

ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

C.P No.D-7528 of 2019

DATE

ORDER WITH SIGNATURE OF JUDGE

Priority

1. For hearing of Misc. No. 33205/19.
2. For hearing of Main Case.

15.10.2020.

Mr. Malik Muhammad Ejaz, Advocate for Petitioner.
Mr. Muhammad Ahmar, Assistant Attorney General.

Through this Petition, the petitioner has impugned the vires of Section 4B of the Income Tax Ordinance, 2001, whereby, Super Tax was imposed. It appears that controversy now stands decided by a learned Division Bench of this Court in C.P No.D-1849/2016 and other connected matters vide Judgment dated 21.07.2020 by holding that the levy of Super tax is intra-vires to the Constitution in the following terms:-

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.

In view of such position instant Petition is also disposed of on the same terms and the reasons so assigned in the above judgment.

Judge

Judge