

IN THE HIGH COURT OF SINDH, KARACHI

Present: Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Agha Faisal

1.	C. P. D- 4614/2022	Hakimsons (Impex) (Pvt) Ltd & Others V/S Federation of Pakistan and Others
2.	C. P. No. D-4518/2022	Muhammad Aamir Altaf Qureshi VS Federation of Pakistan and Others
3.	C. P. No. D-4519/2022	Salma Aamir Altaf Qureshi VS Federation of Pakistan and Others
4.	C. P. No. D-4520/2022	Sunshine Corporation (Pvt) Ltd VS Federation of Pakistan and Others
5.	C. P. No. D-4521/2022	Muhammad Asim VS Federation of Pakistan and Others
6.	C. P. No. D-4522/2022	Shahbaz Yasin Malik & Ors VS Federation of Pakistan and Others
7.	C. P. No. D-4523/2022	Osman Asghar Khan & another VS Federation of Pakistan and Others
8.	C. P. No. D-4524/2022	Mian Muhammad Ahmed & Ors VS Federation of Pakistan and Others
9.	C. P. No. D-4525/2022	Faisal Hanif & Ors VS Federation of Pakistan and Others
10.	C. P. No. D-4526/2022	Naveed Arshad & Ors VS Federation of Pakistan and Others
11.	C. P. No. D-4527/2022	Shamim Ahmed & Ors VS Federation of Pakistan and Others
12.	C. P. No. D-4528/2022	Jawaid Iqbal & Ors VS Federation of Pakistan and Others
13.	C. P. No. D-4546/2022	K & N Polutry Farms (Pvt) Ltd VS Federation of Pakistan and Others
14.	C. P. No. D-4547/2022	Khalil A. Sattar & Others VS Federation of Pakistan and Others
15.	C. P. No. D-4548/2022	Rehman Naseem & Others VS Federation of Pakistan and Others
16.	C. P. No. D-4615/2022	Artistic Milliners (Pvt) Ltd & Os VS Federation of Pakistan
17.	C. P. No. D-4663/2022	Gul Ahmed Textiles Mills Ltd & Ors VS Federation of
18.	C. P. No. D-4664/2022	Shahzada Ellahi Shaikh & Ors VS Federation of Pakistan
19.	C. P. No. D-4667/2022	Fazal Ahmed Sheikh & Others VS Federation of Pakistan & Others
20.	C. P. No. D-4716/2022	Muhammad Salim Umer and Others VS Federation of Pakistan and Others
21.	C. P. No. D-4717/2022	Bhanero Textile Mills Ltd and Others VS Federation of Pakistan and Others
22.	C. P. No. D-4718/2022	Sharique Azim Siddiqui and Another VS Federation of Pakistan and Others
23.	C. P. No. D-4770/2022	PTCL Ltd VS Federation of Pakistan and Others
24.	C. P. No. D-4807/2022	Hussain Ahmed Fazal & Ors VS Federation of Pakistan and Others
25.	C. P. No. D-4993/2022	Khurram Inam & Others VS Federation of Pakistan and Others
26.	C. P. No. D-5020/2022	Deewan M. Yousuf Farooqui and Others VS Federation of Pakistan and Others
27.	C. P. No. D-5084/2022	Muhammad Faisal Ahmed VS Federation of Pakistan and Others

28.	C. P. No. D-5123/2022	Pervesh Kumar VS Federation of Pakistan and Others
29.	C. P. No. D-5125/2022	Autu Ram VS Federation of Pakistan and Others
30.	C. P. No. D-5205/2022	Masarrat Hussain and Another VS Federation of Pakistan and Others
31.	C. P. No. D-5217/2022	Aftab Faizullah Tapal and Others VS Federation of Pakistan
32.	C. P. No. D-5224/2022	Sindh High Court Bar Association VS Federation of Pakistan and Others
33.	C. P. No. D-5246/2022	Shamshad Begum VS Federation of Pakistan and Others
34.	C. P. No. D-5247/2022	Shahid Abdullah and Others VS Federation of Pakistan and Others
35.	C. P. No. D-5248/2022	Yousuf Abdullah & Another VS Federation of Pakistan and Others
36.	C. P. No. D-5249/2022	Amer Abdullah & Another VS Federation of Pakistan and Others
37.	C. P. No. D-5250/2022	Noshaba Nadeem and Others VS Federation of Pakistan and Others
38.	C. P. No. D-5251/2022	Bakhtiar Khan VS Federation of Pakistan and Others
39.	C. P. No. D-5253/2022	Naveed Ahmed Khan VS Federation of Pakistan and Others
40.	C. P. No. D-5279/2022	Shahzad Salim Godil Others VS Federation of Pakistan & Others
41.	C. P. No. D-5308/2022	Abdul Aziz Rafiq and Others VS Federation of Pakistan and Others
42.	C. P. No. D-5309/2022	Tewfiq Fikree VS Federation of Pakistan and Others
43.	C. P. No. D-5310/2022	Rehan Rahman and Others VS Federation of Pakistan and Others
44.	C. P. No. D-5311/2022	Rehmat Naveed Elahi VS Federation of Pakistan and Others
45.	C. P. No. D-5312/2022	Afzal Lodhi and Another VS Federation of Pakistan and Others
46.	C. P. No. D-5313/2022	Alnoor Sheriff and Others VS Federation of Pakistan and Others
47.	C. P. No. D-5314/2022	Abdul Kadir Adam and Others VS Federation of Pakistan and Others
48.	C. P. No. D-5315/2022	Saba Perwez and Anothers VS Federation of Pakistan and Others
49.	C. P. No. D-5325/2022	Junaid Mansoor VS Federation of Pakistan and Others
50.	C. P. No. D-5328/2022	Habibullah Khan VS Federation of Pakistan and Others
51.	C. P. No. D-5329/2022	Noor Muhammad & Others VS Federation of Pakistan and Others
52.	C. P. No. D-5330/2022	Nadir Ghulam Hussain VS Federation of Pakistan and Others
53.	C. P. No. D-5331/2022	Nabel Ahmed Chaudhri and Another VS Federation of Pakistan and Others
54.	C. P. No. D-5332/2022	Shabir Ahmed & Others VS Federation of Pakistan and Others

55.	C. P. No. D-5333/2022	Shahzad Shakoor and Others VS Federation of Pakistan and Others
56.	C. P. No. D-5354/2022	Zeeshan Malik VS Federation of Pakistan and Others
57.	C. P. No. D-5356/2022	Abdul Razzak Diwan and Others VS Federation of Pakistan and Others
58.	C. P. No. D-5357/2022	Babar Ali Lakhani and Others VS Federation of Pakistan and Others
59.	C. P. No. D-5424/2022	Miqdad Mohammed and Others VS Federation of Pakistan and Others
60.	C. P. No. D-5441/2022	Zain Dilawar Agha and Others VS Federation of Pakistan and Others
61.	C. P. No. D-5443/2022	Muhammad Samir Ali Feroze VS Federation of Pakistan and Others
62.	C. P. No. D-5444/2022	Muhammad Asim and Others VS Federation of Pakistan and Others
63.	C. P. No. D-5446/2022	Din Corp Pvt Ltd VS Federation of Pakistan and Others
64.	C. P. No. D-5447/2022	Din Leather Pvt Ltd VS Federation of Pakistan and Others
65.	C. P. No. D-5448/2022	Shaikh Muhammad Muneer and Others VS Federation of Pakistan and Others
66.	C. P. No. D-5449/2022	Muhammad Tariq Rafi VS Federation of Pakistan and Others
67.	C. P. No. D-5453/2022	Baraka Zain and Others VS Federation of Pakistan and Others
68.	C. P. No. D-5480/2022	Muhammad Amir and Another VS Federation of Pakistan and Others
69.	C. P. No. D-5503/2022	Aman Aslam and Others VS Federation of Pakistan and Others
70.	C. P. No. D-5506/2022	Faisal Rahim Saya and Others VS Federation of Pakistan and Others
71.	C. P. No. D-5519/2022	Amin Qasim and Others VS Federation of Pakistan and Others
72.	C. P. No. D-5520/2022	Shaheen Amin VS Federation of Pakistan and Others
73.	C. P. No. D-5527/2022	Saghir Ahmed Khan Afridi and Others VS Federation of Pakistan and Others
74.	C. P. No. D-5528/2022	Masood Ahmed Sheikh and Others VS Federation of Pakistan and Others
75.	C. P. No. D-5529/2022	Muhammad Imran Qazi and Others VS Federation of Pakistan and Others
76.	C. P. No. D-5538/2022	Muhammad Irfan and Others VS Federation of Pakistan and Others
77.	C. P. No. D-5539/2022	Abdul Latif Noorani and Others VS Federation of Pakistan and Others
78.	C. P. No. D-5540/2022	Muhammad Haroon VS Federation of Pakistan and Others
79.	C. P. No. D-5541/2022	Kamran Waqar VS Federation of Pakistan and Others
80.	C. P. No. D-5542/2022	Feroze Ahmed Khan VS Federation of Pakistan and Others

81.	C. P. No. D-5562/2022	Muhammad Iqbal Ahmed Khan VS Federation of Pakistan and Others
82.	C. P. No. D-5589/2022	Muhammad Yasin VS Federation of Pakistan and Others
83.	C. P. No. D-5602/2022	Abdul Ghani Basathia and Others VS Federation of Pakistan and Others
84.	C. P. No. D-5604/2022	Muhammad Rafiq and Others VS Federation of Pakistan and Others
85.	C. P. No. D-5605/2022	Muhammad Shoaib & Others VS Federation of Pakistan and Others
86.	C. P. No. D-5606/2022	Waqar Ahmed and Others VS Federation of Pakistan and Others
87.	C. P. No. D-5607/2022	Abdul Aziz Hussain and Another VS Federation of Pakistan and Others
88.	C. P. No. D-5620/2022	Muhammad Nasir Monnoo and Others VS Federation of Pakistan and Others
89.	C. P. No. D-5629/2022	Muhammad Maaz Dada and Others VS Federation of Pakistan and Others
90.	C. P. No. D-5633/2022	Farhan Rajar Khan and Others VS Federation of Pakistan and Others
91.	C. P. No. D-5642/2022	Naila Bhimjee VS Federation of Pakistan and Others
92.	C. P. No. D-5645/2022	Laila Hashm VS Federation of Pakistan and Others
93.	C. P. No. D-5650/2022	Pervez Hayat Noon and Others VS Federation of Pakistan and Others
94.	C. P. No. D-5656/2022	Munaf Abdul Sattar Samega VS Federation of Pakistan and Others
95.	C. P. No. D-5658/2022	Naila Munaf VS Federation of Pakistan and Others
96.	C. P. No. D-5659/2022	Muhammad Hanif VS Federation of Pakistan and Others
97.	C. P. No. D-5663/2022	Namdev VS Federation of Pakistan and Others
98.	C. P. No. D-5664/2022	Pervesh Kumar VS Federation of Pakistan and Another
99.	C. P. No. D-5675/2022	Sohail Tai and Others VS Federation of Pakistan and Others
100.	C. P. No. D-5685/2022	Muhammad Yunus Tabba and Others VS Federation of Pakistan and Others
101.	C. P. No. D-5686/2022	Muhammad Ali Tabba and Others VS Federation of Pakistan and Others
102.	C. P. No. D-5693/2022	Nasir Yusuf and Others VS Federation of Pakistan and Others
103.	C. P. No. D-5706/2022	Nighat Afshan VS Federation of Pakistan and Others
104.	C. P. No. D-5724/2022	Siza Commodities (Pvt) Ltd & Others VS Federation of Pakistan and Others
105.	C. P. No. D-5725/2022	Ms. Malaika Kazi VS Federation of Pakistan and Others
106.	C. P. No. D-5726/2022	Pervaiz Kazi VS Federation of Pakistan and Others

107.	C. P. No. D-5727/2022	Ms. Salma Kazi VS Federation of Pakistan and Others
108.	C. P. No. D-5741/2022	Muhammad Arif Habib VS Federation of Pakistan and Others
109.	C. P. No. D-5742/2022	Nida Ahsan VS Federation of Pakistan and Others
110.	C. P. No. D-5754/2022	Sher Muhammad Mugheri VS Federation of Pakistan and Others
111.	C. P. No. D-5762/2022	Abdul Qayyum VS Federation of Pakistan and Others
112.	C. P. No. D-5766/2022	Khurram Kasim VS Federation of Pakistan and Others
113.	C. P. No. D-5767/2022	Ahmed Ebrahim Hasham VS Federation of Pakistan and Others
114.	C. P. No. D-5771/2022	Noushab Khalid Rehman VS Federation of Pakistan and Others
115.	C. P. No. D-5773/2022	Mustafa Madni and Others VS Federation of Pakistan and Others
116.	C. P. No. D-5780/2022	Samia Begum and Others VS Federation of Pakistan and Others
117.	C. P. No. D-5786/2022	Asif Jooma VS Federation of Pakistan & Others
118.	C. P. No. D-5794/2022	Farah Shaukat VS Federation of Pakistan and Others
119.	C. P. No. D-5795/2022	Imran Shaukat Ahmed VS Federation of Pakistan and Others
120.	C. P. No. D-5812/2022	Muhammad Umar Hayat Chohan and Others VS Federation of Pakistan and Others
121.	C. P. No. D-5825/2022	Rabia Allana and Others VS Federation of Pakistan and Others
122.	C. P. No. D-5826/2022	Asim Siddiqui VS Federation of Pakistan and Others
123.	C. P. No. D-5839/2022	Saifuddin Sistanwala VS Federation of Pakistan and Others
124.	C. P. No. D-5840/2022	Aqueel Ebrahim Merchant VS Federation of Pakistan and Others
125.	C. P. No. D-5841/2022	Kamran Yousuf Mirza VS Federation of Pakistan and Others
126.	C. P. No. D-5880/2022	Aurangzeb Firoz VS Federation of Pakistan and Others
127.	C. P. No. D-5881/2022	Farzana Firoz VS Federation of Pakistan and Others
128.	C. P. No. D-5883/2022	Salman Ahmed Tabba VS Federation of Pakistan and Others
129.	C. P. No. D-5926/2022	Abdul Samad Dawood VS Federation of Pakistan and Others
130.	C. P. No. D-5929/2022	Ms. Sabreena Dawood VS Federation of Pakistan and Others
131.	C. P. No. D-5934/2022	Abdul Jabbar A. Motiwala VS Federation of Pakistan and Others
132.	C. P. No. D-5935/2022	Dilara Abdul Jabbar Motiwala VS Federation of Pakistan and Others

133.	C. P. No. D-5936/2022	Talib Zaki VS Federation of Pakistan and Others
134.	C. P. No. D-5937/2022	Abdul Wakeel VS Federation of Pakistan and Others
135.	C. P. No. D-5938/2022	Abdul Rauf VS Federation of Pakistan and Others
136.	C. P. No. D-5965/2022	Muhammad Junaid Shekha and Others VS Federation of Pakistan and Others
137.	C. P. No. D-5967/2022	Hamdia Fatin Niazi VS Federation of Pakistan and Others
138.	C. P. No. D-5974/2022	Muhammad Ali Rashid & Others VS Federation of Pakistan and Others
139.	C. P. No. D-5989/2022	Zainab & Ors VS Federation of Pakistan and Others
140.	C. P. No. D-6032/2022	Faisal Zairy & Others VS Federation of Pakistan and Others
141.	C. P. No. D-6041/2022	Muhammad Naseem VS Federation of Pakistan and Another
142.	C. P. No. D-6042/2022	Azam Sakrani VS Federation of Pakistan and Another
143.	C. P. No. D-6043/2022	Bilal Haleem VS Federation of Pakistan and Another
144.	C. P. No. D-6044/2022	Humaira Faraz VS Federation of Pakistan and Another
145.	C. P. No. D-6045/2022	Dr. Ashok Kumar Gauba VS Federation of Pakistan and Another
146.	C. P. No. D-6046/2022	Faisal Shafi VS Federation of Pakistan and Another
147.	C. P. No. D-6047/2022	Humaira Hanif VS Federation of Pakistan and Another
148.	C. P. No. D-6048/2022	Hassan Shafi VS Federation of Pakistan and Another
149.	C. P. No. D-6049/2022	Muhammad Asim Maniar VS Federation of Pakistan and Another
150.	C. P. No. D-6050/2022	Javeria Rashid VS Federation of Pakistan and Another
151.	C. P. No. D-6051/2022	JehanBux Dinshaw Gandhi VS Federation of Pakistan and Others
152.	C. P. No. D-6052/2022	Zahid Haleem VS Federation of Pakistan and Others
153.	C. P. No. D-6053/2022	Tasneem Mazhar VS Federation of Pakistan and Others
154.	C. P. No. D-6054/2022	Amir M. Shafi VS Federation of Pakistan and Others
155.	C. P. No. D-6055/2022	Fawwad Shafi VS Federation of Pakistan and Others
156.	C. P. No. D-6056/2022	Asma Tariq VS Federation of Pakistan and Others
157.	C. P. No. D-6057/2022	Faraz Haleem VS Federation of Pakistan and Another
158.	C. P. No. D-6058/2022	Ghulam Murtaza Sheikh VS Federation of Pakistan and Another

159.	C. P. No. D-6059/2022	Khurram Hanif VS Federation of Pakistan and Another
160.	C. P. No. D-6060/2022	Umair Haleem VS Federation of Pakistan and Another
161.	C. P. No. D-6061/2022	Naheed Hanif VS Federation of Pakistan and Another
162.	C. P. No. D-6062/2022	Rashid Haleem VS Federation of Pakistan and Another
163.	C. P. No. D-6063/2022	Faiza Khurram Hanif VS Federation of Pakistan and Another
164.	C. P. No. D-6064/2022	Muhammad Haleem VS Federation of Pakistan and Another
165.	C. P. No. D-6065/2022	Ayesha Zahid VS Federation of Pakistan and Another
166.	C. P. No. D-6066/2022	Tahir Latif VS Federation of Pakistan and Another
167.	C. P. No. D-6067/2022	Rehana Haleem VS Federation of Pakistan and Another
168.	C. P. No. D-6068/2022	Yasir Shafi VS Federation of Pakistan and Another
169.	C. P. No. D-6092/2022	Muneer Ahmed Memon VS Federation of Pakistan and Others
170.	C. P. No. D-6093/2022	Ali Nawaz Nazeer Ahmed VS Federation of Pakistan and Others
171.	C. P. No. D-6094/2022	Abdul Majeed Arain VS Federation of Pakistan and Others
172.	C. P. No. D-6134/2022	Muhammad Tahir VS Federation of Pakistan and Another
173.	C. P. No. D-6135/2022	Zeeshan Maqsood VS Federation of Pakistan and Another
174.	C. P. No. D-6152/2022	Muhammad Ashraf and Others VS Federation of Pakistan and Others
175.	C. P. No. D-6154/2022	Syed Hassan Ali Khan and another VS Federation of Pakistan and Others
176.	C. P. No. D-6185/2022	Muhammad Amjad and Others VS Federation of Pakistan and Others
177.	C. P. No. D-6199/2022	Faisal Imran Hussain Malik VS Federation of Pakistan and Others
178.	C. P. No. D-6217/2022	Syed Masood Abbas Jaffery VS Federation of Pakistan and Others
179.	C. P. No. D-6222/2022	Dost Muhammad Khan & Others VS Federation of Pakistan and Others
180.	C. P. No. D-6240/2022	Nazish Anwer VS Federation of Pakistan and Others
181.	C. P. No. D-6363/2022	Waqas Shakil VS Federation of Pakistan and Another
182.	C. P. No. D-6364/2022	Shakil Ahmed VS Federation of Pakistan and Another
183.	C. P. No. D-6372/2022	Syed Irfan Mehdi VS Federation of Pakistan and Others
184.	C. P. No. D-6376/2022	Ms. Sayeeda Nadir Leghari VS Federation of Pakistan and Others

185.	C. P. No. D-6377/2022	Nadir Akmal Khan Leghari VS Federation of Pakistan and Others
186.	C. P. No. D-6378/2022	Akmal Khan Leghari VS Federation of Pakistan and Others
187.	C. P. No. D-6388/2022	Bilal Ahmed and Others VS Federation of Pakistan and Another
188.	C. P. No. D-6389/2022	Muhammad Yaseen and Others VS Federation of Pakistan and Another
189.	C. P. No. D-6391/2022	Mrs. Rubeena Ahmed VS Federation of Pakistan and Another
190.	C. P. No. D-6392/2022	Javed Ahmed and Others VS Federation of Pakistan and Another
191.	C. P. No. D-6412/2022	Abdul Samad Khan and Others VS Federation of Pakistan and Others
192.	C. P. No. D-6415/2022	Muhammad Shoaib Ismail VS Federation of Pakistan and Another
193.	C. P. No. D-6452/2022	Farhana Mawjee Khan and Others VS Federation of Pakistan and Others
194.	C. P. No. D-6457/2022	Iftikhar Ahmed Ejaz VS Federation of Pakistan and Another
195.	C. P. No. D-6466/2022	Raja Mir Muhammad VS Federation of Pakistan and Another
196.	C. P. D-6275/2022	Nusrat Khan V/S Federation of Pakistan and Others
197.	C. P. D-6276/2022	Abdul Wahab & Others V/S Federation of Pakistan and Others
198.	C. P. D-6277/2022	Inshipping Pvt Ltd V/S Federation of Pakistan and Others
199.	C. P. D-6278/2022	G4 Mega Pakistan Pvt Ltd V/S Federation of Pakistan and Others
200.	C. P. D-6487/2022	Ali Akhai V/S Federation of Pakistan and Others
201.	C. P. D-6439/2022	Najmus Saqib V/S Federation of Pakistan and Others
202.	C. P. D-6401/2022	Madad Ali Madan V/S Federation of Pakistan and Others
203.	C. P. D-6429/2022	Amanullah Kassim and Others V/S Federation of Pakistan and Others
204.	C. P. D-6440/2022	Nadeem Ahmed V/S Federation of Pakistan and Others
205.	C. P. D-6441/2022	Asif Amanullah Khanani V/S Federation of Pakistan and Others
206.	C. P. D-6442/2022	Rizwan Ahmed V/S Federation of Pakistan and Others
207.	C. P. D-6443/2022	Salim Amanullah V/S Federation of Pakistan and Others
208.	C. P. D-6523/2022	Muhammad Najam Ali V/S Federation of Pakistan and Others

For the Petitioners:

M/s. Rashid Anwar, Ovais Ali Shah, Omer Soomro, Jahanzeb Awan, Abid H. Shaban, Dr. Muhammad Tariq Masood, Iqbal Salman Pasha, Mushtaq Hussain Qazi, Abdul Rahim Lakhani,

Abdul Sattar Pirzada, Umair Qazi, M. Anas Makhdoom, Jawad Qureshi, Syeda Rabia Shahid, Maryum Riaz, Fizzah Bucha, Umer Ilyas, Ms. Naveeda Bisharat, Imtiaz Ali, Ms. Ghazala Rafiq, Ellahi Bukhsh Qureshi, Faisal Ahmed, Muhammad Rashid Khan Mahar, Naeem Suleman, Arshad Hussain Shahzad, Jawed Zakaria, Anwar Kashif Mumtaz, Muhammad Usman Alam, Jawaid Farooqi, Muhammad Asad Ashfaq Tola, Muhammad Amayed Ashfaq Tola, Ms. Hamda Ali Khan, Ahmed Ali Hussain, M. Aizaz Ahmed, Arshad Sahzad, Umer Ilyas, Nasir Latif Khan, Muhammad Imran Khan, Sufyan Zaman, Muneeb Qidwai, Aitezaz Manzoor Memon, Ameen Bandukda, Syed Ali Ahmed Zaidi, M. Imran Khan, Ajeet Kumar, Nadir Hussain Abro, Vishwa Mittar, Fazl-e-Rabi, Sadiqullah, Yousuf Ali, Muhammad Aleem, Umer Ahad, Fahim Ali, Faiz Mehmood Khan Durrani, Samia Faiz Durrani, Ghulam Muhammad, Saadat Yar Khan, Ahmed Farhaj, Muhammad Taimoor Ahmed, Muhammad Mansoor Mir, Ms. Lubna Pervaiz, Abdul Jabbar Mallah, Munir Ahmed, Saifullah Khawaja, Atta Muhammad, Saad Fayaz, Rabia Khan, Syed Noman Zahid, Furqan Mohiuddin Ansari, Muhammad Tariq, Syed Sultan Ahmed, Syed Hamza Ahmed Hashmi, Advocates for Petitioners.

For the Respondents:

M/s. Dr. Shah Nawaz Memon, Ameer Bux Metlo, Kafeel Ahmd Abbasi, Ameer Nousherwan Adil, Syed Ahsan Ali Shah, Fouzia Muhammad Murad, Fayyaz Ali Metlo, Qaim Ali Memon, Rana Sakhawat Ali, Imtiaz Ali Solangi, Syed Shafqat Ali Shah Masoomi, Abdul Hakeem, Hayat Muhammad, Ghazi Khan Khalil, Abdul Razzak Panhwar, Shaheer Saleem Memon, Imran Ali Mithani, Saddiqullah Kakar, Faheem Ali, Muhammad Ali Shahwani, Arshad Ali Tunio, Sajjad Ali Solangi, Muhammad Idress Rahimoon, Abdul Basit Rasheed, Asif Ali Siyal, Zohaib, Abdul Basit Rasheed, Hayat Muhammad Junejo, Saghir Ahmed Khan, Ayaz Sarwar Jamali, Advocates for Respondents.

Mr. Syed Yasir Ahmed Shah, Assistant Attorney General.

Mr. Qazi Ayazuddin Qureshi, Assistant Advocate General Sindh.

Date of hearing: 28.10.2022

Date of Order: 28.10.2022.

J U D G M E N T

Muhammad Junaid Ghaffar, J: All these Petitions involve a common legal question and are therefore, being decided through this

common Judgment. The Petitioners have challenged the provisions of Section 7E of the Income Tax Ordinance, 2001 (“**Ordinance**”) introduced through Finance Act, 2022, on the ground that it is ultra vires to the Constitution and so also discriminatory; confiscatory; hence, void, ab-initio and liable to be struck down.

2. At the very outset we may state, and this is without disrespect to any of the learned Counsel for the Petitioners as well as Respondents, that their arguments have been noted and recorded in this judgment collectively for ease, convenience and to avoid overlapping, if any. Petitioners Counsel¹ have contended that Section 7E of the Ordinance imposes tax on property which is not within the competence of the Federal Legislature pursuant to Entry 50 of the Federal Legislative List provided in the Fourth Schedule to the Constitution of the Islamic Republic of Pakistan (“**Constitution**”); that it is only the Provincial Legislature who can tax an immovable property; that Section 7E ibid within itself is discriminatory as it provides certain exceptions and exclusions without providing any rationale to such exclusions and or exemptions; that notwithstanding the validity of the concept of deemed income, while imposing tax under Section 7E of the Ordinance no transaction has been outlined on the basis of which any deemed income can accrue; that tax can only be imposed on the income from property, whereas, under Section 7E ibid even properties which cannot be let out or generate any income, have also been included; that it is also in violation of the concept of income received or income receivable; that there is no concept of any fictional income as it is alien to the Ordinance; that in pith and substance it is a tax on immovable property which cannot be levied by the Federal Legislature; that it is an attempt or a colourable exercise of powers under the Constitution so as to impose a tax for which the Constitution does not confer any authority upon the Federation; that it has also failed to take or provide basis and differentiation in the nature of property; its location, and the earning potential, if at all a tax has to be sustained; that even such properties have been taxed for which there is no permission to raise any construction; that there is also an anomaly in the holding period of the property in question; that per settled law what cannot be done directly, cannot be permitted to be done indirectly; that as and when deemed income has been held to be valid and legal, it has always had nexus with respect to generation of income or a transaction which can lead to an income; that the concept of

¹ (In order of arguments made) M/s Abid H Shaban; Dr. Tariq Masood; Rashid Anwar; Mushtaque Hussain Qazi; Abdul Rahim Lakhani; Omar Soomro; Ovais Ali Shah and Jehanzeb Awan, Advocates

deemed income was introduced to avoid benefits being claimed through losses, whereas, in the instant matter it is not present; that the speech of the Finance Minister while introducing this levy by way of Finance Bill is very relevant inasmuch as the intent and object of the said levy as disclosed is to discourage holding the properties which does not fall within the domain of the Federal Legislature; that it amounts to violate the fundamental rights as enshrined in Article 23 read with Article 253 of the Constitution; that if at all, the impugned levy is to be sustained vis-à-vis. the speech of the Finance Minister, it ought to have been levied through an Act of Parliament by following the procedure as contemplated under Article 70 of the Constitution; that in fact it is an attempt to control ownership of immovable properties; hence, by way of a Finance Bill or a Money Bill introduced through Article 73 of the Constitution, no valid legislation can be made; that tax can only be levied when there is an earning potential, which admittedly, in the present facts and circumstances, is lacking; that it fails to pass the twin test regarding discrimination as settled by the Hon'ble Supreme Court of Pakistan and India; that in essence it imposes tax on property and in pith and substance it is not a tax on income or deemed income; that even otherwise, it has been imposed retrospectively for the current tax / financial year, whereas, it could only have been levied, if at all, from the next tax year; that it is confiscatory in nature inasmuch as there are instances wherein, the tax payer, notwithstanding holding of various properties, is not generating any income so as to pay the tax on its deemed income; that when the Finance Bill was sent to the Senate of Pakistan, a resolution was passed against this very levy and the advice of Senate must not be ignored; that all deemed income have some nexus with a business activity which in the instant matter is lacking; that it amounts to double taxation as property tax is already levied by the Provinces; that it fails to meet the settled principles regarding discrimination i.e. intelligible differentia; that the exclusion and exemption provided to various persons within Section 7E *ibid* must have nexus with some policy objectives of the Government which in the present facts and circumstances is completely lacking; that an idle property is being taxed under the garb of deemed income; that when the levy itself offends or goes against the competence of the Federal Legislature, no concept of deemed income can be invoked; that the levy amounts to crossing the legislative boundaries which cannot be sustained; that the tax levied through Section 7E *ibid* lacks a triggering event i.e. receiving of income or money; that mere holding of immovable property cannot lead to

any tax by way of a fictional income, and therefore, by placing reliance on the cases reported as² they have prayed that the provision in question is liable to be declared as ultra vires to the Constitution.

3. On the other hand, Respondents Counsel³ have contended that the concept of deemed income is not alien to the Income Tax Law, whereas, it has been validated in a number of cases by the superior courts; that it is a tax on income and not on property; hence, is within the competence of the Federal Legislature under Entry 47 to the Fourth Schedule of the Constitution; that is a conscious policy decision of the Federation and therefore, per settled law Courts must show restraint while interfering in the legislative competence of the Government; that it is not a case of exercising any powers under Entry 50 of the Fourth Schedule to the Constitution inasmuch as it is not a tax on the very property in question; but on the deemed income from the said property; hence, permissible; that in terms of Section 15 of the Ordinance, tax from rental income is already in field and is being paid by the tax payers; that various other taxes are also leviable on properties under various provisions of the Ordinance; that there is no discrimination within Section 7E of the Ordinance as the exceptions which have been provided are in respect of different classes of persons which are otherwise enjoying various exemptions and exceptions under the Ordinance; that the levy itself is a tax, hence, within the

² **Mr. Rashid Anwar** *Baz Muhammad Kakar & Others V/s. Federation of Pakistan through Ministry of Law and Justice and Others* (PLD 2012 SC 923), *Sohail Jute Mills Ltd V/s. Federation of Pakistan* (PLD 1991 SC 329), *Attorney General of British Columbia V/s. Macdonald Murphy Lumber Company* (1930 AC 357), *Attorney General for Ontario V/s. Reciprocal Insurers and Others* (1924 AC Privy Council 328), *Pakistan International Freight of Forwarders Association V/s. Province of Sindh & another* (2017 PTD 1), *Messrs Elahi Cotton Mills Ltd & Others V/s. Federation of Pakistan & Others* (PLD 1997 SC 582), *I. A. Sharwani V/s. Government of Pakistan* (1991 SCMR 1041), *Tariq Aziz ud Din (Human Rights Case)* (2010 SCMR 130) and *Molasses Trading & Export V/s. Federation of Pakistan & Others* (1993 SCMR 905).

Mr. Ovais Ali Shah *Pakistan Industrial Development Corporation V/s. Pakistan through Secretary, Ministry of Finance*, (1992 SCMR 891), *Pakistan State Oil Ltd. V/s. Commissioner of Income Tax, Karachi* (2018 SCMR 894), *Messrs Elahi Cotton Mills Ltd. & Others V/s. Federation of Pakistan through Secretary M/o Finance, Islamabad and 6 Others* (PLD 1997 SC 582).

Dr. Tariq Masood *Pakistan International Freight of Forwarders Association through General Secretary V/s. Province of Sindh through Secretary and Another* (2017 PTD 1), *State V/s. Azizur Rehman* (PLD 1973 SC 49), *Messrs Pakistan Television Corporation Limited V/s. Commissioner Inland Revenue (Legal), LTU, Islamabad and Others* (2017 PTD 1372), *D.S. Nakara & Others V/s. Union of India* (AIR 1983 SC 130) & *Jibendra Kishore Achharyya Chowdhury and 58 Others V/s. The Province of East Pakistan and Secretary, Finance and Revenue (Revenue) Department, Government of East Pakistan* (PLD 1957 SC (Pak) 9).

Mr. Mushtaq Hussain Qazi *Abid Hussain Sherazi V/s. Secretary M/O Industries and Production, Government of Pakistan, Islamabad* (2005 SCMR 1742) & *Pakcom Limited & Others V/s. Federation of Pakistan and Others* (PLD 2011 SC 44).

Mr. Abid Shaban *Messrs Elahi Cotton Mills Ltd and Others V/s. Federation of Pakistan through Secretary M/o Finance Islamabad and 6 Others* (PLD 1997 SC 582), *Federation of Pakistan and Others V/s. Shaukat Ali Mian and Others* (PLD 1999 SC 1026), *Yaqoob Ahmed through Attorney and Others V/s. Federation of Pakistan through The Secretary of Law, Ministry of Law and Others* (2020 PTD 1407), *Syed Nasir Ali & 33 Others V/s. Pakistan through Secretary Ministry of Law, Islamabad and 3 Others* (2010 PTD 1924) & *Dr. Mobashir Hassan and Others V/s. Federation of Pakistan and Others* (PLD 2010 SC 265).

³ M/s Dr. Shahnawaz Memon; Ameer Baksh Metlo; Kafeel Abbasi; Ameer Noshawan Adil; Shafqat Ali Shah Masoomi; Ahsan Ali Shah, Advocates

competence of the Federal Legislature to introduce the same under Article 70 of the Constitution by way of a Money Bill; that any hardship or inability to pay a tax is not a ground to declare the same as ultra vires; that there is no concept of retrospectivity in the levy; that the levy is not in violation of any of the fundamental rights as provided in the Constitution including Article 23 and Article 253 to the Constitution; that no property is being acquired forcibly, whereas, reasonable exceptions and exemptions have also been provided to the petitioners / tax-payers within Section 7E of the Ordinance; that it is neither confiscatory nor discriminatory, whereas, the tax has been levied to fulfil various obligations and functions of the State which requires immediate taxation measures; that under the concept of deemed income there is no requirement of a particular transaction to generate income; that it is a case of reasonable classification within 7E of the Ordinance, hence, cannot be declared ultra vires on this ground; that it is the prerogative of the legislature to choose a class of persons on whom the tax may be imposed or not; that a tax on income is not by itself a tax on property; that income can be deemed without any transaction; that presumptive income or presumptive tax are provided in the Ordinance in various Sections and it is not necessary that there must be an actual income for taxation purposes; that re-characterisation of income is permissible under the Ordinance; that the tax on such income has been levied reasonably vis-à-vis. values of the properties; that various tax payers had availed the benefits of Foreign Assets Declaration Act, 2018 followed by an Ordinance of 2019, hence, when benefits of the said legislation on property was availed, then subsequently, the competence to levy tax on income on the same property cannot be challenged; that the rental income of property is being taxed from the very inception of Income Tax Act, 1922 and such tax is covered by Entry 47 ibid; hence, cannot be declared ultra vires to the Constitution; and by placing reliance on the cases reported as⁴ they have prayed for dismissal of these petitions.

4. Learned Assistant Attorney General appearing on behalf of the Federation pursuant to issuance of notice has contended that it is within the competence of the Federal Legislature to tax any income from property and the provision in question is not a tax by itself on such

⁴ **Dr. Shah Nawaz** Shah Nawaz Pvt. Ltd. through Director Finance Vs. Pakistan through the Secretary Ministry of Finance Government of Pakistan, Islamabad and another (2011 PTD 1558)

Mr. Ameer Bakhsh Metlo M/s Bhuwarka Steel Industries Ltd. & Another Vs. Union of India & Others (Civil Appeal No. 7823 / 2014).

Mr. Ahsan Ali Shah Muhammad Khalid Qureshi Vs. Province of Punjab through Secretary, Excise & Taxation Department, Lahore and another (2017 PTD 805), Messrs I.C.C. Textile Ltd. and Others Vs. Federation of Pakistan and others (2001 PTD 1557).

property; that income in this matter is being generated through the property; that it falls within the competence of Federal Legislature under Entry 47 of the Fourth Schedule to the Constitution; that per settled law the Courts must endeavour to save the legislation as far as possible; hence, by placing reliance on the cases reported as⁵ he has sought dismissal of these Petitions.

5. We have heard all the learned Counsel for the parties including learned Assistant Attorney General and have perused the record. The Petitioners before us are resident taxpayers under various categories and since these Petitions are only premised on a legal challenge, independent facts and status of each petitioner need not be discussed. Their primary challenge is that Section 7E of the Ordinance introduced through Finance Act 2022 is ultra vires to the Constitution as firstly, it is beyond the competence of the Federal Legislature in terms of Entry 50 of the Fourth Schedule to the Constitution. Secondly, notwithstanding the issue regarding competency of the Federal Legislature, even otherwise, the levy by itself is confiscatory, discriminatory and is an attempt of a colourable exercise of power, as in pith and substance the levy in question is a tax on property, and not on its income, which in terms of Entry 50 *ibid* cannot be imposed by the Federal Legislature. This is the entire gist of their case for seeking a declaration that it is Ultra vires to the Constitution.

6. On the other hand, case of the Federation is that it is not a tax *per se* on any immovable property; but is a tax on deemed income of the property and falls within the competence of the Federal Legislature under Entry 47 of the Fourth Schedule to the Constitution. It is their further case that the concept of deemed income has been held to be valid in various cases including the celebrated case of Elahi Cotton (Supra) pronounced by Hon'ble Supreme Court of Pakistan; and therefore, the impugned levy cannot be declared as ultra vires as contended on behalf of the Petitioners.

7. For a better understanding of the controversy in hand, it would be advantageous to refer to Entry 47 and 50 of the Fourth Schedule to the

⁵ Mohtarma Benazir Bhutto and another Vs. President of Pakistan and others (PLD 1998 SC 388 (670), Lahore Improvement Trust, Lahore through its Chairman Vs. The Custodian, Evacuee Property, West Pakistan, Lahore and 4 others (PLD 1971 SC 811), Government of Sindh through the Chief Secretary and others Vs. Khalil Ahmed and others (1994 SCMR 782) and Dr. Tariq Nawaz and another Vs. Government of Pakistan through the Secretary, Ministry of Health, Government of Pakistan, Islamabad and another (2000 SCMR 1956).

Constitution enacted pursuant to Article 70(4) and Article 142(a) of the Constitution. The same reads as under: -

“47. Taxes on income other than agricultural income.

“50. Taxes on the capital value of the assets, not including taxes [* * *]⁶ on immoveable property.”

8. From perusal of the aforesaid Entry 47, it appears that the Federal Legislature can impose taxes on income other than an agricultural income. A plain reading of this entry makes it clear that insofar as any income is concerned, a tax can be validly levied by the Federal Legislature. Perhaps, to this effect, there is no dispute and Petitioners Counsel have not raised any objection, that if it is a case of any income, tax can be levied by the Federation. Insofar as Entry 50 as above is concerned, again it permits the Federal Legislature to impose taxes on the capital value of the assets, not including taxes on immoveable property. The case of the Petitioners before us is to the effect that the impugned levy under Section 7E is not a tax on income; but a tax on immoveable property, which in terms of Entry 50 *ibid* is not within the competence of the Federal Legislature. To proceed further, it would be advantageous to refer to the relevant provisions of the impugned levy introduced by way of Section 7E in the Ordinance, through Finance Act, 2022 which reads as under: -

“7E. Tax on deemed income. - (1) For tax year 2022 and onwards, a tax shall be imposed at the rates specified in Division VIIC of Part-I of the First Schedule on the income specified in this section.

(2) ***A resident person shall be treated to have derived, as income chargeable to tax under this section, an amount equal to five percent of the fair market value of capital assets*** situated in Pakistan held on the last day of tax year excluding the following, namely:—

- (a) one capital asset owned by the resident person;
- (b) self-owned business premises from where the business is carried out by the persons appearing on the active taxpayers' list at any time during the year;
- (c) self-owned agriculture land where agriculture activity is carried out by person excluding farmhouse and land annexed thereto;
- (d) capital asset allotted to –
 - (i) a Shaheed or dependents of a shaheed belonging to Pakistan Armed Forces;
 - (ii) a person or dependents of the person who dies while in the service of Pakistan armed forces or Federal or provincial government;
 - (iii) a war wounded person while in service of Pakistan armed forces or Federal or provincial government; and
 - (iv) an ex-serviceman and serving personal of armed forces or ex-employees or serving personnel of Federal and provincial

⁶ The words “on capital gains” omitted by the Eighteenth amendment in 2010

- governments, being original allottees of the capital asset duly certified by the allotment authority;
- (e) any property from which income is chargeable to tax under the Ordinance and tax leviable is paid thereon;
 - (f) capital asset in the first tax year of acquisition where tax under section 236K has been paid;
 - (g) where the fair market value of the capital assets in aggregate excluding the capital assets mentioned in clauses (a), (b), (c), (d), (e) and (f) does not exceed Rupees twenty-five million;
 - (h) capital assets owned by a provincial government or a local government; or
 - (i) capital assets owned by a local authority, a development authority, builders and developers for land development and construction, subject to the condition that such persons are registered with Directorate General of Designated Non-Financial Businesses and Professions.
- (3) The Federal Government may include or exclude any person or property for the purpose of this section.
- (4) In this section—
- (a) **“capital asset” means property of any kind held by a person, whether or not connected with a business, but does not include –**
 - (i) any stock-in-trade, consumable stores or raw materials held for the purpose of business;
 - (ii) any shares, stocks or securities;
 - (iii) any property with respect to which the person is entitled to a depreciation deduction under section 22 or amortization deduction under section 24; or
 - (iv) any movable asset not mentioned in clauses (i), (ii) or (iii);
 - (b) “farmhouse” means a house constructed on a total minimum area of 2000 square yards with a minimum covered area of 5000 square feet used as a single dwelling unit with or without an annex:

Provided that where there are more than one dwelling units in a compound and the average area of the compound is more than 2000 square yards for a dwelling unit, each one of such dwelling units shall be treated as a separate farmhouse.”;

9. From perusal of the aforesaid provision, it appears that for tax year 2022 and thereafter, a tax has been imposed at the rates specified in Division VIII C of Part-I of the First Schedule⁷ on the income specified in this section. Sub-section (2) of Section 7E *ibid* has further provided that a resident person shall be treated to have derived, as income on the amount equal to five percent of the fair market value of capital assets situated in Pakistan held on the last day of the tax year, excluding one capital asset owned by the resident person; self-owned business premises from where the business is carried out; self-owned agriculture land where agriculture activity is carried out by such person and the capital asset allotted to a Shaheed or dependents of a Shaheed belonging to Pakistan Armed Forces; a person or dependents of the person who dies while in the service of Pakistan armed forces or Federal or provincial government; a war wounded person while in service of Pakistan armed forces or Federal

⁷ The rate of tax under section 7E shall be 20%.”;

or provincial government; and an ex-serviceman and serving personal of armed forces or ex-employees or serving personnel of Federal and provincial governments, being original allottees of the capital asset duly certified by the allotment authority; any property from which income is chargeable to tax under the Ordinance and tax leviable is paid thereon; capital asset in the first tax year of acquisition where tax under section 236K has been paid; and where the fair market value of the capital assets in aggregate excluding the capital assets mentioned in clauses (a), (b), (c), (d), (e) and (f) **does not exceed Rupees twenty-five million.** Similarly, capital assets have been defined in sub-section 4(a) of Section 7E *ibid*, and means property of any kind held by a person, whether or not connected with a business, but does not include any stock-in-trade, consumable stores or raw materials, any shares, stocks or securities; any property to which a person is entitled to a depreciation deduction under Section 22 or amortization under Section 24 and any moveable asset not mentioned in clauses (i) (ii) or (iii) *ibid*. The arguments of the petitioners Counsel as noted hereinabove are three fold; that the impugned levy is discriminatory; it is confiscatory, and beyond the legislative competence of the Federal Legislature. We will deal with these one by one in the following manner.

(A) DISCRIMINATION

10. As to the argument regarding meting out discrimination to the petitioners as against the exceptions provided in Section 7E (2) *ibid*, it can be safely held that that this argument is not only misconceived but even has no force or legs to stand. Time and again, it has been held by the Hon'ble Supreme Court as well as various High Courts of the country that the legislature has the competence to levy tax on different classes of persons and merely for the fact that someone is exempted from the levy of such tax, it cannot, always be pleaded that it is discriminatory in nature and is liable to be struck down in terms of Article 25⁸ of the Constitution. It has to be clearly established from bare perusal of the impugned legislation that the levy has discriminated a same class of persons. In order that a law be struck down on the touchstone of Article 25 of the Constitution, it must be demonstrated that the said law is not based on intelligible criteria;

⁸ **Article 25 (Equality of Citizens).**

(1) All citizens are equal before law and are entitled to equal protection of law.

(2) There shall be no discrimination on the basis of sex;

(3) Nothing in this Article shall prevent the State from making any special provision for the protection of women and children.

does not have a nexus with the purpose of law⁹. Per settled law the legislature is competent to classify persons or properties into different categories subject to different rates of tax¹⁰. Further that the test of vice of discrimination in a taxing law are less rigorous and if there is equality and uniformity within each group founded on intelligible differentia having a rational nexus with the object sought to be achieved by the law, the Constitutional mandate that a law should not be discriminatory is fulfilled¹¹. When the impugned provision of Section 7E *ibid* is looked into keeping in mind the above dicta laid down by the Hon'ble Supreme Court, it clearly reflects that the classes of persons who have been exempted from such levy are within the competence of the legislature as being classified separately, whereas, it is not the case of the Petitioners that they fall within the same class of those persons who have been exempted from the levy of tax in question. Much stress was laid on Sub Section 2(d)(iv) of Section 7E *ibid* as to why certain exemption has been provided to a category of persons specified therein and to this, it may be observed that the very exemption is also further clarified and is not generic in nature. It only extends to persons specified in sub-section 2(d)(iv) of Section 7E to the *original allottees of the capital assets* and that also being duly *certified by the allotment authority*. It may be observed that such category of person is allotted various properties which fall within their terms and condition of service from time to time either as an incentive or on their promotions, whereas, the exception provided is only to the extent of such original allotment and not thereafter. Though it is settled law that the guarantee of equal protection of laws also extend to taxing statutes; however, If the taxation, generally speaking, imposes a similar burden on every one with reference to that particular kind and extent of property, on the same basis of taxation, the law shall not be open to attack on the ground of inequality, even though the result of the taxation may be that the total burden on different persons may be unequal¹². Hence, if the Legislature has classified persons or properties into different categories, which are subjected to different rates of taxation with reference to income or property, such a classification would not be open to the attack of inequality on the ground that the total burden resulting from such a classification is unequal¹³. In deciding whether a taxation law is discriminatory or not it is necessary to bear in mind that the State has a

⁹ Sheraz Kaka v Federation of Pakistan (2018 PTD 336)

¹⁰ Elahi Cotton (Supra)

¹¹ Elahi Cotton (Supra)

¹² AIR 1961 SC 552

¹³ AIR 1961 SC 552

wide discretion in selecting the persons or objects it will tax, and that a statute is not open to attack on the ground that it taxes some persons or objects and not others¹⁴. In the celebrated case of *I A Sherwani*¹⁵ while deliberating on the question of equal protection in law the Hon'ble Supreme Court has been pleased to hold that that equal protection of law does not envisage that every citizen is to be treated alike in all circumstances, but it contemplates that persons similarly situated or similarly placed are to be treated alike; that no standard of universal application to test reasonableness of a classification can be laid down as what may be reasonable classification in a particular set of circumstances, may be unreasonable in the other set of circumstances; and finally that in order to make a classification reasonable, it should be based (a) on an intelligible differentia which distinguishes persons or things that are grouped together from those who have been left out; and (b) that the differentia must have rational nexus to the object sought to be achieved by such classification. At para 26 of the said judgment the Hon'ble Supreme Court has deduced the principle of law that equal protection of law does not envisage that every citizen is to be treated alike in all circumstances, but it contemplates that persons similarly situated or similarly placed are to be treated alike. It has been further held reasonable classification is permissible provided it is based on an intelligible differentia which distinguishes persons or things that are grouped together from those who have been left out and that the differentia must have rational nexus to the object sought to be achieved by such classification. It may further be pointed out that different laws can be validly enacted for different sexes, persons in different age-groups, persons having different financial standings and that no standard of universal application to test reasonableness of a classification can be laid down as what may be reasonable classification in a particular set of circumstances, may be unreasonable in the other set of circumstances. Going further it has been observed that 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 the other side of the line. Therefore, in essence no discrimination can be pleaded on this ground alone. Moreover, in terms of Section 7E (2)(g) a reasonable exemption has also been provided to all taxpayers in respect of properties owned by them

¹⁴ Avinder Singh and others v State of Punjab (1979) 1 Supreme Court Cases 137

¹⁵ 1991 SCMR 1041

having a value of up to Rs. 25.0 Million, and therefore, the Petitioners are estopped by pleading discrimination when they themselves have been provided a benefit thereon. Resultantly, the argument that the impugned the levy is discriminatory, is *per-se* devoid of any merits; hence, not tenable.

(B) CONFISCATORY NATURE OF LEVY.

11. It has been vehemently argued on behalf of the Petitioners that the levy in question is confiscatory in nature inasmuch as the properties in question are idle and not generating any income, therefore, there may be a case that the taxpayer does not have any money to pay any such tax or it does not have any further source of income; but is merely holding such property as assets or which have devolved upon and owned as legal heir(s). However, again there is no concept of invalidating a levy or tax merely on this ground that the taxpayer does not have any such capacity to pay the tax. Much stress was laid on the case of Pakistan State Oil (supra), wherein, in its peculiar facts and circumstances the Hon'ble Supreme Court had provided an exception to levy tax on Pakistan State Oil who was not generating any income to that extent which could sustain the levy of a presumptive tax on deemed income. Firstly, it may be of relevance to observe that the facts as discussed in Pakistan State Oil (supra) were materially different and not available to the present Petitioners. Secondly, with utmost respect and humility at our command, we may observe that case of Pakistan State Oil (supra) was decided by a three-member bench of the Hon'ble Supreme Court, whereas, the Hon'ble Supreme Court in Elahi Cotton (Supra) case supra decided by a five-member bench has been pleased to hold that levy of a tax, in its operation, may result in hardships or advantages or disadvantages to individual assesseees which are accidental and inevitable. Simpliciter this fact will not constitute violation of any of the fundamental rights. It has been further held that the taxing power is unlimited as long as it does not amount to confiscation. Similarly, a levy or imposition of tax cannot be struck down merely because of the reason that the taxpayer does not has the capacity or the amount of income on which tax has been levied. Hence, it may be rightly remarked that the Act obliges every person who holds land to pay the tax at the flat rate prescribed whether or not he makes any income out of the property, or whether or not the property is

capable of yielding any income¹⁶. If they cannot afford the tax, the property is liable to be sold, in due process of law, for realization of the public demand¹⁷. It is but natural that while paying taxes, there is always an element of hardship for a taxpayer in discharging his or her liability so created by the taxing statute; but this is inevitable in every taxation law, and this within itself is no ground to struck down a taxing law. The quantum of tax, levied by the taxing statute, the conditions subject to which it is levied, the manner in which it is sought to be recovered, are all matters within the competence of the Legislature, and in dealing with the contention raised by a citizen that the taxing statute contravenes any Article of the Constitution, Courts would naturally be circumspect and cautious¹⁸. Again in *Elahi Cotton (Supra)*, the Hon'ble Supreme Court has dealt with the argument also raised herein on behalf of the Petitioners that the impugned levy is confiscatory in nature as it is demanding tax beyond the capacity of a tax-payer inasmuch as there is no corresponding income of the tax-payer to pay such a tax. Over there the argument was that losses were being suffered continuously by various tax-payers, whereas, the levy of presumptive tax or minimum tax under Section 80-C, 80-CC and 80-D of the then Income Tax Ordinance, 1979, was confiscatory and it was observed by the Hon'ble Supreme Court that *"Since there is a presumption in favour of legislative competence as held in a number of judgments referred to hereinabove, the burden to show that the impugned taxes are confiscatory or expropriatory, was on the appellants. In our view, they have failed to bring on record any reliable material on the basis of which it can be concluded that the same are confiscatory or expropriatory"*. It was further held that *"The question, as to whether a particular tax is confiscatory or expropriatory, is to be determined with reference to the actual earning or earning capacity of an average prudent successful entrepreneur in a particular trade or business. The fact that a particular assessee has suffered loss/losses during certain assessment years, is not germane to the above question"*. Therefore, in our considered view, the present levy cannot be declared as ultra vires to the Constitution merely on the ground that it is confiscatory in nature.

(C) LEGISLATIVE COMPETENCE

¹⁶ AIR 1961 SC 552

¹⁷ AIR 1961 SC 552

¹⁸ Rai Ramakrishna v. State of Bihar (1963) 50 ITR 171

12. Lastly, coming to issue regarding competency of the Federal Legislature, the case of the Petitioners is primarily based on the ground that the Federal Legislature has no jurisdiction or authority or competence to levy any tax on immovable property in terms of Entry 50 as above. According to them post 18th amendment, this authority now vests exclusively in the Provincial Legislature, whereas, in essence, the impugned levy is in fact a tax on property and not a tax on any income generated by the Petitioners. On the other hand, the case of the Respondent / Federation is that it is not a tax falling within Entry 50 *ibid*; but it is a case of deemed income on a resident taxpayer falling within the competence of the Federal Legislature under Entry 47 of the Fourth Schedule to the Constitution. From perusal of Section 7E *ibid*, it appears that firstly, it is a provision which has been incorporated in the Income Tax Ordinance 2001 by way of Finance Act, 2022, and provides that resident person shall be treated to have derived, as income chargeable to tax under this section, an amount equal to five percent of the fair market value of capital assets situated in Pakistan held on the last day of tax year. It is not denied that a tax on income can be levied by the Federal Legislature under Entry 47 *ibid*. Now what is to be seen is that whether an income could be deemed to have arisen to a resident taxpayer so as to levy a tax on such income. The concept of deemed income is not alien to the taxation laws in the country including the Income Tax Act, 1922, the Income Tax Ordinance 1979 and presently the Income Tax Ordinance, 2001 and this concept of deemed income has been accepted and approved, whereby, the Courts have upheld such deemed income for the purposes of levy of tax as being *tax on income*.

13. In the Indian Constitution of 1949, there exists Entry 82¹⁹ of List I of the Seventh Schedule which is identical to our Entry 47 *ibid*, whereas, Entry 49²⁰ of List II of the Seventh Schedule to their Constitution is more or less similar to our Entry 50 *ibid*. In the case reported as **Bhagwan Dass Jain v Union of India (AIR 1981 SC 907)**, the issue for consideration before the Supreme Court of India was whether it is open to the Income-tax Officer while computing the liability of an assessee to tax under the Income-tax Act 1961 to include in the income of the assessee any amount calculated in accordance with Section 23(2) of the Act in respect of a house in the occupation of the assessee for the purposes of his own residence. It was contended that inclusion of any amount under

¹⁹ 82. Taxes on income other than agricultural income.

²⁰ 49. Taxes on lands and buildings.

Section 23(2) of the Act in his income was unconstitutional as there could be no income at all in such a case accruing to him in the true sense of that term, the liability that was sought to be imposed under the Act in respect of his residential house was therefore, in its pith and substance a tax on building falling under Entry 49 of List II of the Seventh Schedule to the Constitution and hence Parliament could not impose the said liability under a law made in exercise of its legislative power under Entry 82 of List I of the Seventh Schedule to the Constitution which authorized it only to levy taxes on income other than agricultural income. The Indian Supreme Court didn't agree with this proposition and held that the tax levied was on the income (though computed in an artificial way) from house property and not on house property; hence, Entry 49 of List II of the Seventh Schedule was not attracted. Similar is the situation in the instant matter, as apparently, the tax is on the deemed income and not on the immoveable property as contended. The relevant finding of the Indian Supreme Court is as under;

13. There is one other circumstance which persuades us to take the view that computation of income for purposes of levy of income tax in accordance with Section 23(2) of the Act is justifiable under Entry 82 of List I of the Seventh Schedule to the Constitution. It is to be borne in mind that the Government of India Act, 1935 was enacted when the Indian Income-tax Act, 1922 was in force. Section 9 of the Indian Income-tax Act, 1922 provided for levy of income tax on the basis of the bona fide annual value of the property even when it was in the occupation of the assessee for the purposes of his own residence. While enacting entry 54 of list I of the Seventh Schedule to the Government of India Act, 1935, the British Parliament must have had in its view the Indian Income-tax Act, 1922 which was probably the only law relating to tax on incomes in force in British India then. Similarly, the Constituent Assembly while enacting Entry 82 of List I of the Seventh Schedule to the Constitution must have understood that the word 'income' used in that Entry would in any event include within its scope all items which came within the definition of income and were subjected to charge in the Indian Income-tax Act, 1922 which was in force at the time the Constitution was adopted. That the Constitution makers had the Indian Income-tax Act, 1922 in their view is borne out from Article 270(1) of the Constitution which provides for collection of taxes on income by the Government of India and distribution thereof between the Union and the States, Article 366(1) which defines 'agricultural income' as agricultural income as defined for the purposes of the enactments relating to Indian Income-tax and Article 366(29) which defines 'tax on income' as including a tax in the nature of an excess profits tax. In the circumstances it would not be wrong to construe the word 'income' in Entry 82 as including all items which were taxable under the contemporaneous law relating to tax on incomes which was in force at the time when the Constitution was enacted when as observed by this Court in the case of Navinchandra Mafatlal (supra) the word 'income' in Entry 82 is capable of a wider meaning than what was given to it in the Indian Income-tax Act, 1922 or the English Act of 1918.

14. Even in its ordinary economic sense, the expression 'income' includes not merely what is received or what comes in by exploiting the use of a property but also what one saves by using it oneself. That which can be converted into income can be reasonably regarded as giving rise to income. The tax levied under the Act is on the income (though computed in an artificial way) from house property in the above sense and not on house property. Entry 49 of List II of the Seventh Schedule to the Constitution is not, therefore, attracted. The levy in question squarely falls under Entry 82 of List I of the Seventh Schedule to the Constitution.

14. Insofar as concept of deemed income under our tax laws is concerned, it would be of relevance to note that it was introduced through insertion of Section 80(C) Section 80(D) and 80(DD) in the Income Tax Ordinance, 1979 which was impugned by the taxpayers in the High Courts of the country and eventually, it was decided by the Hon'ble Supreme Court in the case of Elahi Cotton supra. As a matter of fact, the levy was sustained by the High Court of Sindh²¹ as well as learned Lahore High Court²² and thereafter, in appeal it was also upheld by the Hon'ble Supreme Court. It may also be of relevance to observe that time and again the judgment in Elahi Cotton supra is cited and in fact, in this matter it was relied upon by both the sides by referring to various sub-paras of Para 31 and by making an argument in support of their contention respectively. However, we may say that this is least impressive and does not assist the Court in any manner. What has been overlooked by respective Counsels is that firstly, what was the proposition of law before the Hon'ble Supreme Court; and secondly, what had been finally decided therein. The question was that whether there could be any concept of deemed income when it had not been received in actual; and whether there could be any minimum tax or presumptive tax on income. This was, in a simple and plain language, the gist of the issue involved. And nothing beyond that. As to Para 31 it may further be observed that the Hon'ble Supreme Court after a thread bare examination of the arguments and the case law relied upon by the respective parties enunciated certain principles of law; however, at the same time while dismissing the Appeals it was observed that they do not support the case of the Appellant / taxpayers and ultimately the levy was upheld in the following manner.

32. We have summarized hereinabove in para. 31 the ratio decidendi of the above discussed cases and certain pertinent observations made therein. A perusal of above sub-paras. (i) to (xxx) of para. 31 indicates that the 'same do not advance the case of the appellants. On the contrary, they reinforce the principle of law that the Legislature, particularly in economic activities, enjoys a wide latitude in the matter of selection of persons, subject-matters, events etc., for taxation. the presumption is in favour of the validity of the legislation. The burden to prove that the same is invalid is on the person who alleges it.

However, one can urge that the general observations contained in sub paras. (xxxi) to (xxxiv) of para. 31 lend support to some extent to the appellants' case. However, it should not be overlooked that in none of the cases from the judgments of which the above observations have been lifted the question, as to whether there can be presumptive tax or the minimum tax, in view of entries 47 and 52 of the Legislative List, was in issue. In this view of the matter, it would be inappropriate to apply the tests traditionally prescribed by the Income Tax Act and/or any other statute.

The Indian Supreme Court in the three cases falling in the first category mentioned in para. 25(i) hereinabove upheld the levy of tax on expenditure, hotel receipts and luxuries for the reasons already discussed hereinabove in para.26. In the cases

²¹ Pakistan Burmah Shell Limited v Federation of Pakistan (1998 PTD 1804)

²² Aisha Spinning Mills Limited v Federation of Pakistan (1995 PTD 493)

falling in the second category referred to hereinabove in para.25(ii) which consists of six cases, the vires of newly added sections 44-AC and 206-C of the Indian Income Tax Act were in issue. The matter eventually was taken up by the Indian Supreme Court in the case of Sanyasi Rao (supra), which has been dealt with in detail with reference to the contentions of the learned counsel for the appellants herein below in para. 44. The cases falling under the above category do not advance the case of the appellants.

As regards the cases covered by the third category and which comprise 14 cases mentioned hereinabove in para. 25(iii), it may be stated that the learned counsel for the appellants have heavily relied upon the two cases, namely, the case of Kunnathat Thuni Moopil Nair etc. (supra) and the case of State of Kerala v. Haji K. Kutty Nalia and others (supra) mentioned in para. 28(ii) and (viii) respectively', which have again been dealt with herein below in para 46 with reference to the submissions made by the learned counsel for the appellants. The remaining cases of the above category do not support the case of the appellants.

It may further be stated that the three cases of the Privy Council referred to hereinabove in para. 28 and also herein below in para. 42 need no further discussion. However, in one of the above three cases, namely, in the case of King v. Canedonis Collieries (supra), observations contained in above sub para. (xxxiv) of para. 31 were made namely, that "there is a marked distinction between a tax on gross revenue and a tax on income, which for taxation purposes means gains and profits and that there may be considerable gross revenues but no income taxable by an income-tax in the accepted sense". The above observations are to be viewed with reference to the above context in which they were made, namely, the legislative power inter se between the Dominion and the Provinces. The question, whether there can be presumptive tax and/or minimum tax was not in issue which. are comparatively modern concepts. The Indian Supreme Court in the Elal Hotel & Investment Ltd. (supra) held that the tax on chargeable receipts under the Hotel Receipts Tax Act, 1980, was valid.

As regards cases of Pakistani origin referred to hereinabove in para. 29, it may be observed that the learned counsel for the appellants heavily relied upon the case of Government of Pakistan and others v. Muhammad. Ashraf and others (supra) mentioned in sub-para. (viii) of para. 29 hereinabove, the same has been again dealt with herein below in para. 44. Reliance was also placed by the learned counsel for the appellants on certain observations in the case of Pakistan Industrial Development Corporation v. Pakistan (supra) mentioned at para.29(vii) hereinabove, particularly on the general observation that "thus the deeming provision in section 4 of the Act By this provision anything which is not income cannot be treated as income Before charging tax an assessee must be shown to have received income or it has arisen and accrued or deemed to be so", (which has been referred to hereinabove in sub para. (xxxiii) of para. 31).

The above observations no doubt seemingly support the learned counsel for the appellants, but the same are to be viewed with reference to the context in which they were made, namely, whether the definition of income as extended by newly-added section 2(6-C) of the late Act, whereby even free reserves exceeding paid-up ordinary share capital of the company as on the last day of the previous year, was included in the income. The above provisions were not declared ultra vires by this Court in the above report. Furthermore, the above general observation founded on traditional approach cannot be pressed into service to examine the Constitutional validity of the above three impugned sections.

33. We may point out that in most of the above-cited cases the Court had upheld the validity of the impugned legislation levying taxes. In the first category which consists of three cases of the Indian Jurisdiction mentioned in para. 25(i) hereinabove, the Indian Supreme Court upheld the levy of tax on expenditure, hotel receipts, and luxuries for the reasons already discussed in para. 26 hereinabove.

It may further be observed that the cases falling under the second category referred to in para. 25(ii) have already been dealt with hereinabove in para. 27. The case of Sanyasi Rao (supra) decided by the Indian Supreme Court; which has some relevance to the controversy in issue, has again been dealt with herein below in para. 44 and, therefore, need no further discussion.

It may be stated that the third category of cases of Indian Jurisdiction referred to in para. 25(iii) hereinabove comprises 14 cases, the detail of which is given in para.28 hereinabove. It is not necessary to deal with each of them as they have already been dealt with hereinabove in the above para. However, we may again refer to some of the above cases heavily relied upon by the learned counsel for the appellants.

34. Keeping in view the above case-law and the treatises and the aforesaid legal inferences drawn therefrom, we may now revert to the question of vires of impugned sections. It may again be observed that the power to levy taxes is a sine qua non for a State. In fact, it is an attribute of sovereignty of a State. It is mandatory requirement of a State as it generates financial resources which are needed for running a State and for achieving the cherished goal, namely, to establish a welfare State. In this 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 one single entry. It is needless to reiterate that it is a well-settled proposition of law that an **entry** in the Legislative List must be given a very wide and liberal interpretation. The word "income" is susceptible as to include not only what is in ordinary parlance it conveys or it is understood, but what is deemed to have arisen or accrued. It is also manifest that income-tax is not only levied in the conventional manner i.e., by working out the net income after adjusting admissible expenses and other items, but the same may also be levied on the basis of gross receipts, expenditure etc. There are new species of income-tax, namely, presumptive tax and minimum tax.

15. From the above observations and the conclusion, it clearly reflects that any reliance by the Petitioners Counsel on Para 31 and its sub-paras in support of their respective contention is not in accordance with what has been finally held by the Hon'ble Supreme Court. On the other hand, in fact, it is the inverse and supports the case of Respondents as to validity of the impugned levy. The following observations of the Hon'ble Supreme Court while upholding the said levy which are relevant for the present purposes reads as under: -

(ix) 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 a Constitutional provision.

(x) That as per dictionary the word 'income' means "a thing that comes in". Its natural meaning embraces any profit or gain which is actually received. However, while construing the above word used in **an entry** in a legislative list, the above restricted meaning cannot be applied keeping in view that the allocation of the subjects to the lists is not by way of scientific or logical definition but by way of mere simplex enumeration of broad categories.

(xi) That the expression "income" includes not merely what is received or what comes in by exploiting the use of a property but also what one saves by using it oneself. For example, use of a house by its owner.

(xii) That what is not "income" under the Income Tax Act can be made "income" by a 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.

(xvii) That generally the effect of a deeming provision in a taxing statute is that it brings within the tax net an amount which ordinarily would not have been treated as an income. In other words, it brings within the net of chargeability income not actually accrued but which supposedly to have accrued notionally.

(xviii) That when a statute enacts that something shall be deemed to have been done which in fact and in truth was not done, the Court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to.

(xix) That where a person is deemed to be something the only meaning possible is that whereas he is not in reality that something, the Act required him to be treated as he were with all inevitable corollaries of that state of affairs.

16. Therefore, insofar as the concept of deemed income is concerned, it is not in dispute that it is an approved concept of taxation and is not dependent on the actual amount of money or income being received by a taxpayer. The best example which has been dealt with in respect of a deemed income in India as well as Pakistan, is in respect of the annual rental income from a property whether it has been rented out by a taxpayer or otherwise. Time and again disputes had arisen as to the actual income received or receivable as well as concealment by the taxpayer in respect of rent from the property and therefore, the legislature introduced a concept of deemed income, whereby, tax was levied on a fixed amount of income, whether or not the property was being let out; or the taxpayer was actually receiving such income. Insofar as the present levy is concerned, from perusal of Section 7E *ibid*, it clearly reflects that it is not a tax on property *per-se*; but a tax on deemed income for holding of a capital asset as defined in Section 7E *ibid*, along with the exceptions and or exemptions as are also applicable to the Petitioners. As we understand, in essence, it is a tax on the income being deemed from such immoveable properties and in that case, it would clearly fall within Entry 47 of the Federal Legislative List as provided under the Fourth Schedule to the Constitution. The argument that it is a tax on property; hence, will fall under Entry 50 *ibid*; and then it can only be levied by the Provincial Legislature, if at all, is misconceived and not tenable inasmuch as no tax is being levied on the property itself; rather it is a tax on deemed income of the property. As to the argument that a tax has been levied without there being any transaction not resulting in any income, it would suffice that again the same does not appear to be a correct approach as apparently holding of property beyond the threshold as provided in Section 7E(2)(g) is by itself a transaction which has been deemed to be an income within the ambit of Section 7E *ibid*. Similarly, the argument that a transaction only occurs when an actual amount of income has been received is also misconceived as apparently a deemed income concept has been upheld by the Hon'ble Supreme Court in *Elahi Cotton* case and we need not go any further to elaborate the said concept of deemed income which apparently is an income, notwithstanding that it is being received in terms

of money or otherwise. It is a fictional income concept, and if at all, it is to be relatable to an actual transaction or an attempt to generate an income, as contended, it would then not be an income deemed to have arisen. Deemed Income of a tax-payer is always not an actual income; hence, if the conditions of an enactment are satisfied, it is deemed income, irrespective of the actual transaction. This is what the concept of a deemed income is. Any other interpretation and meaning would not be a deemed income; but an actual income. A fictional income is not needed to create a situation which already exists in reality. It is an income which is deemed to have arisen and that is all. Once it is so, then any other relative happenings are materially irrelevant. The definition of income is an inclusive definition; it enlarges the meaning of income. An income from property which has been made liable to tax is not its actual income in money but an artificial or statutory income as explained in the impugned section 7E of the Ordinance. In fact, by way of insertion of this Section another head of income has been created; though fictionally. Therefore the fact that the owner of the property receives no income in fact or even that there is no possibility of his receiving an income is irrelevant for the consideration of the question as to what the artificial or statutory income of an assessee is from property²³. Fictions always conflict with reality, whereas presumptions may prove to be true²⁴. Legal fictions create an artificial state of affairs by a mandate of the legislature. They compel everybody concerned including the courts to believe the existence of an artificial state of facts contrary to the real state of facts. When a fiction is created by law, it is not open to anybody to plead or argue that the artificial state of facts created by law is not true, barring the only possible course if at all available is to question the constitutionality of the fiction²⁵.

17. One of the petitioners Counsel²⁶ had vehemently relied upon the case of PIDC (Supra) in support of the contention that the concept of deemed income has not been approved by the Hon'ble Supreme Court. However, this contention is misconceived inasmuch as the case of Elahi Cotton (Supra) is later in time. Moreover, in Elahi Cotton (Supra) the case of PIDC (Supra) has been discussed and it is observed that while dismissing the above appeal it was held that the controversy, whether amount of free reserves could be treated as income, was not involved as

²³ D. M. Vakil vs. Commissioner of Income Tax [1946] 14 ITR 298 (additional note by M.C. Chagla, J)

²⁴ Vermeer-Kunzli, Annemarieke, As If: The Legal Fiction in Diplomatic Protection, European Journal of International Law (2007)

²⁵ Bhuwalka Steel v Union of India (2017) 5 SCC 598

²⁶ Ovais Ali Shah

the levy challenged by the appellant was not income-tax but was a super-tax charged under section 55 of the late Act. Here this question is not before us; hence, any passing remarks in the case of *PIDC (Supra)* will not be relevant for the present purposes and are of no help to the case of the petitioner before us. It was further observed in *PIDC (Supra)* at Para 9 *"It is only if the income is received arises or accrues or is deemed to receive, arise or accrue when an assessee is subjected to tax. The deeming provision presupposes accrual of income to the assessee but by fiction of law shifts the 'locale of accrual of the income'. A deeming clause makes a thing to be as provided by Statute though in reality it is not so. According to Privy Council in C.I.T. v. Bombay Trust Corporation 4 ITC 312, the term "deemed to receive or accrue" conveys the meaning that in reality it is not so but the Statute treats it as if it were".* By placing reliance on Kanga and Palkhiwala on Income Tax, Volume I, VIIth Edition, it was further observed that *"Thus, the phrase deemed to accrue or arise to him in India during such year' and the corresponding phrase with reference to receipt in this section, involve our possible concepts; (a) artificial accrual or receipt, (b) artificial place of accrual or receipt, (c) artificial chargeability of a person other than the actual owner of the income, and (d) artificial year of taxability."* The Hon'ble Supreme Court in *Elahi Cotton (Supra)* has dealt with this particular finding by observing that (already reproduced hereinabove), *"The above observations no doubt seemingly support the learned Counsel for the appellants, but the same are to be viewed with reference to the context in which they were made, namely, whether the definition of income as extended by newly added section 2(6-C) of the late Act, whereby even free reserves exceeding paid-up ordinary share capital of the company as on the last day of the previous year, was included in the income. The above provisions were not declared ultra vires by this Court in the above report. Furthermore, the above general observation founded on traditional approach cannot be pressed into service to examine the Constitutional validity of the above three impugned sections"*.

18. Therefore, reliance placed on the case of *PIDC (Supra)* is of no help to the case of the Petitioners. It is settled law that Income-tax is a tax on a person in relation to his income. The tax is not imposed on income generally; it is imposed on the income of a person, natural or artificial, whereas, the assessment has to be made against a person, and the tax has to be collected from the assessee; the tax is not made a charge on the income upon which it is levied, and broadly speaking, it is accurate to

say that income-tax is a tax imposed upon a person in relation to his income.²⁷"

19. Lastly an argument was also made as to the inability of FBR to make arrangements to collect the impugned levy as no modalities have been made public, it would suffice to observe that per settled law once the Court finds that a fiscal statute does not suffer from any Constitutional infirmity, it is not supposed to entangle itself with the technical questions as to the scope and modality of its working etc. The above questions pre-eminently deserve to be decided by the Government which possesses of experts` services and the relevant information which necessitated imposition of the tax involved unless the same suffers from any legal infirmity which may warrant interference by the Court²⁸. Additionally, while examining a fiscal statute the Court should not be carried away with the fact that the same may be disadvantageous to some of the tax-payers. If such a fiscal statute is beneficial to the country on the whole, the individuals' interest should yield to the nationals' interest²⁹.

20. From perusal of the above case law as well as the dicta laid down by the Hon'ble Supreme Court in the case of Elahi Cotton (Supra), and in view of hereinabove facts and circumstances of these cases, after hearing all the learned Counsel as well as learned Assistant Attorney General, we had come to the conclusion that no exception can be drawn to the competence of the Federal Legislature while introducing Section 7E through Finance Act, 2022, in the Ordinance, whereas, the impugned levy is neither ultra vires to the Constitution; nor it is confiscatory or discriminatory; hence, the Federal Legislature is fully competent to impose tax on deemed income pursuant to Section 7E of the Ordinance, and therefore, by means of a short order dated 28.10.2022 all listed Petitions were dismissed and these are the reasons thereof.

J U D G E

J U D G E

Arshad/

²⁷ Beaumont, C.J. in re: Patiala State Bank's case AIR 1941 Bombay 94

²⁸ Elahi Cotton (Supra)

²⁹ Elahi Cotton (Supra)