

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C.P No. D- 7517 of 2022

Date _____ Order with signature of Judge _____

Direction.

1. For order on Misc. No. 33249/22.
2. For order as to non-prosecution.

20.12.2022.

Mr. Muhammad Usman Alam, Advocate for Petitioner.
Mr. Qazi Ayazuddin, Assistant Attorney General.

1. Through this application, it has been prayed that this Petition may be de-tagged from C.P No. D-5842 of 2022 and other connected matters as this Petition pertains to Section 4B of the Income Tax Ordinance, 2001 and not Section 4C.

We have perused the application as well as Memo of Petition and it appears that Petitioner's contention is correct. Accordingly, the application is allowed. This Petition is de-tagged from C.P No. D-5842 of 2022 and other connected matters.

Learned Counsel submits that instant petition can be disposed of in terms of Judgment dated 21.07.2020, passed by a Division Bench of this Court in C.P No.D-1849/2016 & others reported as **2020 PTD 1742 (Messrs HBL Stock Fund through Trustee and others vs. Additional Commissioner Inland Revenue and others)**, whereby, levy of Super Tax under Section 4B of the Income Tax Ordinance, 2001 imposed through Finance Act, 2015, has been declared to be intra-vires to the Constitution. Learned Assistant Attorney General does not oppose disposal of the instant petition in similar terms. Accordingly, by consent, instant petition is disposed of in terms of Para-17 of the above order, which reads as under:-

- 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.*

The petition stands disposed of in the aforesaid terms along with listed application(s).

J U D G E

J U D G E

Ayaz P.S.