particular classes of person i.e. Banking Company at the uniform rate of 4%, and person other than Banking Company having income equal to or exceeding

Rs.500 Million at the rate of 3% respectively. We are of the opinion that Legislature is competent to choose a particular class of person or persons for the purposes of charging tax at the rates as may be specified, however, without discrimination within the same class of persons. Similarly, in the absence of any prohibition or restriction under Entry 47 of the Federal Legislative List to the Fourth Schedule to Constitution, more than one tax can be imposed on the income of a person, however, in clear and unambiguous language used by legislature in the enactment, as held by the Hon'ble Supreme Court in the case of **Pakistan Industrial Development Corporation v. Pakistan through the Secretary, Ministry of Finance (1992 SCMR 891)**. While introducing Section 4B of the Income Tax Ordinance, 2001, through Finance Act, 2015, it appears that **in addition to charge of income tax** under Section 4 of the Income Tax Ordinance, 2001, **additional charge of super tax** has been created pursuant to Entry 47 of Federal Legislative List to the Fourth Schedule of the Constitution of Islamic Republic of Pakistan, 1973, whereas, an independent mechanism has been provided for the purposes of assessment, collection and recovery of the super tax at the rates specified under Division IIA of Part I of the First Schedule of the Income Tax Ordinance, 2001.

12. The Hon'ble Supreme Court of Pakistan in the case of Workers Welfare Fund v. Federation of Pakistan (PLD 2017 SC 28), while examining the nature and scope of the Workers Welfare Fund as amended through Money Bill (Finance Act) has also provided for a litmus test to determine as to whether a levy imposed through Finance Act along with Money Bill in terms of Article 73 of the Constitution of Islamic Republic of Pakistan, 1973, possess the characteristic of tax or otherwise in the following terms:-

“13. Heard. The Constitution has provided the legislative procedure for the introduction and passing of Bills by Parliament. Generally, all Bills (pertaining to matters in the Federal Legislative List) though they may originate in either house, i.e. National Assembly or Senate, must be passed by both houses after which the Bill receives the Presidential Assent. However there is an exception provided by the Constitution. According to Article 73 of the Constitution, Money Bills are to originate in the National Assembly and can be passed by the Assembly whilst bypassing the Senate. What constitutes a Money Bill has been set out in Article 73(2) of the Constitution, and

Article 73(3) specifically sets out what shall not constitute a Money Bill. The relevant portions of Article 73 are reproduced below for ease of reference:--

**73. Procedure with respect to Money Bills.**---(1) Notwithstanding anything contained in Article 70, a Money Bill shall originate in the National Assembly:

Provided

(1A)

(2) For the purposes of this Chapter, a Bill or amendment shall be deemed to be a Money Bill if it contains provisions dealing with all or any of the following matters, namely:-

- (a) the imposition, abolition, remission, alteration or regulation of any tax;
- (b) the borrowing of money, or the giving of any guarantee, by the Federal Government, or the amendment of the law relating to the financial obligations of that Government;
- (c) the custody of the Federal Consolidated Fund, the payment of moneys into, or the issue of moneys from, that Fund;
- (d) the imposition of a charge upon the Federal Consolidated Fund, or the abolition or alteration of any such charge;
- (e) the receipt of moneys on account of the Public Account of the Federation, the custody or issue of such moneys;
- (f) the audit of the accounts of the Federal Government or a Provincial Government; and
- (g) any matter incidental to any of the matters specified in the preceding paragraphs.

(3) A Bill shall not be deemed to be a Money Bill by reason only that it provides-

- (a) for the imposition or alteration of any fine or other pecuniary penalty, or for the demand or payment of a licence fee or a fee or charge for any service rendered; or
- (b) for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.

(4) .

(5) .

Therefore any Bill which does not fall within the purview of Article 73(2) of the Constitution would not constitute a Money Bill and cannot be passed under the legislative procedure (mandate) provided by Article 73, by bypassing the Senate, rather the regular legislative procedure under Article 70 would be required to be followed. In the instant matters, the relevant sub-Article is (2)(a) of Article 73, which pertains to the imposition, abolition, remission, alteration or regulation of any tax, read with sub-Article (2)(g) which relates to any matter incidental to any of the matters specified in sub-Articles (2) (a) to (f). Thus we must consider whether the levies/ contributions in question under the various laws are in the nature of a tax: which would render the amendments thereto through the Finance Acts valid and lawful.

14. Whether the various levies/ contributions in the instant matter constitute a tax as opposed to a fee depends on whether they possess the characteristics of a tax or not. The key characteristics of a 'tax' and a 'fee' have been the subject of much debate in our jurisprudence. In the judgment reported as Government of North-

West Frontier Province through Secretary Agriculture and others v. Rahimullah and others (1992 SCMR 750) it was held that:--

"The distinction between "tax" and "fee" lies primarily in the fact that a tax is levied as a part of common burden while a fee is paid for a special benefit or privilege."

This Court in the more recent judgment reported as Federation of Pakistan through Secretary M/o Petroleum and Natural Resources and another v. Durrani Ceramics and others (2014 SCMR 1630), after taking into account considerable case law from our jurisdiction and abroad, came to the following definitive conclusion:--

19. Upon examining the case-law from our own and other jurisdictions it emerges that the 'Cess' is levied for a particular purpose. It can either be 'tax' or 'fee' depending upon the nature of the levy. Both are compulsory exaction of money by public authorities. Whereas 'tax' is a common burden for raising revenue and upon collection becomes part of public revenue of the State, 'fee' is exacted for a specific purpose and for rendering services or providing privilege to particular individuals or a class or a community or a specific area. However, the benefit so accrued may not be measurable in exactitude. So long as the levy is to the advantage of the payers, consequential benefit to the community at large would not render the levy a 'tax'. In the light of this statement of law it is to be examined whether the GIDC is a 'tax' or a 'fee'.

[Emphasis supplied]

There are no two opinions about the fact that a tax is basically a compulsory exaction of monies by public authorities, to be utilized for public purposes. However its distinguishing feature is that it imposes a common burden for raising revenue for a general as opposed to a specific purpose, the latter being one of the key characteristics of a fee. Now let us examine each of the subject levies/contributions in light of the above touchstone."

The purpose of referring to the above cited judgment of the Hon'ble Supreme Court is to examine as to whether the subject levy under challenge in all these cases i.e. super tax introduced by inserting Section 4B of the Income Tax Ordinance, 2001 through Finance Act, 2015, in terms of Article 73 of the Constitution of Islamic Republic of Pakistan, 1973, possess the characteristic of a tax and if this Court reaches to the conclusion that subject levy under Section 4B of the Income Tax Ordinance, 2001, is not a tax then the main ground of challenge to the vires of Section 4B of the Income Tax Ordinance, 2001, in all these cases would fail.

13. A Full Bench of this Court in the case of **Shahbaz Garment (Pvt) Ltd and others v. Pakistan through Secretary Ministry of Finance,**

**Revenue Division, Islamabad and others (2013 PTD 969)** after having examined in detail the large number of judgments of the Superior Courts has elaborately defined the term taxation, tax, fee and the difference between two, as well as the scope of legislative competence of the Federation to introduce and impose taxes through Finance Act along with Money Bill under Article 73 of the Constitution of Islamic Republic of Pakistan, 1973, however, subject to constitutional mandate, in the following terms:-

“13. The word **taxation and tax** have been defined in Article 260(1) of the Constitution which reads as under:-

“Article 260(1) “taxation” includes the imposition of any tax or duty, whether general, local or special, and “tax” shall be construed accordingly.”

Plain reading of the above Article shows that constitution has given widest amplitude to the word “**taxation**”, it is an inclusive definition instead of exhaustive in nature. Duties of all types have been included in its scope, therefore, if levy under WWFO can be said to be a “duty” then it would fall within the meaning and scope of word taxation as used in Article 73(2) (a). As the word tax is required to be construed accordingly, therefore, the definition of tax is to be given widest meanings and any levy which has attributes of a tax may fall in its ambit irrespective of name & nomenclature or ultimate use of the fund generated through the particular statute.

14. In terms of the Constitutional mandate and Federal Consolidated List, the government can levy various taxes on items and activities to raise revenue to finance the government operations. When one earns money one pays income tax, when one spends money he pays sales tax, and when one owns real estate he pays property tax. Similarly, when one buys specific products he pays excise tax. In most of the cases the revenue collected through various taxes goes into the government’s general fund, where it can be used for whatever proposes, the Government think is best. On the other hand, Government impose levy on some specified services in order to cover government’s specific cost of providing those services. For instance postage stamp fee covers cost of providing mail services, a bridge toll (fee) covers the cost of maintaining the bridge. Fee is always levied on services rendered by government to its payer. In other words, **quid pro quo** is an essential ingredient which brings a levy within the definition of term ‘**fee**’. A fee can be

regarded as a charge or payment for a service rendered by the government to its payer. If one wants to utilize a service available with the Government against a charge of money then upon its utilization whatever is required to be paid is a “fee”. If the charge of money by Government is not against a service provided by the Government, then such levy cannot be termed as fee. Fee cannot be regarded as a general levy or impost as it is meant for those who want to avail the benefit of the services provided by the Government. In case of imposition of parking fee, parks fee, tuition fee, registration fee, license fee etc., the direct beneficiary of such payment is the person who pays it and gets reciprocated, though not in exact terms, the benefit out of such payment. Whereas **tax** is not co-related to a particular service to be provided by the Government to the taxpayers. Tax in fact is a compulsory exaction of money by public authority for public purposes enforceable by law and is not a payment for services rendered.

15. From perusal of the definitions as given in the various dictionaries as referred to herein above and the judgments of the superior Courts, it has emerged that the legislature has vast powers under the Constitution to impose various taxes on its subject by whatever nomenclature, however, within the Constitutional domain. The legislative competence of the Government to raise funds through imposition of various taxes is required to be jealously guarded instead of making an attempt to declare a taxing statute ultra vires. Keeping in view the mandate of State to levy taxes, and after having examined the scope, nature and attributes of the terms tax and fee, we may now examine on the above threshold, the nature and characteristics of super tax imposed under Section 4B of the Income Tax Ordinance, 2001.”

“8. Similarly, in order to understand definition and the scope of term ‘**tax**’, we may refer to various dictionaries wherein tax has been defined as follows:-

(i) **Chambers 21<sup>st</sup> Century Dictionary (Revised Edition)**

**‘Tax’ A compulsory contribution towards a country’s expenses raised by the government from people’s salaries, property and from the sale of goods and services.**

(ii) **Black’s Law Dictionary (Sixth Edition)**

**‘Tax’** A charge by the government on the income of an individual, corporation, or trust, as well as the value of an estate or gift. The objective in assessing the tax is to generate revenue to be used for the needs of the public.



**A pecuniary burden laid upon individual or property to support the government, and is a payment exacted by legislative authority. ....whether under the name of toll, tribute, tal-age, gable, impost, duty, custom, excise, subsidy, aid, supply, or other name.**

**(iii) Wharton’s Law Lexicon Dictionary (Fifteenth Edition)**

**‘Tax’** A monetary charge imposed by government on persons entities or property to yield public revenue.

**A “tax” is a compulsory exaction of money by public authority for public purposes enforceable by law and is not payment for services rendered.**

“Tax” includes fee in the wider sense of the term.

Tax, includes any toll, crate, cess fee or other impost leviable or levied under the Act.

**(iv) Judicial Dictionary 13<sup>th</sup> Edition K J Aiyar**

**‘Tax’** ‘A tax’, according to the learned Chief Justice, ‘is a compulsory exaction of money by public authority for public purposes enforceable by law and is not payment ‘for services rendered’. This definition brings out, the essential characteristics of a tax as distinguished from other forms of imposition which, in a general sense are included within it. It is said that the essence of taxation is compulsion, that is to say, it is imposed under statutory power without the taxpayer’s consent and the payment is enforced by law.

**(v) Legal Terms & Phrases 2006 Edition by M. Ilyas Khan**

Tax – A pecuniary obligation imposed by the State on its subject. It is a charge levied upon a person or a property by the Government for public purposes.

The word ‘tax’ has been used and it is to be taken as a tax whether of central or provincial Government. For revenue realization the terms used and in vogue are tax, charge, fee and duty.

A tax is a compulsory extraction or a contribution imposed by a sovereign authority or required by the general body of the subjects or citizens.

**(vi) Supreme Court on Words & Phrases by Justice M. L. Singhal**

**“Tax”** A charge or fee, if levied for the purpose of raising revenue under the taxing power is a “tax”. Similarly, imposition of fees for the primary purpose or “regulation and control” may be classified as fees as it is in the exercise of “police power”, but if revenue is the primary purpose and regulation is merely incidental, then the imposition is a “tax”. A tax is an enforced contribution expected pursuant to a legislative authority for purpose of raising revenue to be used for public or governmental purpose and not as payment for a special privilege or service rendered by a public officer, in which case it is a “fee”. Generally speaking “taxes” are burdens of a pecuniary nature imposed for defraying the cost of governmental functions, whereas charges are “fees” where

they are imposed upon a person to defray the cost of particular services rendered to his account.

9. After having examined the definitions of term 'tax' and 'fee' separately, as defined in various dictionaries as referred to hereinabove, it will be equally beneficial to examine the **distinction** between two terms as defined in the following dictionaries:-

(i) **Legal Terms & Phrases 2006 Edition by M. Ilyas Khan**

**Tax and Fee:- Tax is compulsory exaction of money by public authority for public purposes enforceable by law.** (PLD 1977 Kar. 742, 1986 CLC 533, 1990 CLC 550, NLR 1994 Tax 114). In contrast, **a fee is a sort of consideration for the services rendered, which necessitate that there should be an element of quid pro quo.** Therefore co-relationship must exist between the fee charged and services rendered against it, like parking fee. (PLD 1997 Kar. 604, 1990 CLC 197 and 638, 1998 SCMR 1402). It is, however, not necessary those services mathematically are proportionate or equal with the benefit to the person charged or necessarily is uniform. **At the same time it may not be excessively disproportionate.**

(ii) **Wharton's Law Lexicon Dictionary (Fifteenth Edition)**

**Tax and fee:-** It is true that between a tax and a fee there is no generic difference. Both are compulsory exactions of money by public authorities; **but whereas a tax is imposed for public purposes and is not, and need not, be supported by any consideration of service rendered in return, a fee is levied essentially for services rendered and as such there is an element of quid pro quo between the person who pays the fee and the public authority which imposes it.**

**Tax and fee:** A tax is a compulsory exaction of money by a public authority for public purposes enforceable by law and is not payment "for services rendered"..... **The second characteristic of tax is that it is an imposition made for public purpose without reference to any special benefit to be conferred on the payer of the tax.** On the other hand A fee is generally defined to be a charge for special service rendered to individuals by some governmental agency.

(iii) **Judicial Dictionary 13<sup>th</sup> Edition K J Aiyar**

**Tax and Fee:-** It follows, therefore, that although a tax may be levied upon particular classes of persons or particular kinds of property, it is imposed not to confer any special benefit upon individual persons and the collections are all merged in the general revenue of the state to be applied for general public purposes. **Tax is a common burden and the only return which the tax-payer gets is participation in the common benefits of the state.** Fees, on the other hand, are payments primarily in the public interest, **but for some special service rendered or some special work done for the benefit of those from whom the payments are demanded. Thus, in fees, there is always an element of quid pro quo which is absent in a tax.**

10. After having referred to the various definitions of the term ‘tax’, ‘fee’ and **distinction** between them as defined in various dictionaries, we would now refer to various judgments of the Hon’ble Supreme Court of Pakistan, High Courts and judgments of Foreign Jurisdiction whereby the term ‘tax’, ‘fee’, their scope and jurisdiction as well as **distinction** between them has been dealt with judicially as follows:

- (i) In the case of **Collector of Customs and others v. Sheikh Spinning Mills 1999 SCMR 1402**, A Full Bench of Hon’ble Supreme Court of Pakistan vide their common judgment in number of identical appeals while examining the validity of levy of service charges under Section 19-B in the Customs Act, 1969 has elaborately defined the distinction between terms ‘tax’ and ‘fee’ in the following manner:-

*“5.....**The distinction between “tax” and “fee” lies primarily in the fact that a tax is levied as a part of common burden while a fee is paid for a special benefit or privilege. Fees confer a special capacity although the special advantage as for example, in the case of registration fee for documents or marriage licence is secondary to the primary motive or regulation in the public interest. Public interest seems to be at the basis of all impositions, but in a fee it is some special benefit, which the individual receives. It is the special benefit accorded to the individual, which is the reason for payment in the case of fees. In the case of a tax, the particular advantage if it exists at all, is an incidental result of State action. “This distinction was elaborated” by a Division Bench of the Dacca High Court in the case reported as Abdul Majid and another v. Province of East Pakistan and others (PLD 1960 Dacca 502) and it was held unless the fee is embarked or specified for rendering services to the payee, it would amount to a tax and not a fee.**”*

*“6. On the other hand the nature of tax is entirely different. The term “tax” was defined by Chief Justice Latham of the High Court of Australia in Mathews v. Chicory Marketing Board (1960 CLR 263). The learned Chief Justice held that tax is a compulsory exaction of money by public authority for public purposes enforceable by law and is not payment for services rendered. A fee may be generally defined to be a charge for a special service rendered to individuals by some governmental agency. In Muhammad Ismail & Co.’s case (supra), it was also observed that a fee may be compulsorily levied as well as tax, but the distinction between them lies primarily in the fact that a tax is levied as a part of the common burden while a fee is a payment for special benefit or privilege. The same was followed by this Court in the case of M/s Sohail Jute Mills Ltd. v. Federation of Pakistan and M/s Nishat Textile Mills Ltd. v. Federation of Pakistan (supra).”*

*“8.....No doubt both tax and fee are compulsory exactions, but the difference between the two lies in the fact that the tax is not correlated to a particular service rendered but is intended to meet the expenses of the Government and a fee is meant to compensate the Government for expenses incurred in rendering services to the person from whom fee is collected. A tax is for the purpose and goes to the general revenue unlike fee. This view was also followed by the Indian Supreme Court in the case reported as The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamirar of Sri Shirpur Mutt (AIR 1954 SC 282).”*

*“16. To sum up in the light of the definition and distinction between ‘tax’ and ‘fee’ as demonstrated above, the service charge as levied by virtue of section 18-B, inserted into the Act through Tax Adjustment Ordinance, the charge is not a fee, because it is neither meant for benefit of payees nor its collection enables the Government to carry out expense, for the benefit of importer. The world has shrunk into a global village. With the advancement of information and media technology, the determination of prices is an easy task, and the quality of goods to be exported or imported can be checked through the machinery provided by the Customs Act.”*

(ii) In the case of **Pakistan Burmah Sheel Ltd. v. Federation of Pakistan 1998 P.T.D. 1804**, it has been held as under:-

*“21. The expression “Money Bill” has been defined by clause (2) of Article 73 of the Constitution and paragraph (a) thereof indicates that a Bill dealing with the imposition, abolition, remission, alteration or regulation of any tax” would fall within the purview of the said definition. Paragraph (g) in the said clause further indicates that any matter incidental to above or any other paragraph of the said clause (not reproduced herein for the sake of brevity) would fall within the purview of the said definition. Article 73(1) of the Constitution which relates to the procedure with respect to money bills indicates that a money bill shall originate in the National Assembly and after it has been passed by the Assembly, it is to be presented to the President for his assent without the same being transmitted to the Senate. It may be pointed out that although Article 73 of the Constitution provides for a different procedure in respect of Money Bills but when the Bill has been passed by the National Assembly and it receives assent by the President, it will have effect like an Act of Parliament. The fact that the Money Bill was not transmitted to Senate, in no case places it at a lower pedestal when compared to any other Act passed by the Parliament.”*

(iii) In the case of **Pakistan Flour Mills Association v. Government of Sindh 2003 SCMR 162**, the Hon’ble Supreme Court has held as follows:-

*“Admittedly if the pith and substance of the said Act is to be examined in view of the definition of “fee” and “tax” as defined by this Court in Collector of Customs and others v. Sheikh Spinning Mills (1999 SCMR 1402), the said imposition would be fees and not tax considering special services to be rendered by the respondents and the fact that collection of said fees being not appropriated by the Government for general revenue purposes but for the better regulation of the purchase and sale of agricultural produce and the establishment of markets and for proper admiration thereof within the province.”*

(iv) In the case of **Messrs Mutual Funds Association of Pakistan (MUFAB) v. Federation of Pakistan 2010 P.L.C 306**, a Division Bench of this Court, while examining the validity of amendments through Finance Act, 2006 and 2008 in the Workers’ Welfare Fund Ordinance, 1971 has decided the controversy in the following manner;

***“26. Reading of the above provisions indicates that firstly (i) imposition under the Workers’ Welfare Fund Ordinance, 1971 is in the nature of a tax and not in the nature of fee because it is not a charge for service rendered or to be rendered and is certainly a compulsory exaction of money by public authority for public purposes enforceable by law and is not payment for services rendered, Muhammad Ismail and Co. v. Chief Cotton Inspector, PLD 1966 SC 388.***

*(ii) An entry in a Legislative List cannot be construed narrowly or in a pedantic manner but is to be given a liberal construction. It should be, as far as possible or permissible, interpreted in a manner so as to save the legislation rather than in a narrow manner so as to reduce as far as possible power of Parliament to legislate.*

***(iii) The only basis for determination of liability of an industrial establishment for payment of Workers’ Welfare Fund is total income of the establishment. Under Entry 47 of the Part-I of the Federal Legislative List, taxes on income (other than agricultural income) is a federal subject.***

*(iv) It cannot be held that the Legislature can impose a tax on income only and only through the Income Tax Ordinance. If the Legislature through any other piece of law authorizes as compulsory exaction for public purpose without making rendering of his service a condition for a levy, such a levy, by whatever name called, would be a tax on income.”*

27. Therefore, in our opinion the amendment incorporated in the Workers’ Welfare Fund Ordinance, 1971 by the Finance Act, 2008 is also a financial amendment as it imposes a sort of tax on income of establishments

*including the petitioner. Admittedly the taxes on income, other than agricultural income, is within the legislative competence of the Parliament under Item 47 of Part-I of the Federal Legislatives List contained in the Fourth Schedule. Therefore its adoption on a money bill is not ultra-vices of the Constitution.”*

12. The purpose of referring to the definitions of ‘**tax**’ and ‘**fee**’ and their **distinction** as defined in various dictionaries and the judgments of the Superior Courts is to comprehend and define the concept and scope of ‘tax’ and ‘fee’ and also to examine the legislative competence to introduce amendments in various levies under the Constitution through Money Bill (Finance Act). From perusal of the above referred definitions and the case law following conclusion can be drawn:

- (i) That in view of wide variety of diverse economic criteria, which are to be considered for the formulation of a fiscal policy, Legislature enjoys a wide latitude in the matter of selection of persons, subject-matter, events etc. for taxation. But with all this latitude certain irreducible desiderata of equality shall govern classification for differential treatment in taxation law as well.
- (ii) That Courts while interpreting laws relating to economic activities view the same with greater latitude than the laws relating to civil rights such as freedom of speech, religion etc., keeping in view the complexity of economic problems which do not admit of solution through any doctrinaire or strait jacket formula as pointed out by Holmes, J. in one of his judgments.
- (iii) That Frankfurter J., in *Morey v. Doud* (1957) U.S. 457 has remarked that “in the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not judicial deference to the legislative judgment”.
- (iv) That while interpreting Constitutional provisions Court should keep in mind, social setting of the country, growing requirements of the society/nation, burning problems of the day and the complex issues facing the people, which the Legislature in its wisdom through legislation seeks to solve. The judicial approach should be dynamic rather than static, pragmatic and not pedantic and elastic rather than rigid.
- (v) That the law should be saved rather than be destroyed and the Court must lean in favour of upholding the constitutionality of a legislation keeping in view that the rule of Constitutional interpretation is that there is a presumption in favour of the constitutionality of

the legislative enactments unless ex facie it is violative of Constitutional provision.

- (vi) That what is not “income under the Income Tax Act can be made “income” by Finance Act. An exemption granted by the Income Tax Act can be withdrawn by the Finance Act or the efficacy of that exemption may be reduced by the imposition of a new charge, of course, subject to Constitutional limitations.
- (vii) 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.
- (viii) That income-tax is a tax on a person in relation to his income. It is a tax imposed upon a person (natural or juristic) in relation to his income.
- (ix) That there is a clear distinction between the subject-matter of a tax and the standard by which the amount of tax is measured keeping in view the practical difficulties, which are encountered by the Revenue to locate the persons and to collect the tax due in certain trades, if the Legislature in its wisdom thought that it would facilitate the collection of tax due from specified traders on a presumptive basis, the same is not violative of the Fundamental Right relating to equality.
- (x) Tax is compulsory exaction of money by public authority for public purposes enforceable by law. In contrast, a fee is a sort of consideration for the services rendered, which necessitate that there should be an element of quid pro quo. Therefore co-relationship must exist between the fee charged and services rendered against it, like parking fee. It is, however, not necessary those services mathematically are proportionate or equal with the benefit to the person charged. At the same time it may not be excessively disproportionate.
- (xi) Tax is imposed for public purposes and is not, and need not, be supported by any consideration of service rendered in return, a fee is levied essentially for services rendered and as such there is an element of quid pro quo between the person who pays the fee and the public authority which imposes it.
- (xii) The second characteristic of tax is that it is an imposition made for public purpose without reference to any special benefit to be conferred on the payer of the tax. On the other hand A fee is generally defined to be a charge for special service rendered to individuals by some governmental agency.
- (xiii) Tax is a common burden and the only return which the tax-payer gets is participation in the common

benefits of the state. Fees, on the other hand, are payments primarily in the public interest, but for some special service rendered or some special work done for the benefit of those from whom the payments are demanded. Thus, in fees, there is always an element of *quid pro quo* which is absent in a tax.

- (xiv) The distinction between “tax” and “fee” lies primarily in the fact that a tax is levied as a part of common burden while a fee is paid for a special benefit or privilege.
- (xv) No doubt both tax and fee are compulsory exactions, but the difference between the two lies in the fact that the tax is not correlated to a particular service rendered but is intended to meet the expenses of the Government and a fee is meant to compensate the Government for expenses incurred in rendering services to the person from whom fee is collected.
- (xvi) The expression “Money Bill” has been defined by clause (2) of Article 73 of the Constitution and paragraph (a) thereof indicates that a Bill dealing with the imposition, abolition, remission, alteration or regulation of any tax” would fall within the purview of the said definition.

14. While applying the ratio of the afore-cited judgments and from perusal of comparative analysis of two terms i.e. tax and fee, we are of the opinion that the subject levy i.e. **Super Tax** imposed through Finance Act, 2015 along with Money Bill under Article 73(2) (a) of the Constitution of Islamic Republic of Pakistan, 1973 does not possess the characteristics of **fee** as there is no element of **quid pro quo**, nor the amount of Super Tax is charged as consideration for rendering any services to its payer in any manner. Fee cannot be regarded as a general levy imposed, as it is meant for those who avail the services provided by the Government. In case of imposition of parking fee, parks fee, tuition fee, registration fee, license fee etc., the direct beneficiary of such payment is the person, who pays the fee and gets reciprocated, though may not be in exact terms of such payment. Accordingly, we have no hesitation to hold that Super Tax imposed under Section 4B of the Income Tax Ordinance, 2001 through Finance Act, 2015 is not a fee.

15. In the light of ratio of the afore-cited judgments and the detailed discussion relating to constitutional and legislative competent of Federation to impose taxes through Finance Act under Article 73 of the Constitution,



we may now examine the nature and scope of Super Tax imposed under Section 4B of the Income Tax Ordinance, 2001 to decide as to whether the subject levy possess the characteristics of tax or otherwise. It is now well settled that **tax** can primarily be defined as compulsory exaction of money by the public authority, for the public purposes enforceable by law. However, its distinguishing feature from fee or other levies is that it creates common burden upon every person for raising revenue to be utilized for the general purposes, and need not, be supported by any consideration of services rendered in return. Generally speaking, taxes are burden of pecuniary nature, imposed to meet the cost of government functions and to meet the National expenditures and cost of development works. The amount of tax, so collected, goes in the Federal Consolidated Funds to be utilized for general purposes, and not for any specific purpose, however, as per policy decisions and priorities, if any, set by the Government as per constitutional mandate. It is a settled legal position that in a taxing statute, the charging provision is the most relevant provision to determine the scope and intent of enactment, as there is no scope of any intendment or to draw inferences, while interpreting the charging provisions of taxing statute. Perusal of Section 4B of the Income Tax Ordinance, 2001, reflects, that while introducing Section 4B of the Income Tax Ordinance, 2001, a levy in the name of **Super Tax** has been imposed on income of every person specified in Division IIA of Part I of the First Schedule to the Income Tax Ordinance, 2001, e.g. (i) Banking Company, (ii) Person, other than a banking Company, having income equal to or Exceeding Rs.500 million, at the rate of 4% and 3% respectively. It further reflect that a separate charge of super tax, in addition to income tax charged under Section 4 of the Income Tax Ordinance, 2001, has been created, whereas, entire distinct mechanism for assessment, collection and recovery of super tax has also been provided within the newly inserted section. Prima facie, it appears that the charge of Super Tax is different and distinct from the charge of income tax created under Section 4 of the Income Tax Ordinance, 2001. However, both income tax and Super Tax are imposed on the income (i) of every person, who has taxable income for the purposes of Section 4 of the Income Tax Ordinance, 2001 and (ii) every person specified in Division IIA

of the Part I of the First Schedule to the Income Tax Ordinance, 2001 e.g. banking companies and persons other than banking companies having income equally to or exceeding to Rs.500 Million (Five Hundred Million) under Section 4B of the Income Tax Ordinance, 2001. Hon'ble Supreme Court of Pakistan in the case of **Pakistan Industrial Development Corporation versus Pakistan (PICD) reported as 1992 SCMR 891**, while examining the vires of super tax imposed under Section 55 of the Income Tax Act, 1922, was pleased to hold that **Super Tax is therefore, independent, separate and quite distinct from income tax. It is a tax in addition to income tax on the total income of the assessee. It is not an income tax levied again on the free reserves treating it to be an income.** Entry 47 of the IV Schedule of the Constitution of Islamic Republic of Pakistan, 1973 authorizes the Federation to impose **taxes** on income other than the agricultural income, whereas, the procedure to imposition, abolition, remission, alteration or regulation of tax has been provided under Article 73(2)(a) of the Constitution of Islamic Republic of Pakistan, 1973, through Money Bill. There seems no embargo or restriction on the Legislative Competence of the Federation to impose more than one taxes on the income of a person, provided such imposition possess the characteristics of a tax on income as per Entry 47 of the IV Schedule of the Constitution, and would also satisfy the test of **not being violative of fundamental rights of a citizen and/or discriminatory in nature.** The submissions of the learned counsel for the petitioners to the effect that Super Tax amounts to double taxation as it is being charged on the same income of an assessee, which has already been subjected to charge to income tax under Section 4 of the Income Tax Ordinance, 2001 is, therefore, of no substance as we are of the opinion that **Super Tax** imposed through **Section 4B** of the Income Tax, 2001 is distinct and separate from the income tax charged under Section 4 of the Income Tax Ordinance, 2001, whereas, it has been imposed through clear an unambiguous language as a separate charge, therefore, does not violate the constitutional mandate, even if it amounts to taxing the same income of a person already subjected to income tax. Reliance in this regard can be made in the afore-cited judgment of the Hon'ble Supreme Court of Pakistan

in the case of **Pakistan Industrial Development Corporation versus Pakistan (PICD) reported as 1992 SCMR 891.**

16. Similarly, the submissions of the learned counsel for the petitioners to the effect that subject levy is **discriminatory** in nature as it has been imposed only upon particular class of person i.e. (i) Banking Companies, without reference to amount of income and (ii) Person, other than a banking Company having income equal to or exceeding to Rs.500 Million (Rupees Five Hundred Million) is also misconceived, for the reason that legislature is competent to determine the reasonable classification for the purposes of imposition of a tax, however, while ensuring that such classification is not discriminatory amongst the same class of persons. While imposing Super Tax under Section 4B of the Income Tax Ordinance, 2001, it appears that uniform rate of tax upon the same class of person i.e. (i) Banking Companies @ 4% and (ii) Person, other than a banking Company having income equal to or exceeding to Rs.500 Million (Rupees Five Hundred Million) @ 3% has been imposed without any discrimination within the same class. Nothing has been produced on record to show as to how the above classification is un-reasonable or creates any discrimination amongst the aforesaid class within itself nor it has been argued that impugned super tax is confiscatory in nature. Reliance in this regard can be placed in the case of **I.A. Sharwani & others v. Government of Pakistan & others reported as 1991 SCMR 1041, Anoud Power Generation Limited & others v. Federation of Pakistan & others reported as PLD 2001 SC 340** and **M.**

17. Accordingly, the above petitions and the suits, challenging the vires of Section 4B of the Income Tax Ordinance, 2001 through Finance Act, 2015 are disposed of in the following terms along with listed applications:-

- (a) The Super Tax imposed under Section 4B of the Income Tax Ordinance, 2001 through Finance Act 2015 along with Money Bill **possess the characteristics of a tax**, for being a compulsory exaction of money by public authority for the purposes of general revenue, whereas, the amount to tax so charged goes to Federal Consolidated Fund, therefore, has been rightly introduced under Article 73(2)(a) of the

- Constitution of the Islamic Republic of Pakistan, 1973, hence **intra-vires** to the Constitution;
- (b) The Super Tax imposed under Section 4B of the Income Tax Ordinance 2001, through Finance Act 2015, along with Money Bill is **an additional tax on income covered under Entry 47 of the IV Schedule to the Constitution “taxes on income”**, and does not amount to double taxation, therefore, falls within the legislative competence of the National Assembly to impose, abolish, remit, alter or regulate a tax, through Finance Act along with Money Bill under Article 73 (2)(a) of the Constitution of the Islamic Republic of Pakistan, 1973, hence **intra-vires** to the Constitution;
- (c) The Super Tax imposed under Section 4B of the Income Tax Ordinance, 2001 through Finance Act, 2001 along with Money Bill is **not violative of the Article 25** of the Constitution of the Islamic Republic of Pakistan, 1973 as it is **neither discriminatory nor creates any unreasonable classification amongst the same class of person** upon whom its charge has been created, while applying the common burden through uniform rate of tax upon Banking Companies@ 4% of the income, and person other than Banking Company, having income equal to or exceeding Rs.500 Million @ 3% of the income.
- (d) The Super Tax imposed under Section 4B of the Income Tax Ordinance, 2001 through Finance Act 2015 along with Money Bill, is not a **fee** as there is no element of **quid pro quo**, nor the amount of Super Tax is charged as consideration for rendering any services to its payer in any manner.

18. Before parting with the judgment, while considering it to be our duty as a Constitutional Court, we may observe that in Modern Democratic Political System, imposition of taxes, particularly, in countries having written Constitution, must qualify the test of Legislative Competence and

adherence to Constitutional mandate at the one hand, and shall also meet the criteria of well-established century's old **Cannons of Taxation** as profounded by **Adam Smith**, who is regarded as father of a Modern Economic System i.e. **(i) equality (ii) certainty (iii) convenience of payment and (iv) economy in collection**, instead of using imposition of taxes as a tool of extracting money from citizen just to meet government expenses as an adhoc measure for some specific purposes, as opposed to general purposes. It is regretted to observe that imposition of taxes in our country is considered merely as source to collect money, and not as a tool to regulate and to make the National Economy documented, in such a manner that largest number of persons being benefitted from the National economy shall contribute by paying taxes in equal proportion to meet the expenditure of the Government and for the development of the economic growth of the country on regular basis. It is equally regretted to observe that instead of making efforts for **broadening the tax base** and bringing the most affluent persons of the society into tax net, a small number of existing taxpayers, mostly the salaried persons, are being burdened with additional amount as **taxes on income** as in the instant case, **sales tax** and Customs Duty, Excise Duty etc. without realizing that it may "**exhaust the ability to pay of an existing taxpayer at the one hand**" and would allow a huge segment of the economy to flourish disproportionately, without making any payment of taxes or to contribute their due share towards growth of National Economy.

**JUDGE**

**JUDGE**