

IN THE HIGH COURT OF SINDH, KARACHI

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

Sr. No.	Constitution Petition Nos.	Parties Names.
1.	C.P No. D- 4942/2022	Irfan Hussain Halai & others VS Federation of Pakistan & another.
2.	C.P. No.D- 5116/2022	Irfan Ahmed and Others VS Fed. of Pakistan and Others
3.	C.P. No.D- 5117/2022	Khurram Inam & Others VS Fed. of Pakistan and Others
4.	C.P. No.D- 5118/2022	Rahman Naseem and Others VS Fed. of Pakistan and Others
5.	C.P. No.D- 5119/2022	Fazal Ahmed Sheikh and Others VS Fed. of Pakistan and Others
6.	C.P. No.D- 5120/2022	Shahbaz Yasin Malik & Ors VS Fed. of Pakistan and Others
7.	C.P. No.D- 5122/2022	Perdeep Kumar VS Fed. of Pakistan and Others
8.	C.P. No.D- 5124/2022	Haresh Kumar VS Fed. of Pakistan and Others
9.	C.P. No.D- 5204/2022	Masarrat Hussain VS Fed. of Pakistan and Others
10.	C.P. No.D- 5216/2022	Sharique Azim Siddiqui VS Fed. of Pakistan and Others
11.	C.P. No.D- 5252/2022	Bakhtiar Khan VS Fed. of Pakistan and Others
12.	C.P. No.D- 5254/2022	Naveed Ahmed Khan VS Fed. of Pakistan and Others
13.	C.P. No.D- 5275/2022	Shamim Ahmed & Others VS Fed. of Pakistan and Others
14.	C.P. No.D- 5276/2022	Osman Asghar Khan & another VS Fed. of Pakistan and Others
15.	C.P. No.D- 5323/2022	Rasheed Batkar VS Fed. of Pakistan and Others
16.	C.P. No.D- 5324/2022	Bilal Barkat VS Fed. of Pakistan and Others
17.	C.P. No.D- 5416/2022	Yousuf Abdullah & Another VS Fed. of Pakistan and Others
18.	C.P. No.D- 5417/2022	Amer Abdullah & Another VS Fed. of Pakistan and Others
19.	C.P. No.D- 5418/2022	Nadeem Abdullah and Another VS Fed. of Pakistan and Others
20.	C.P. No.D- 5419/2022	Muhammad Abdullah VS Fed. of Pakistan and Others
21.	C.P. No.D- 5420/2022	Shahid Abdullah VS Fed. of Pakistan and Others
22.	C.P. No.D- 5421/2022	Muhammad Bashir and Another VS Fed. of Pakistan and Others
23.	C.P. No.D- 5422/2022	Shaukat Ellahi Shaikh and Others VS Fed. of Pakistan and Others
24.	C.P. No.D- 5423/2022	Jawaid Iqbal and Others VS Fed. of Pakistan and Others
25.	C.P. No.D- 5425/2022	Miqdad Mohammed and Others VS Fed. of Pakistan and Others

26.	C.P. No.D- 5426/2022	Azam Faruque and Others VS Fed. of Pakistan and Others
27.	C.P. No.D- 5450/2022	Shaikh Muhammad Tanveer and Others VS Fed. of Pakistan and Others
28.	C.P. No.D- 5452/2022	Rizwan Ahmed Khan VS Fed. of Pakistan and Others
29.	C.P. No.D- 5454/2022	Abida Khalil and Others VS Fed. of Pakistan and Others
30.	C.P. No.D- 5473/2022	Habibullah VS Fed. of Pakistan and Others
31.	C.P. No.D- 5504/2022	Ahmed Muhammad VS Fed. of Pakistan and Others
32.	C.P. No.D- 5505/2022	Ms. Almas Maqsood VS Fed. of Pakistan and Others
33.	C.P. No.D- 5530/2022	Saqib Saeed Masood and Others VS Fed. of Pakistan and Others
34.	C.P. No.D- 5543/2022	Omair Rehman and Others VS Fed. of Pakistan and Others
35.	C.P. No.D- 5544/2022	Afaq Ahmed Khan VS Fed. of Pakistan and Others
36.	C.P. No.D- 5545/2022	Sultan Waqar & Others VS Fed. of Pakistan and Others
37.	C.P. No.D- 5546/2022	Rabia Allana and Others VS Fed. of Pakistan and Others
38.	C.P. No.D- 5563/2022	Muhammad Iqbal Ahmed VS Fed. of Pakistan and Others
39.	C.P. No.D- 5571/2022	M. Faisal Pervaiz & Others VS Fed. of Pakistan and Others
40.	C.P. No.D- 5586/2022	Asif Riaz and Others VS Fed. of Pakistan and Others
41.	C.P. No.D- 5588/2022	Muhammad Yasin VS Fed. of Pakistan and Others
42.	C.P. No.D- 5603/2022	Muhammad Nadeem Ghani and Others VS Fed. of Pakistan and Others
43.	C.P. No.D- 5608/2022	Shahzad Shakoor and Others VS Fed. of Pakistan and Others
44.	C.P. No.D- 5609/2022	Farooq uz Zaman Khan and Others VS Fed. of Pakistan and Others
45.	C.P. No.D- 5610/2022	Khaleeq ur Rehman and Others VS Fed. of Pakistan and Others
46.	C.P. No.D- 5611/2022	Babar Ali Lakhani and Others VS Fed. of Pakistan and Others
47.	C.P. No.D- 5612/2022	Murtaza Ajaz Saya VS Fed. of Pakistan and Others
48.	C.P. No.D- 5619/2022	Muhammad Nasir Monnoo and Others VS Fed. of Pakistan and Others
49.	C.P. No.D- 5624/2022	Hawa Hameed Adamjee & Others VS Fed. of Pakistan and Others
50.	C.P. No.D- 5626/2022	Saghir Ahmed Khan Afridi VS Fed. of Pakistan and Others
51.	C.P. No.D- 5628/2022	Muhammad Yahya and Others VS Fed. of Pakistan and Others

52.	C.P. No.D- 5630/2022	Mazher Ali Jumani and Others VS Fed. of Pakistan and Others
53.	C.P. No.D- 5636/2022	Irshad Adamjee & Another VS Fed. of Pakistan and Others
54.	C.P. No.D- 5646/2022	Aameer Mustaaly Karachiwalla VS FBR and Another
55.	C.P. No.D- 5657/2022	Muhammad Aamir & Another VS Fed. of Pakistan and Others
56.	C.P. No.D- 5661/2022	Sher Muhammad Mugheri VS Fed. of Pakistan and Others
57.	C.P. No.D- 5662/2022	Deepak Kumar VS Fed. of Pakistan and Others
58.	C.P. No.D- 5676/2022	Sohail Tai VS Fed. of Pakistan and Others
59.	C.P. No.D- 5700/2022	Rizwan Diwan and Others VS Fed. of Pakistan and Others
60.	C.P. No.D- 5711/2022	Amir Noorani VS Fed. of Pakistan and Others
61.	C.P. No.D- 5730/2022	Aly Mehboob Rawjee VS Fed. of Pakistan and Others
62.	C.P. No.D- 5748/2022	Afsheen VS Fed. of Pakistan and Others
63.	C.P. No.D- 5749/2022	Nargis VS Fed. of Pakistan and Others
64.	C.P. No.D- 5750/2022	Nasreen Bano VS Fed. of Pakistan and Others
65.	C.P. No.D- 5751/2022	Noman VS Fed. of Pakistan and Others
66.	C.P. No.D- 5752/2022	Muhammad Nadeem Qadri VS Fed. of Pakistan and Others
67.	C.P. No.D- 5753/2022	Idrees VS Fed. of Pakistan and Others
68.	C.P. No.D- 5756/2022	Muhammad Kasim VS Fed. of Pakistan and Others
69.	C.P. No.D- 5757/2022	Muhammad Hussain Hashim VS Fed. of Pakistan and Others
70.	C.P. No.D- 5758/2022	Ahmed Ebrahim Hasham VS Fed. of Pakistan and Others
71.	C.P. No.D- 5759/2022	Khurram Kasim VS Fed. of Pakistan and Others
72.	C.P. No.D- 5774/2022	Abdul Majeed Abdul Latif and Others VS Fed. of Pakistan and Others
73.	C.P. No.D- 5782/2022	Muhammad Faisal Ahmed VS Fed. of Pakistan and Others
74.	C.P. No.D- 5784/2022	Muhammad Aurangzeb VS Fed. of Pakistan and Others.
75.	C.P. No.D- 5787/2022	Asif Jooma VS Federation of Pakistan & Others
76.	C.P. No.D- 5791/2022	Hassan Imam Kazmi VS Federation of Pakistan & Others
77.	C.P. No.D- 5805/2022	Ahmed Ali Bawany VS Fed. of Pakistan and Others
78.	C.P. No.D- 5806/2022	Zaibun Ali VS Fed. of Pakistan and Others
79.	C.P. No.D- 5807/2022	Muhammad Omar Bawany VS Fed. of Pakistan and Others
80.	C.P. No.D- 5808/2022	Shahida VS Fed. of Pakistan and Others
81.	C.P. No.D- 5809/2022	Imran Shaukat Ahmed VS Fed. of Pakistan and Others

82.	C.P. No.D- 5813/2022	Muhammad Umar Hayat Chohan and Others VS Fed. of Pakistan and Others
83.	C.P. No.D- 5816/2022	Rahma Ibrahim VS Fed. of Pakistan and Others
84.	C.P. No.D- 5824/2022	Syed Ghulam Ali Shah and Others VS Fed. of Pakistan and Others
85.	C.P. No.D- 5835/2022	Saifuddin Sistanwala VS Fed. of Pakistan and Others
86.	C.P. No.D- 5836/2022	Aqueel Ebrahim Merchant VS Fed. of Pakistan and Others
87.	C.P. No.D- 5837/2022	Kamran Yousuf Mirza and Another VS Fed. of Pakistan and Others
88.	C.P. No.D- 5838/2022	Zeeshan Aftab VS Fed. of Pakistan and Others
89.	C.P. No.D- 5890/2022	Murtaza Akmal Siddiqi VS Federation of Pakistan & Others
90.	C.P. No.D- 5894/2022	Azim Ahmed and Others VS Fed. of Pakistan and Others
91.	C.P. No.D- 5896/2022	Usama Zaki VS Fed. of Pakistan and Others
92.	C.P. No.D- 5897/2022	Abdul Jabbar A. Motiwala VS Fed. of Pakistan and Others
93.	C.P. No.D- 5927/2022	Ms. Sabrina Dawood VS Federation of Pakistan & Others
94.	C.P. No.D- 5928/2022	Abdul Samad Dawood VS Federation of Pakistan & Others
95.	C.P. No.D- 5950/2022	Usman Sadiq and Others VS Fed. of Pakistan and Others
96.	C.P. No.D- 5964/2022	Mrs. Tasneem Sultana Nakhuda VS Fed. of Pakistan and Others
97.	C.P. No.D- 5966/2022	Asad Alam Niazi VS Fed. of Pakistan and Others
98.	C.P. No.D- 5986/2022	Ghaffar A. Habib VS Federation of Pakistan & Others
99.	C.P. No.D- 5990/2022	Nazia Malik & anothe VS Fed. of Pakistan and Others
100.	C.P. No.D- 6033/2022	Abdul Qadir & Others VS Fed. of Pakistan and Others
101.	C.P. No.D- 6035/2022	Muhammad Naseem VS Fed. of Pakistan and Others
102.	C.P. No.D- 6036/2022	Ghulam Murtaza Shaikh VS Fed. of Pakistan and Another
103.	C.P. No.D- 6037/2022	Tahir Hanif VS Fed. of Pakistan and Another
104.	C.P. No.D- 6038/2022	Yasir Shafi VS Fed. of Pakistan and Another
105.	C.P. No.D- 6039/2022	Rashna Jehan Bux Gandhi VS Fed. of Pakistan and Another
106.	C.P. No.D- 6040/2022	Khurram Hanif VS Fed. of Pakistan and Another
107.	C.P. No.D- 6128/2022	Muhammad Ali Rashid & Others VS Federation of Pakistan & Others
108.	C.P. No.D- 6142/2022	Noor Muhammad & another VS Fed. of Pakistan and Others

109.	C.P. No.D- 6155/2022	Syed Hassan Ali Khan VS Fed. of Pakistan and Others
110.	C.P. No.D- 6159/2022	Syed Ahmed Ali Shah VS Fed. of Pakistan and Others
111.	C.P. No.D- 6184/2022	Kaiser Saleem Shajani and Others VS Fed. of Pakistan and Others
112.	C.P. No.D- 6218/2022	Syed Masood Abbas Jaffery VS Fed. of Pakistan and Others
113.	C.P. No.D- 6263/2022	Adil Agar VS Fed. of Pakistan and Others
114.	C.P. No.D- 6272/2022	Rukhsana A. Nancy VS Fed. of Pakistan and Another
115.	C.P. No.D- 6273/2022	Muhammad Kalim VS Fed. of Pakistan and Another
116.	C.P. No.D- 6274/2022	Hanain Raza Nancy VS Fed. of Pakistan and Another
117.	C.P. No.D- 6359/2022	Fawad Yousuf VS Fed. of Pakistan and Others
118.	C.P. No.D- 6361/2022	Mian Aurangzeb VS Fed. of Pakistan and Others
119.	C.P. No.D- 6365/2022	Shakil Ahmed VS Fed. of Pakistan and Another
120.	C.P. No.D- 6366/2022	Waqas Shakil VS Fed. of Pakistan and Another
121.	C.P. No.D- 6371/2022	Syed Irfan Mehdi VS Fed. of Pakistan and Others
122.	C.P. No.D- 6379/2022	Ms. Sayeeda Nadir Leghari VS Fed. of Pakistan and Others
123.	C.P. No.D- 6387/2022	Owais Yaqub and Others VS Fed. of Pakistan and Another
124.	C.P. No.D- 6393/2022	Javed Ahmed and Others VS Fed. of Pakistan and Another
125.	C.P. No.D- 6398/2022	Insiya Abrar Mooraj VS Fed. of Pakistan and Another
126.	C.P. No.D- 6399/2022	Muniza Shaikh VS Fed. of Pakistan and Another
127.	C.P. No.D- 6411/2022	Muleika Sayeed and Others VS Fed. of Pakistan and Others
128.	C.P. No.D- 6414/2022	Muhammad Shoaib Ismail VS Fed. of Pakistan and Another
129.	C.P. No.D- 6424/2022	Najmus Saqib VS Fed. of Pakistan and Others
130.	C.P. No.D- 6425/2022	Abdul Majeed VS Fed. of Pakistan and Others
131.	C.P. No.D- 6426/2022	Rizwan Ahmed VS Fed. of Pakistan and Others
132.	C.P. No.D- 6427/2022	Nadeem Ahmed VS Fed. of Pakistan and Others
133.	C.P. No.D- 6428/2022	Amanullah Kassim and Others VS Fed. of Pakistan and Others
134.	C.P. No.D- 6447/2022	Shaheen Amin VS Fed. of Pakistan and Others
135.	C.P. No.D- 6450/2022	Moin Muhammad Fudda VS Fed. of Pakistan and Others

136.	C.P. No.D- 6488/2022	Ali Akhai and Another VS Fed. of Pakistan and Others
137.	C.P. No.D- 6501/2022	Sadia Khan VS Fed. of Pakistan and Another
138.	C.P. No.D- 6503/2022	Irfan Patel & Another VS Fed. of Pakistan and Others
139.	C.P. No.D- 6524/2022	Muhammad Najam Ali VS Fed. of Pakistan and Others
140.	C.P. No.D- 6529/2022	Zameer Ahmed VS Fed. of Pakistan and Others
141.	C.P. No.D- 6538/2022	Amjad Sheikh VS Fed. of Pakistan and Others
142.	C.P. No.D- 6573/2022	Masood Ihsan and Others VS Fed. of Pakistan and Others
143.	C.P. No.D- 6595/2022	Mrs. Qamar Mubeen Jumani VS Fed. of Pakistan and Others
144.	C.P. No.D- 6596/2022	Faraz Mubeen Jumani VS Fed. of Pakistan and Others
145.	C.P. No.D- 6597/2022	Muhammad Mubeen Jumani VS Fed. of Pakistan and Others
146.	C.P. No.D- 6613/2022	Faraz Nafees VS Fed. of Pakistan and Others
147.	C.P. No.D- 6626/2022	Ali Ahsan Halai VS Fed. of Pakistan and Others
148.	C.P. No.D- 6640/2022	Usman VS Fed. of Pakistan and Others
149.	C.P. No.D- 6641/2022	Khursheed VS Fed. of Pakistan and Others
150.	C.P. No.D- 6642/2022	Nazia Fayaz VS Fed. of Pakistan and Others
151.	C.P. No.D- 6664/2022	Raza Baqir VS Fed. of Pakistan and Another
152.	C.P. No.D- 6665/2022	Syed Yavar Moini VS Fed. of Pakistan and Another
153.	C.P. No.D- 6671/2022	Abbas Akber Ali and another VS Federation of Pakistan & Others
154.	C.P. No.D- 6675/2022	Muhammad Amin Khanani VS Fed. of Pakistan and Others
155.	C.P. No.D- 6676/2022	Muhammad Asla Mianoor VS Fed. of Pakistan and Others
156.	C.P. No.D- 6677/2022	Muhammad Anis Mianoor VS Fed. of Pakistan and Others
157.	C.P. No.D- 6678/2022	Zainab Anis Mianoor VS Fed. of Pakistan and Others
158.	C.P. No.D- 6680/2022	Muhammad Usman Mianoor VS Fed. of Pakistan and Others
159.	C.P. No.D- 6692/2022	Noman Ashfaq VS Fed. of Pakistan and Another
160.	C.P. No.D- 6693/2022	Shamim Rahim VS Fed. of Pakistan and Another
161.	C.P. No.D- 6694/2022	Ashfaque Ahmed VS Fed. of Pakistan and Another
162.	C.P. No.D- 6695/2022	Taiq Jamoo VS Fed. of Pakistan and Another
163.	C.P. No.D- 6696/2022	Muhammad Zakaria VS Fed. of Pakistan and Another
164.	C.P. No.D- 6697/2022	Khurram Ashfaq VS Fed. of Pakistan and Another

165.	C.P. No.D- 6715/2022	Rabia Wafah Khan VS Fed. of Pakistan and Others
166.	C.P. No.D- 6781/2022	Zia Hameed VS Fed. of Pakistan and Others
167.	C.P. No.D- 6785/2022	Islam Salim VS Fed. of Pakistan and Others
168.	C.P. No.D- 6789/2022	Syed Ali Jamil Hamdani VS Fed. of Pakistan and Others
169.	C.P. No.D- 6790/2022	Muhammad Altaf VS Fed. of Pakistan and Others
170.	C.P. No.D- 6823/2022	Jahangir Abdullah Rasheed VS Fed. of Pakistan and Others
171.	C.P. No.D- 6824/2022	Shireen Rasheed VS Fed. of Pakistan and Others
172.	C.P. No.D- 6825/2022	Muhammad Bashir Kodvawala VS Fed. of Pakistan and Others

Advocates for the Petitioners

M/s. Muhammad Osman Ali Hadi, Rashid Anwar, Ovais Ali Shah, Arshad M. Tayebaly & Mr Omar Memon, Abdul Rahim Lakhani, Dr. Tariq Masood, Abid H. Shaban, Mushtaq Hussain Qazi, Jahanzeb Awan, Iqbal Salman Pasha, Ameen Mohammad Bandukda, Abdur Raafae Soori, Maryam Riaz, Wishno, , Syed Riazuddin, Muhammad Jawed Zakria, Abdul Jabbar Mallah, Atta Muhammad Qureshi, Imtiaz Ali Sahito, Saifullah Khawaja, Nahl Chamdia, Naveeda Basharat, Imtiaz Ali, Asad Manzoor Halepota, Aitezaz Manzoor Memon, Saad Fayyaz Memon, Muhammad Asad Ashfaq Tola, Muhammad Amayed Ashfaq Tola, Qazi Umair Ali, Naeem Suleman, Arshad Hussain Shehzad, Muneer Ahmed Sahito, Muhammad Aleem, Ajeet Kumar, Nadir Hussain Abro, Vishwa Mittar, Syed Muhammad Ahsan, Anwar Kashif Mumtaz, Ammar Ather Saeed, Usman Alam, Muhammad Rashid Khan Mahar, Abdul Rehman, Ms. Lubna Pervez, Shafqat Zaman, Jawaid Farooqui, Ahmed Ali Hussain, Aman Aftab, Muhammad Inzimam Sharif, Muhammad Aizaz Ahmed, Syed Hamza Ahmed Hashmi, Ghazala Rafiq, Elahi Bakhsh, Muhammad Imran Khan, Abdallah Azzaam Naqvi, Sufiyan Zaman, Muneeb uddin Qidwai, Muhammad Arshad Athar, Nasir Latif Khan, Muhammad Ahmed Masood, Muhammad Mazharul Hassan, Shams Mohiuddin Ansari, Tairmur Ali Mirza, Syed Sultan Ahmed, Muhammad Ali Aziz, Muhammad Naqqash Siddiqui, Syed Muhammad Hussain, Syed Muhammad Ahsan, Fizzah Bucha, Ovais Farooqui, Umer Ilyas, Ameer Hyder, Hamda Ali Khan, Kashan Ahmed.

Advocates for the Respondents

M/s. Dr. Shah Nawaz Memon, Ameer Bakhsh Metlo, Ameer Nausherwan Adil Memon, Ghazi

Khan Khalil, Fayyaz Ali Metlo, Asif Ali Siyal, Zohaib Ahmed, Muhammad Idrees Rahimoon, Arshad Ali Tunio, Ms. Fozia M. Murad, Faheem Raza, Dr. Huma Sodher, Abdul Razaque Panhwar, Sajjad Ali Solangi, S. Ahsan Ali Shah, Kafil Ahmed Abbasi, Hayat Muhammad Junejo, Bilal Memon, Abdul Hakeem Junejo, Abdul Sami, Shaheer Saleem Memon, Jamshed Ahmed Abbasi, Muhammad Awais, Zain Mustafa Soomro, Jazib Aftab Memon. Mr. Abdul Wahid Shar, Additional Commissioner.
Syed Yasir Shah, Assistant Attorney General.

Dates of hearing: 01.11.2022, 02.11.2022, 03.11.2022 & 08.11.2022.
Date of Judgment: 30.12.2022

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. Through these petitions, the Petitioners have challenged vires of Section 8 of the Finance Act, 2022, whereby, a tax has been levied on the value of assets at the rates specified in the First Schedule to that Section for tax year 2022 and onwards, whereas, the present challenge of the Petitioners is in respect of and only to the extent of Section 8(2)(b) i.e. levy of tax on foreign assets of a resident individual as defined in Section 8(13) (c) ibid which includes moveable and immoveable properties. The challenge is mainly on the ground that Parliament has no legislative competence to levy such a tax on foreign assets of the Petitioners.

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. Learned Counsel¹ appearing on behalf of the Petitioners have contended that the Parliament / Federal Legislature is not competent to levy this tax on immovable properties abroad; that the powers of the Parliament pursuant to 18th Amendment to the Constitution are now curtailed in respect of levying any tax on immovable properties; that even otherwise, the properties as well as other assets in question are abroad and outside

¹ (In order of arguments made) M/s Osman Ali Hadi, Dr. Tariq Masood, Abdul Rahim Lakhani, Rashid Anwar, Mushtaque Hussain Qazi, Abid Shaban, Ovais Ali Shah and Abdur Rehman Advocates

the territorial jurisdiction of Pakistan; hence it is not within the competence of the Parliament to levy any such tax in view of Article 142 of the Constitution; that once it is outside the competence of the Parliament to levy any tax on an immovable property, then the parliament cannot even legislate in respect of properties outside the territorial limits of Pakistan; that the words “not including taxes on immovable property” has to be read as a Proviso to Entry-50 of the Federal Legislative List to the 4th Schedule of the Constitution as it intends to exclude something; which but for the proviso would have otherwise been covered by Entry-50; that the use of the word “not including” qualifies generality of the main enactment by providing an exception; that all along starting from the Government of India Act, 1935 up to the 18th Amendment to the present Constitution in 2010, tax on immovable properties have always been a provincial subject and even post 18th Amendment, after insertion of the words “not including” in Entry-50 will have a consequence by specifically excluding the competence of the Parliament to legislate or impose taxes on immovable properties; that the powers of the Parliament to legislate pursuant to Article 141 of the Constitution is qualified by the words “Subject to Constitution” and it must be interpreted in a manner, which brings it in conformity with other provisions of the Constitution; that Article 141 of the Constitution does not enhance the powers conferred by the Constitution or Parliament; that Article 142(a) of the Constitution empowers the Parliament to legislate on subjects enumerated in the Federal Legislative List; whereas, Article 142(c) of the Constitution stipulates that Parliament shall not have powers to make laws in respect of any matter not provided in the Federal Legislative List; that it is only when the Parliament is competent to legislate on the Subject pursuant to the Federal Legislative List then the extent of legislation can be determined under Article 141 of the Constitution; that in the same line where the powers to legislate on a subject does not exist or has been specifically excluded, then the extent of legislation as provided under Article 141 of the Constitution is not relevant; that in terms of Article 142(d), Federal Legislature has been granted powers to legislate on any subject with respect to areas not falling within any Province; however, it specifically limits these powers by using the word “in the Federation”; hence when a subject is not within the competence of the Parliament, then the territorial limits are not of any consideration; that per settled law, the Parliament can only impose taxes in terms of Entries 43 to 53 of the said list and not otherwise, and therefore, for a tax to fall under the competence

of the Parliament pursuant to the Federal Legislative List, it must be covered by any of these Entries; that the contention of the Respondents that when certain amnesty schemes were introduced in respect of immovable properties abroad, no such objection as to the competence of the Federal Legislative was raised and Declarations were made by the Petitioners under the said Scheme; hence they are barred to raise any objection as to the competence of the Parliament is not correct inasmuch as pursuant to the said Scheme it was the income which had escaped taxation and was taxed accordingly; whereas, it was not by itself a tax on immovable property; that on the other hand under the Foreign Assets (Declaration and Repatriation) Act, 2018 (“**Foreign Assets Act**”), pursuant to Section 14 *ibid*, there was a complete protection for the taxpayer to make a declaration, and therefore, neither any further tax can be levied on such properties; nor any question could be asked from the taxpayers; that the tax in question is violating the fundamental rights of the Petitioners to acquire and hold properties as provided under Article 23 & 24 of the Constitution; that any reliance placed on Entry-58 of the Federal Legislative List by the Respondents to justify imposition of the impugned tax is misconceived and does not confer any unbridled powers; that Entry-58 cannot be used to enlarge the scope of Entry-50, which by itself restricts the powers of the Parliament in respect of taxes on immoveable property; that post 18th Amendment, the powers of the Federation or Parliament are not residuary, rather the powers of the Provinces to legislate are now residuary; that once the power to impose tax on immovable property is beyond the competence of the Parliament, then it is not relevant as to where the property is located; that per settled law, which cannot be taxed directly cannot be taxed indirectly; that under the garb of Capital Value Tax, an immovable property cannot be taxed; that even otherwise this levy is not harmonious; rather is in conflict with The Income Tax Ordinance, 2001 and so also various tax treaties; that the levy is discriminatory as it is only on individuals and not on all persons who had declared their foreign assets pursuant to the amnesty scheme, and therefore by placing reliance on the reported cases² they have prayed that

² **Mr. Muhammad Osman Ali hadi, Advocate.** *Dr. Zahid Javed Vs. Dr. Tahir Riaz Chaudhary & Others (PLD 2016 SC 637)*, *District Bar Association Rawalpindi and others Vs. Federation of Pakistan and others (PLD 2015 SC 401)*, *Baz Muhammad Kakar & Others Vs. Federation of Pakistan and Others (PLD 2012 SC 923)*, *Collector of Customs (appraisalment), Karachi & Others Vs. Messrs Abdul Majeed Khan & Others (1977 SCMR 371)*, *Messrs Independent Media Corporation (Pvt.) Ltd. Through Director Finance Vs. Province of Sindh through Chief Secretary Sindh & Others (2018 PTD 1869)*, *The Imperial Tobacco Co. of India Ltd. Vs. The Commissioner of Income Tax, South Zone, Karachi and another (PLD 1958 SC (Pak.) 125)*, *Independent Thought V. Union of India and Another (AIR 2017 SC 4904)*.

the levy in question be declared as beyond the competence of the Parliament; hence, is ultra vires to the Constitution.

3. On the other hand, Respondents' Counsel³ have controverted the arguments of the Petitioners' Counsel and have contended that after availing amnesty under the Foreign Assets Act, which was also legislated by the Parliament in respect of Immoveable Properties, the Petitioners now cannot object as to the competence of the Parliament; that the capital value of a property located abroad can be taxed by the Parliament pursuant to Articles 141 & 142 read with Article 97 of the Constitution; that even otherwise it is within the competence of Federal Legislature to levy such tax pursuant to Entry-50, which must be read along with Entry-58 of the Federal Legislative List; that admittedly provinces cannot legislate in respect of immovable properties located abroad; but the Parliament can; that within the Constitution there are various Articles, which empowers the Federation to deal with legislation beyond the territorial waters of Pakistan; that for the purposes of taxation the principle of a resident is applicable; whereas, the properties in question are declared properties in terms of the Income Tax Ordinance, 2001, the Tax and Wealth Tax Return; hence can be taxed by the Parliament; that under the Foreign Assets Act, the

Mr. Rashid Anwar, Advocate. Messrs Pak Gulf Construction Company (Pvt.) Ltd. Islamabad & Others Vs. Federation of Pakistan and Others (2020 SCMR 146), Muhammad Khalid Qureshi Vs. Province of Punjab through Secretary, Excise & Taxation Department, Lahore & Another (2017 PTD 805),

Mr. Abid H. Shaban, Advocate. Syed Muhammad Shah & Others Vs. Federal Investment Agency & Others (2017 SCMR 1218), Gul Taiz Khan Marwat Vs. The Registrar, Peshawar High Court, Peshawar and others (PLD 2021 Supreme Court 391),

Mr. Ovais Ali Shah, Advocate. Haji Muhammad Shafi & Others Vs. Wealth Tax Officer & Others (1992 PTD 726), Messrs East & West Steamship Company Vs. Pakistan & Others (PLD 1958 SC (Pak.) 41), Commissioner of Income Tax Vs. Messrs Phillips Holzman A. G. Ameerjee Valeejee & Sons, Karachi (PLD 1968 Karachi 95), Messrs I.C.C. Textile Ltd. & Others Vs. Federation of Pakistan & Others (2001 SCMR 1208), Muhammad Khan Vs. The Border Allotment Committee & Another (PLD 1965 SC 623), Pakistan Mobile Communications Ltd. & Others Vs. Pakistan / Federation of Pakistan & Others (2022 PTD 266), Zona Pakistan (Pvt.) Ltd. Vs. Province of Sindh & Others (C. P. No. D-5791/2016), Sapphire Textile Mills Limited Vs. Federation of Pakistan and Others (2021 PTD 971), Gul Taiz Khan Marwat Vs. The Registrar, Peshawar High Court, Peshawar & Others (PLD 2021 SC 391),

Dr. Tariq Masood, Advocate. Province of Sindh through Chief Secretary and others Vs. M.Q.M. through Deputy Convener and others (PLD 2014 Supreme Court 531), Government of Sindh through Secretary Health Department & others Vs. Dr. Nadeem Rizvi & others (2020 SCMR 1), Pakistan Mobile Communication Ltd. Through Authorized Officer and others Vs. Pakistan / Federation of Pakistan through Secretary Ministry Finance and others (2022 PTD 266), Lahore Development Authority through D.G & others Vs. Ms. Imrana Tiwana & others (2015 SCMR 1739), Pakistan International Freight of Forwarders Association through General Secretary Vs. Province of Sindh through Secretary and another (2017 PTD 1), Messrs Gadoon Textile Mills and 814 others Vs. Wapda and others (1997 SCMR 641),

Mr. Rahim Lakhani, Advocate. Muhammad Hanif Abbasi Vs. Imran Khan Niazi and others (PLD 2018 Supreme Court 189), The Commissioner Inland Revenue, Zone-IV, Corporate Regional Tax officer, Karachi Vs. MSC Switzerland Geneva (2021 PTD 885), Commissioner of Income Tax, Karachi Vs. Grindlays Bank PLC, Karachi (2010 PTD 2012) Commissioner Inland Revenue (Legal Division), LTU, Islamabad Vs. Messrs Geopfzyka Krakow Pakistan Ltd. (2017 SCMR 140), Attock Petroleum Limited (APL) Vs. National Highway Authority and another (2022 PTD 222)

Mr. Mushtaq Hussain Qazi, Advocate. Messrs Gadoon Textile Mills and 814 others Vs. Wapda and others (1997 SCMR 641)

³ Dr. Shah Nawaz Memon, Ameer Bux Metlo, Ghazi Khan Khalil, Ameer Noshawan Adil and Ahsam Ali Shah, Advocates

protection was provided in respect of any adverse action in relation to the conduct of the taxpayer by concealing any such declaration; but no protection has been provided to the effect that no further tax can be levied on such properties; that the mandate of the Constitution as to Articles 23 and 24 does not prohibit or restrict the powers of the Parliament to levy any tax; that per settled law, wide latitude has been given to the Legislature to impose taxes; that whatever cannot be taxed by a Province falls within the competence of the Parliament and since a Province can only legislate or levy tax within its territorial boundaries; hence a tax on a property situated outside Pakistan falls within the competence of the Parliament; that in essence it is a not a tax on the property; but on the capital value of the assets as declared in the Wealth Reconciliation Statement by the taxpayer; that there cannot be a vacuum in respect of legislation and once Province cannot legislate, then the powers of the Parliament cannot be restricted; that per settled law a purposive interpretation must be adopted and if an immovable property does not fall within the competence of the Province, then it falls within the competence of Parliament; that it must be understood that any of the two legislatures i.e. the Province or the Parliament must have powers to legislate and impose tax; and by placing reliance upon the reported cases⁴, they have jointly prayed for dismissal of these petitions.

4. Learned Assistant Attorney General in addition to adopting the arguments of the Respondents' Counsel has contended that pursuant to Articles 141 & 142 of the Constitution, including geographical restrictions upon the provinces, it is within the competence of the Parliament to levy the impugned tax as it is always within the competence of the Parliament

⁴ Dr. Shah Nawaz, Advocate. Muhammad Khalid Qureshi Vs. Province of Punjab through Secretary Excise and Taxation Department Lahore (2017 PTD 805), Shahnawaz (Pvt) Ltd. Vs. Pakistan through the Secretary Ministry of Finance, Government of Pakistan Islamabad (2011 PTD 1558), Sui Southern Gas Company Ltd. Vs. Federation of Pakistan (2018 SCMR 802), Province of Sindh through Chief Secretary Vs. M.Q.M through Chief Convenor (PLD 2014 SC 531).

Ameer Buksh Metlo, Advocate. Muhammad Shaif Vs. Wealth Tax Officer Circle-IV (PLD 1989 Karachi 15), Haji Muhammad Shafi Vs. Wealth Tax Officer (1992 PTD 726), I.C.C. Textile Limited Vs. Federation of Pakistan (2001 PTD 1557), M/s. Volkart Pakistan (Private) Limited through Manager Finance Vs. Federation of Pakistan (2006 PTD 236), Pakistan Gulf Construction Company (Pvt) Ltd. Islamabad Vs. Federation of Pakistan through Secretary Finance Islamabad (2020 SCMR 146), Sui Southern Gas Company Ltd. Vs. Federation of Pakistan (2018 SCMR 802).

Mr. Ghazi Khan Khalil, Advocate. Association of Pakistan through Chairman Vs. Federation of Pakistan through Secretary, Ministry of Petroleum and Natural Resources, Islamabad and Others (2021 CLD 214), Sindh Revenue Board through Chairman Government of Sindh and Another Vs. The Civil Aviation Authority of Pakistan through Airport Manager (2017 SCMR 1344).

Mr. Ahsan Ali Shah, Advocate. Muhammad Khalid Qureshi Vs. Province of Punjab through Secretary Excise and Taxation Department Lahore (2017 PTD 805), Lahore Development Authority Vs. Ms. Imrana Tiwana (2015 SCMR 1739), Special Reference under Article 187 of the Interim Constitution of Republic of Pakistan Vs. IN RE (PLD 1973 SC 563), I.C.C. Textile Ltd. Vs. Federation of Pakistan, (2001 PTD 1557).

Mr. Ameer Nuasherwan, Advocate. Sui Southern Gas Company Vs. Federation of Pakistan (2018 SCMR 802).

to legislate in respect of extra territorial limits; that use of the words “including laws having extra-territorial operation” in Article 141 of the Constitution expressly vests competence in the Parliament to levy the impugned tax; that any other interpretation to it would amount to redundancy; that the Indian Constitution under Article 245 (1) & (2) has dealt with the doctrine of nexus and extra territorial limits, which is fully applicable in the instant matter; that since the tax in question cannot be levied competently by the Province; hence it is not a case of encroachment of any of the provincial legislative powers; that per settled law entries in the legislative list should be given as broad and wide meaning as possible; hence, by placing reliance on the case of **KESC**⁵ he has sought dismissal of these petitions.

5. We have heard all the learned Counsel for the parties as well as learned Assistant Attorney General and have also perused the record. It appears that the Petitioners before us own foreign assets (**movable and immovable**) and pursuant to the Foreign Assets Act (not all, but most of them) availed the benefit of the scheme initiated by the Federal Government pursuant to which by paying a one-time tax they had declared such foreign assets. The same are now a part of their respective Wealth Statement(s) filed in terms of Section 116(2) of the Income Tax Ordinance, 2001. Through impugned levy, introduced by way of Section 8 of the Finance Act, 2022, these foreign assets (movable and immovable) including various other assets have now been taxed on their capital value. Insofar as the Petitioners before us are concerned, they have challenged the imposition of such Capital Value Tax on foreign assets (movable and immovable) as defined in Section 8 (13)(c) of the said Act. Though one of the learned Counsel⁶ for the Petitioners also made submissions regarding imposition of impugned tax on movable foreign assets; however, in essence the Petitioners’ challenge is in respect of Capital Value Tax on immovable properties situated outside the territorial limits of Pakistan. The precise challenge is based upon the argument that the Parliament / Federal Legislature has no authority to impose any tax on immovable property post 18th Amendment introduced by way of Act No. X of 2010 dated 19.10.2010 in view of the present status of Entry-50 of the Federal Legislative List to the Constitution of Pakistan. It would be advantageous to refer to the relevant provisions of Section 8 of the Finance Act, 2022 as well as Entry-50 *ibid* in its present form.

⁵ KESC Vs. N.I.R.C (PLD 2014 Sindh 553)

⁶ Mr. Rashid Anwar Advocate

"8. Capital value tax 2022. - (1) A tax shall be levied, charged, collected and paid on the value of assets at the rates specified in the First Schedule to this section for tax year 2022 and onwards: provided that the tax shall be charged from the 1st day of July, 2022 in case of motor vehicles in Pakistan.

(2) Capital value tax shall be charged on the following assets-

(a) motor vehicle held in Pakistan where—

(i) the engine capacity exceeds 1300 cc; or

(ii) in case of electric vehicles, the battery power capacity exceeds 50kwh;

(b) foreign assets of a resident individual where the value of such assets on the last day of the tax year in aggregate exceeds Rupees one hundred million;

(3) Value of the assets, for the purposes of this tax, shall be determined in the following manner, namely:-

(a)

(b)

(c) in case of foreign assets mentioned in clause (b) of sub-section (2) above, the value shall be-

(i) the total cost of the foreign assets on the last day of the tax year, in relevant foreign currency converted into Rupees as per exchange rates notified by State Bank of Pakistan for the said day;

(ii) where the cost of foreign asset as provided in paragraph (i) cannot be determined with reasonable accuracy, the fair market value of the asset on the last day of the tax year, in relevant foreign currency converted into Rupees per as exchange rates notified by State Bank of Pakistan for the said day; and

(13) In this section -

(a)

(b)

(c) **"foreign assets"** means any moveable or immovable assets held outside Pakistan, whether directly or indirectly, and includes but not limited to real estate, mortgaged assets, stock and shares, bank accounts, bullion, cash, jewels, jewelry, paintings, accounts and loan receivables, assets held in dependents' name, beneficial ownership or beneficial interests or contribution in offshore entities or trusts;

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Entry 50 of the Federal Legislative List:

50. *Taxes on the capital value of the assets, not including taxes on immoveable property;*

6. Perusal of Section 8, as above, reflects that a tax has been levied / charged and is to be collected and paid on the value of assets at the rate specified in the First Schedule to this Section for tax year 2022 and onwards. This Capital Value Tax has been levied in respect of various immovable and movable assets; however, for the present purposes under challenge is the Capital Value Tax on foreign assets [as defined in Section 8(13) (c)] of a resident individual where the value of such assets on the last day of the tax year in aggregate exceeds One Hundred Million. The "Foreign Assets" have been defined in Section 8(13) (c) of this Act, and means any moveable or immovable assets held outside Pakistan, whether directly or indirectly, and includes but not limited to real estate, mortgaged

assets, stock and shares, bank accounts, bullion, cash, jewellery, paintings, accounts and loan receivables, assets held in dependents' name, beneficial ownership or beneficial interests or contribution in offshore entities or trusts. The Petitioners' case is that since the Parliament cannot impose any tax on an immovable property, and if this is so, then it cannot impose tax on an immovable property, which is even outside Pakistan. To buttress this argument, their main emphasis is on Entry-50 of the Federal Legislative List to the Constitution. This according to them, post 18th Amendment, has taken away the powers of the Parliament to impose any tax on immovable properties. It would be advantageous to refer to Entry-50 as it stood prior to and post 18th Amendment as well as in the earlier Constitutions of the Country:

CONSTITUTIONS

	FEDERAL LEGISLATIVE LIST	PROVINCIAL LIST/CONCURRENT
Government of India Act 1935	Seventh Schedule Federal Legislative List: 55. Taxes on the capital value of the assets, exclusive of agricultural land, of individuals and companies, taxes on capital of companies.	List II Provincial Legislative List 42. Taxes on lands and buildings, hearths and windows.
1956 Constitution	Fifth Schedule Federal list 26. Duties of customs (including export duties) duties of excise (including duties on salt, but excluding alcoholic liquor, opium and other narcotics), corporation taxes and taxes on income other than agriculture income, estate and succession duties in respect of property other than agricultural land; taxes on the capital value of assets exclusive of agricultural land, taxes on sales and purchases, terminal taxes on goods or passengers carried by sea or air, taxes on their fares and freights; taxes on mineral and natural gas	Provincial list 75. Taxes on lands and buildings
1962 Constitution	Matters with respect to which the Central Legislature has exclusive power to make Laws: 43. Duties and taxes, as follows: (e) taxes on the capital value of assets, not including taxes on capital gains on immovable property;	No Provincial List
1972 Interim Constitution	Federal Legislative List 57. Taxes on the capital value of assets, not including tax on capital gains on immovable property	List II Provincial Legislative 40. Taxes on lands and buildings, hearths and windows.

Constitution of Pakistan 1973 Pre 18th Amendment	Federal Legislative List 50. Taxes on the capital value of assets, not including tax on capital gains on immovable property	Concurrent Legislative List 11. Transfer of property other than agricultural land, registration of deeds and documents
Constitution of Pakistan 1973 Pre 18th Amendment	50. Taxes on the capital value of the assets, not including taxes on Immovable property	No Provincial or Concurrent list

7. As is well known that prior to the 18th Amendment, under the present Constitution of 1973, there were two separate Legislative Lists, namely Federal Legislative List and the Concurrent Legislative List, whereas, Article 142(e) *ibid* provided that a Provincial Assembly shall and the Parliament shall not, have power to make laws with respect to any matter not enumerated in either the Federal Legislative List or the Concurrent List. Prior to 18th Amendment, introduced through Act X of 2010 dated 19.4.2010, Entry-50 of the Federal Legislative List read as “*Taxes on the capital value of assets, not including tax (on capital gains)*”⁷ *on immovable property*”. This means that the Parliament had all the powers to levy taxes on immovable property; but not including only one tax i.e. on capital gains on immovable property. At the same time Entry-11 of the Concurrent Legislative List empowered the Province to legislate (no specific taxing power being specified) in respect of transfer of property other than the agricultural land, registration of deeds and documents. Post 18th Amendment, now the words “on capital gains” stands omitted from this Entry which now reads as *taxes on the Capital Value of the assets, not including taxes on immovable property*. This use of the words *not including taxes on immovable property* is in fact the entire gist of the case of the Petitioners regarding challenge to the levy of tax on their immovable properties abroad. Their case is that use of these words has taken away all powers of the Parliament in respect of any legislation or imposition of tax on any sort of immovable property; hence, the properties abroad cannot be taxed as well, notwithstanding, that the said properties also do not fall within the territorial limits of the Provinces. It may also be relevant to note that post 18th amendment since there is no Concurrent List or a separate list for the Provinces, it has been argued that the use of the words *not including taxes on immovable property* now vest all powers and authority upon the Provinces to legislate and tax all such immovable properties. With respect we are unable to agree with

⁷ Deleted pursuant to 18 amendment vide Act section 101 of Act No. X of 2010

this for a number of reason to follow. The entry in question empowers the Parliament to levy taxes on the capital value of assets which includes all assets i.e. moveable and immoveable. This use of the words *not including taxes on immovable property* is to be read as no tax can be levied by the Parliament on the capital value of an immoveable property. And that is all. It wouldn't be fair, to interpret this as contended by the Petitioners Counsel that this excludes competence of the Parliament to legislate in all manners including imposition of taxes of any sort on immoveable property. It is only taxes on immoveable property which now can be taxed by Province; however, subject to the property being falling within its territorial limits. The subject of immoveable property still remains with the Parliament subject to that the property is beyond the territorial limits of the Province. In fact, if it is not within the competence of the Province to impose tax on any immoveable property due to restriction in respect of its territorial limits, then it reverts back to the Parliament. This is the only interpretation which can be arrived at when the entire scheme of the Constitution and the Legislative entries are read as a whole and understood accordingly. While proceeding further, it will also be advantageous to refer to the relevant Articles of the Constitution regarding legislative competence of the Parliament and the Province as there is also a change in such authority post 18th amendment. Relevant Articles being Article 141 and Article 142 of the Constitution which reads as under: -

141. Extent of Federal and Provincial laws. - Subject to the Constitution, ¹[Majlis-e-Shoora (Parliament)] may make laws (**including laws having extra-territorial operation**) for the whole or any part of Pakistan, and a Provincial Assembly may make laws for the Province or any part thereof.

142. Subject-matter of Federal and Provincial laws.- Subject to the Constitution—

- (a) ¹[Majlis-e-Shoora (Parliament)] shall have exclusive power to make laws with respect to any matter in the Federal Legislative List;
- [(b) Majlis-e-Shoora (Parliament) and a Provincial Assembly shall have power to make laws with respect to criminal law, criminal procedure and evidence;]
- [(c) Subject to paragraph (b), a Provincial Assembly shall, and Majlis-e-Shoora (Parliament) shall not, have power to make laws with respect to any matter not enumerated in the Federal Legislative List;]
- [(d) Majlis-e-Shoora (Parliament) shall have exclusive power to make laws with respect to all matters pertaining to such areas in the Federation as are not included in any Province].

8. Before discussing Article 141 we would like to discuss Article 142 first. Article 142 deals with Subject matter of Federal and Provincial laws and 142(a) provides that Subject to Constitution, Parliament shall have exclusive power to make laws with respect to any matter in the Federal Legislative List. Article 142(b) provides that Parliament and a Provincial Assembly shall have power to make laws with respect to criminal law, criminal procedure and evidence. Similarly, Article 142(c) provides that Subject to Paragraph (b), a Provincial Assembly shall, and Parliament shall not have power to make laws with respect to any matter not enumerated in the Federal Legislative List. The Petitioners' case is primarily premised on the provision of Article 142(c) of the Constitution and it has been contended that since imposition of tax on immovable property is not provided in the Federal Legislative List; rather, use of the words "*not including tax on immovable property*" in fact, excludes such powers of the Parliament, and therefore, it means that it is not enumerated in the Federal Legislative List; hence Parliament cannot impose taxes on any immovable property irrespective of the fact that it is beyond the territorial limits of the Province. However, this does not appear to be a correct approach, if the provision of Article 142(c) is looked into as a whole. Article 142(c) when read in conjunction with Sub-Article (a) and Sub-Article (b) of Article 142, reflects that while enacting the 18th Amendment, the Provincial Autonomy has though being expanded by only providing a Federal Legislative List in respect of competence of the Parliament, and whatever has not been enumerated in that list is now within the domain of the provinces; but this is only to the extent of the territorial limits of the Province vis-à-vis the Parliament or the Federal Legislature's authority. What is not within the competence of the Province will now stands reverted to the Parliament. Article 142(d) clearly provides that Parliament shall have exclusive powers to make laws with respect of all matters pertaining to such areas in the Federation as are not included in any Province. This means that Parliament shall have competence to legislate in respect of all fields of legislation, which are either enumerated in the Federal Legislative List or otherwise and the only condition which has to be met is that such law shall not be in respect of any area, which is included within the Province. For the present purposes, it is not in dispute that the foreign assets including immovable properties do not fall in any area within the Province. This could be better understood when the competence of the Parliament for matters not enumerated in the Federal Legislative List is looked into in respect of areas falling within the

Islamabad Capital Territory. The Constitution of Pakistan, 1973 not only makes specific provision for the exclusive legislative domain in respect of "residuary subjects" (i.e. subjects/entries left out of Federal Legislative List) over the respective provincial territories of the provincial assembly by virtue of Article 142(c), but it also recognizes the exclusive domain of the Federal legislature over "residuary subjects" in respect of territories or areas 'not included in any province' by the operation of Article 142(d) which includes Islamabad Capital Territory. Given the nature of Islamabad Capital Territory under Article 1(2), only the Federal Legislature is empowered with the exclusive domain to legislate in areas not forming part of a territory of any province as enumerated in Article 142(d). It becomes evident that only the Federation itself has the exclusive domain to legislate on all matters that are, in their nature, 'residuary subjects', with respect to ICT⁸. There is no doubt; nor any objection to that effect was raised that insofar as imposition of any tax on an immoveable property within the Islamabad Capital Territory is concerned, it is the Parliament which can do so. And if this is so, then the argument that the subject i.e. "immoveable property" is not within the legislative competence of the Parliament, is completely out of the box. The subject is though within the competence of the Parliament; but is qualified to whatever has been so stated in Entry 50 thereof, and that is *not including taxes on immovable property*, falling within the territorial limits of the Province. It can't be read in isolation by holding that the use of the word *not including taxes on immovable property* would also mean and exclude the subject in its entirety from the competence of the Parliament. This would be reading into what is not provided by the legislature. Therefore, in the same manner, any property which is beyond the territorial limits of the Province (including any property outside Pakistan) would still remain within the competence of the Parliament for the purposes of imposition of tax in terms of Entry 50 of the Federal Legislative List. One could also argue that this would mean sharing of taxing power. However, historically, pre 18th amendment, in our constitution, there was no concurrent taxing power. There has only been a division, and not sharing, of taxing powers⁹. Thus, the Concurrent Legislative List of the present Constitution did not contain any entry relating to a taxing power. And this needs to be kept in mind when we are dealing with only one Legislative List i.e. the Federal Legislative List read with Articles 141 and 142 of the Constitution as they stand today.

⁸ Federal Government Employees Housing Foundation v Malik Ghulam Mustafa (2021 SCMR 201)

⁹ Pakistan International Freight Forwarders Association v Province of Sindh (2017 PTD 1)

9. Moving further, Article 141 provides that Subject to the Constitution, Parliament may make laws (*including laws having extra-territorial operation*) for the whole or any part of Pakistan, and a Provincial Assembly may make laws for the Province or any part thereof. What this Article does is delineates the territory of legislation for the Federation and the Provinces. Now what is required is to see that why the words “(*including laws having extra-territorial operation*)” have been used herein. Even without use of these words the Parliament could have made laws for the whole or any part of Pakistan. One answer could be that here *extra-territorial operation* means and relates to areas within the Province(s); however, this does not seem to be correct. If that had been the case, then the use of the words *whole or any part of Pakistan* appears to be meaningless. When the Parliament can legislate in the entire country [of course subject to Article 142(a)] then it can even do so validly, without use of the words *extra-territorial operation*. Therefore, the only interpretation which could be arrived at and as rightly argued by the learned Assistant Attorney General that it would mean *extra-territorial operation* outside Pakistan as well. This also gets support from the fact that all areas outside the Provinces including Islamabad Capital Territory are fully covered in terms of Article 142(d) *ibid* read with Article 1(2) (b), wherein the Parliament can legislate. Moreover, if this is not so, then many of the entries in Federal Legislative List including Entry 3¹⁰, 32¹¹ to quote as an example would become redundant and the Parliament would not be competent to legislate in respect of those matters. This would lead to an absurd situation for a country which pursuant to International commitments and treatise is always required to legislate on these matters / subjects beyond its territorial limits (here we are talking about beyond the territories of Pakistan). This seem to be the only correct approach while interpreting the use of the words *extra-territorial operation* as otherwise it would amount to redundancy which cannot be attributed to the legislature. Some further discussion on the words “extra territorial operation” may also be of relevance for a proper understanding of the issue in hand. Per settled law a Sovereign State has plenary jurisdiction to enact laws for its own territory. However, at the same time, there are laws enacted by such states, which for one reason or the other might have its operation or effect

¹⁰ 3. External affairs; the implementing of treaties and agreements, including educational and cultural pacts and agreements, with other countries; extradition, including the surrender of criminals and accused persons to Governments outside Pakistan.

¹¹ 32. International treaties, conventions and agreements and International arbitration.

beyond its territorial limits. But this would not by itself render such law as ultra vires. In the instant matter one needs to understand that the impugned levy is not on the property itself. It is on the capital value of the asset of a resident person holding it, whereas, such property, for the present purposes is a subject matter of his wealth statement filed under section 116 (2) of the Income Tax Ordinance, 2001. The said statement is a mandatory requirement for filing of an Income Tax Return under the said Ordinance. Therefore, the law in question in respect of the above is though extra-territorial in one sense; however, applies to a resident person filing an income tax return in the Country. Admittedly, the foreign asset in question is part of the asset of the resident person. The taxing event as well as the person is within the territorial limits and is already subject to taxation under the laws of the Country. The property in question as stated above, is now part of the Wealth of the resident person. It is immaterial that it is so pursuant to a Declaration under the Foreign Assets Act or otherwise, but for the purposes of a person's wealth it is now a part and parcel of it. The tax in question is a tax on the capital value of such asset, which is within the competence of the Parliament. The only question left would be that whether it can impose any tax or legislate in respect of any matter which is beyond its territorial limits and the answer would be; yes. There may be a case that such matter must have some nexus with or within Pakistan and here it has a nexus as noted above. The foreign assets, notwithstanding its acquisition either from undisclosed sources of income or otherwise, they now form part of the petitioner's declaration in their Wealth Statement, and therefore, can always be taxed under Entry 50 of the Federal Legislative List. It is a tax on all that one owns, or his total assets and would fall within the purview of Entry 50 *ibid*. It is not a tax on the immovable property by itself which may bear a direct relation to the said property owned by a tax-payer. It may be that the building owned by a tax-payer may be a component of his total assets, but a tax under entry 50 will not bear any direct or definable relation to his building¹². One can say that the roots of these foreign assets are here in Pakistan. The connection that results is at least as solid as the place of central control. These foreign assets fulfil the test of sufficient territorial connection, the least required in such legislation worldwide. The present case is not that though the subject falls within the competence of the Province; but since legislation has to be made having some nexus with the territorial limits outside the Country, therefore, a Province could be permitted to legislate

¹² D.G.Gouse and Co. (Agents) Pvt. Ltd., v State of Kerala (AIR 1980 SC 271)

on the said subject. The only requirement could that be of a nexus with such subject matter. And in this case there appears to be a nexus of the foreign asset with that of the resident person. In "Conflict of Laws- Restatement of Law" it is observed that "a nation has jurisdiction over its nationals although not present within the territorial limits of the nation". (Page 78). In Corpus Juris Secundum, extra-territoriality is defined as "the act by which a State extends its jurisdiction beyond its own boundaries into the territory of another State", and it is added that "the almost self-evident proposition should perhaps also be noted in this connection that a sovereignty has power to make laws regulating the conduct of its subjects, while beyond the limits of its territorial jurisdiction". (Volume 15, pages 868-869).

10. There is another reason for coming to this conclusion. Post 18th amendment Entry 49 of the Federal Legislative List was also amended in addition to Entry 50 *ibid*. Though they both are not related in any manner insofar as the subject of taxation is concerned; but the use of certain words while amending the Constitution are certainly relevant. Prior to the 18th amendment Entry 49 of the Federal Legislative List read as "*Taxes on the sales and purchases of goods imported, exported, produced, manufactured or consumed*", whereas, post 18th amendment it reads as "*Taxes on the sales and purchases of goods imported, exported, produced, manufactured or consumed, except sales tax on services.*" Here one can see that an exception has been created within the said entry by use of the words *except sales tax on services* which now rests within the competence of the Provincial Legislature. On the other hand, in Entry 50 there is no such exception being created but consciously the words have been used as "not including" instead of "except". Why the Legislature did not used the word "not including sales tax on services" and instead used the words "except sales tax on services", as has been used in many other entries in the same Legislative List? There is certainly an intention being shown by the legislature by use of these different words. The argument that the use of the words "*not including*" is to be treated as a proviso creating an absolute exception does not seem to be correct in the present situation. It though curtails the powers of the Federal Legislature; but only in a limited manner. Both these words are not synonym. In the case of *Pakistan International Freight Forwarders*¹³ a learned Division Bench of this Court has been pleased to hold that *the "exception" added to*

¹³ 2017 PTD 1

entry No. 49 is not a "true" exception. Rather, it is an independent provision in its own right and the real the real effect of the "exception" is to "shift" the taxing power in relation to the taxing event of rendering or providing of services from the Federation to the Provinces. It has been further held that; rather, it has established that "the" said taxing power in respect of the said taxing event now vests solely in the Provinces. Therefore, it would not be a correct approach to interpret the use of words "not including" as being that of an "exception" as the legislature has consciously used two different words while making amendment in the Legislative Entries at the same time. *Not including* here means that what was included within the competence of the Parliament before the 18th amendment has now been vested in the Provinces. At the same time if the Province does not have any such competency for any reason, then it would not mean that the power of Parliament is also wiped out in respect of entire subject matter. The principle settled by the Hon'ble Supreme Court in the case of Sui Southern Gas Company Limited¹⁴ that where a subject has application beyond provincial boundaries, the Provinces could not legislate on such subject and they would then fall within the Federal domain and that the legislative competence of the Parliament comes from several sources; i.e. Federal Legislative List; express provisions of the Constitution and finally on subjects which relate to the Federation, is fully applicable to the present facts and circumstances of the case.

11. In our considered view, if at all any exclusive powers were to be vested in the Provinces in respect of all sort(s) of taxes on immoveable property, then perhaps, the legislature would have definitely taken recourse to the use of word "*except*" instead of "*not including*". This has not been done. Notwithstanding, the issue as to the territorial limits as contemplated in Articles 141 and 142 still remains intact and what is not within the territorial limits of the Province will revert back to the Parliament. One must look what was the intent and need to introduce the 18th Amendment and confer certain powers and authorities to levy the taxes by the Provinces. One must also remain mindful that per settled law in deciding question of legislative competence the Constitution is not to be construed with a narrow or pedantic approach and it is not to be construed as a mere law but as a machinery by which laws are made and such interpretation should be made broadly and liberally. It is also a settled law that the entries in the Constitution only demarcate the legislative fields of the respective legislature and do not confer legislative power as such. It is

¹⁴ 2018 SCMR 802

further settled that the power to levy taxes, being a sovereign power controlled only by the Constitution, any limitation on that power must be express¹⁵. The golden Rule of interpretation is that words should be read in their ordinary, natural and grammatical meaning subject to the rider that in construing words in a Constitution conferring legislative power the most liberal construction should be put upon the words so that they may have effect in their widest amplitude¹⁶. Suffice it to say that the interpretation of any provision of the Constitution will be true and perfect only when the Court looks at the Constitution holistically and keeps in view all important and significant features of the Constitutional scheme constantly reminding itself of the need for a harmonious construction lest interpretation placed on a given provision has the effect of diluting or whittling down the effect or the importance of any other provision or feature of the Constitution¹⁷.

12. It is also noteworthy to point out that the concept of taxation in respect of foreign income is now a worldwide phenomenon and majority of the countries have incorporated the provisions relating to taxing incomes of resident persons. The same is also applicable in Pakistan under Section 9 of the Income Ordinance, 2001 with certain exception; but now is a matter of common knowledge that a person, who is a resident in a country like Pakistan, is liable to tax in respect of his foreign income. Admittedly the foreign income is not earned within the territorial jurisdiction of Pakistan; but in terms of Constitutional provisions, which empowers the Parliament to levy taxes on income of a resident person; his income abroad is also taxed and such tax has never been disputed before the Court. In fact, in the case of *Haji Ibrahim Ishaq Johri*¹⁸, a challenge to such a levy was repelled by the Hon'ble Supreme Court, wherein the question was, when the Income Tax Act has not been applied to Swat State, can the income accruing to the appellant from that area be subjected to tax? And it was held that character of the income qua its taxability, arising to the appellant from Swat State is no better than the income earned from a foreign country by a person "resident" in taxable territory. It was further observed and which is more relevant in view of the fact that Article 131 of the 1962 Constitution was *pari materia* to Article 141 of the present Constitution to the extent of the use of words "including laws having extra territorial operation") that under Article 131 of 1962 Constitution, the

¹⁵ Jindal Stainless v State of Haryana (AIR 2016 SC 5617)

¹⁶ Constitutional Law of India (4th Edition) by H.M. Seervai at Para 2.12

¹⁷ AIR 2016 SC 5617

¹⁸ 1993 SCMR 287

Central laws can have an extra-territorial operation. Reliance was placed on the case of *Wallace Brothers & Co*¹⁹ wherein the theory of nexus with income of a person under the Income-tax Act, 1922 was approved and it was held that "*The resulting general conception as to the scope of income-tax is that given a sufficient territorial connection between the person sought to be charged and the country seeking to tax him income-tax may properly extend to that person in respect of his foreign income.*" In the instant matter, what is being taxed by the Parliament is the capital value of foreign assets, which now stands declared and is part of the Wealth Tax Returns of the Petitioners / resident person. In most of the cases, and barring few exceptions, (which is not relevant for the present purposes) these properties and assets were undisclosed for a number of years. However, pursuant to the Foreign Assets (Declaration and Repatriation) Act, 2018, the Petitioners as well as other taxpayers availed such amnesty and after paying requisite tax, they declared these properties under their Wealth Tax Returns. These are now part of the Wealth Tax Returns of the Resident taxpayers; therefore, even otherwise there is a nexus of these properties with the income and wealth of the resident taxpayers and there appears to be no impediment or restriction for the Parliament to levy the tax in question.

13. Insofar as the foreign assets, which have been taxed through the impugned legislation excluding the immovable properties is concerned, no substantial arguments were made by the Petitioners' Counsel and their main focus was in respect of immovable properties and the use of word "not including" in Entry-50 and on such basis they have contended that the Parliament does not have any legislative powers to levy tax on foreign immovable properties. As to moveable assets, even this argument is not at all applicable, whereas, no other ground was raised in this regard as to the impugned levy being ultra vires to the Constitution; or otherwise the Parliament is not competent to levy such tax on moveable foreign assets.

14. In view of hereinabove facts and circumstances of this case, we do not see any justifiable reason to declare the provisions of Section 8 of the Finance Act, 2022, as *ultra vires* to the Constitution; hence all these Petitions are hereby dismissed.

Dated: 30.12.2022

¹⁹ AIR 1948 Privy Council 118

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Ayaz P.S.