

ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI**C.P. No. D – 2507 of 2022**

Date	Order with signature of Judge
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PRESENT:

MR. JUSTICE AQEEL AHMED ABBASI
JUSTICE MRS. KAUSAR SULTANA HUSSAIN

Fresh Case

1. *For orders on Misc. No. 11294/2022.*
2. *For hearing of Main Case.*

19.09.2022:

Mr. Hyder Ali Khan, advocate for the petitioner.

ORDER

1. Granted subject to all just exceptions.
2. Through instant petition, the petitioner bank has challenged the imposition of Super Tax under Section 4B of the Income Tax Ordinance, 2001, which was introduced through Finance Act, 2015 and has challenged its vires for being ultra vires to the Constitution. However, learned counsel for the petitioner at the very outset submits that the subject controversy has already been decided against the petitioner through a consolidated judgment passed by a Divisional Bench of this Court in number of constitutional petitions and suits, including C.P. No.D-1849 of 2016 [*Re: Messrs HBL Stock Fund through Trustee & others v. Additional Commissioner Inland Revenue & others*] reported as **2020 PTD 1742**, wherein, according to learned counsel, it has been held that provisions of Section 4B of the Income Tax Ordinance are intra-vires to the Constitution. In support of his contention, learned counsel for the petitioner has placed on record copy of the affore-cited judgment and submits

that instant petition may be disposed of in similar terms, so that the petitioner may seek further remedy by approaching the Hon'ble Supreme Court.

Accordingly, instant petition is dismissed in terms of Para:17 of the afore-cited judgment, which reads as follows:-

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

*(a) The Super Tax imposed under Section 4B of the Income Tax Ordinance, 2001 through Finance Act 2015 along with Money Bill **possess the characteristics of a tax**, for being a compulsory exaction of money by public authority for the purposes of general revenue, whereas, the amount to tax so charged goes to Federal Consolidated Fund, therefore, has been rightly introduced under Article 73(2)(a) of the Constitution of the Islamic Republic of Pakistan, 1973, hence **intra-vires** to the Constitution;*

*(b) The Super Tax imposed under Section 4B of the Income Tax Ordinance 2001, through Finance Act 2015, along with Money Bill is **an additional tax on income covered under Entry 47 of the IV Schedule to the Constitution “taxes on income”**, and does not amount to double taxation, therefore, falls within the legislative competence of the National Assembly to impose, abolish, remit, alter or regulate a tax, through Finance Act along with Money Bill under Article 73 (2)(a) of the Constitution of the Islamic Republic of Pakistan, 1973, hence **intra-vires** to the Constitution;*

(c) The Super Tax imposed under Section 4B of the Income Tax Ordinance, 2001 through

Finance Act, 2001 along with Money Bill is not violative of the Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973 as it is neither discriminatory nor creates any unreasonable classification amongst the same class of person upon whom its charge has been created, while applying the common burden through uniform rate of tax upon Banking Companies@ 4% of the income, and person other than Banking Company, having income equal to or exceeding Rs.500 Million @ 3% of the income.

*(d) The Super Tax imposed under Section 4B of the Income Tax Ordinance, 2001 through Finance Act 2015 along with Money Bill, is not a fee as there is no element of **quid pro quo**, nor the amount of Super Tax is charged as consideration for rendering any services to its payer in any manner.”*

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A.S.

ORDER SHEET

IN THE HIGH COURT OF SINDH, KARACHI**C.P. No. D – 2508 of 2022**

Date	Order with signature of Judge
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PRESENT:

MR. JUSTICE AQEEL AHMED ABBASI
JUSTICE MRS. KAUSAR SULTANA HUSSAIN

Fresh Case

1. *For orders on Misc. No. 11297/2022.*
2. *For hearing of Main Case.*

19.09.2022:

Mr. Hyder Ali Khan, advocate for the petitioner.

ORDER

1. Granted subject to all just exceptions.
2. Through instant petition, the petitioner bank has challenged the imposition of Super Tax under Section 4B of the Income Tax Ordinance, 2001, which was introduced through Finance Act, 2015 and has challenged its vires for being ultra vires to the Constitution. However, learned counsel for the petitioner at the very outset submits that the subject controversy has already been decided against the petitioner through a consolidated judgment passed by a Divisional Bench of this Court in number of constitutional petitions and suits, including C.P. No.D-1849 of 2016 [*Re: Messrs HBL Stock Fund through Trustee & others v. Additional Commissioner Inland Revenue & others*] reported as **2020 PTD 1742**, wherein, according to learned counsel, it has been held that provisions of Section 4B of the Income Tax Ordinance are intra-vires to the Constitution. In support of his contention, learned counsel for the petitioner has placed on record copy of the affore-cited judgment and submits

that instant petition may be disposed of in similar terms, so that the petitioner may seek further remedy by approaching the Hon'ble Supreme Court.

Accordingly, instant petition is dismissed in terms of Para:17 of the afore-cited judgment, which reads as follows:-

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

*(a) The Super Tax imposed under Section 4B of the Income Tax Ordinance, 2001 through Finance Act 2015 along with Money Bill **possess the characteristics of a tax**, for being a compulsory exaction of money by public authority for the purposes of general revenue, whereas, the amount to tax so charged goes to Federal Consolidated Fund, therefore, has been rightly introduced under Article 73(2)(a) of the Constitution of the Islamic Republic of Pakistan, 1973, hence **intra-vires** to the Constitution;*

*(b) The Super Tax imposed under Section 4B of the Income Tax Ordinance 2001, through Finance Act 2015, along with Money Bill is **an additional tax on income covered under Entry 47 of the IV Schedule to the Constitution “taxes on income”**, and does not amount to double taxation, therefore, falls within the legislative competence of the National Assembly to impose, abolish, remit, alter or regulate a tax, through Finance Act along with Money Bill under Article 73 (2)(a) of the Constitution of the Islamic Republic of Pakistan, 1973, hence **intra-vires** to the Constitution;*

(c) The Super Tax imposed under Section 4B of the Income Tax Ordinance, 2001 through

Finance Act, 2001 along with Money Bill is not violative of the Article 25 of the Constitution of the Islamic Republic of Pakistan, 1973 as it is neither discriminatory nor creates any unreasonable classification amongst the same class of person upon whom its charge has been created, while applying the common burden through uniform rate of tax upon Banking Companies@ 4% of the income, and person other than Banking Company, having income equal to or exceeding Rs.500 Million @ 3% of the income.

*(d) The Super Tax imposed under Section 4B of the Income Tax Ordinance, 2001 through Finance Act 2015 along with Money Bill, is not a fee as there is no element of **quid pro quo**, nor the amount of Super Tax is charged as consideration for rendering any services to its payer in any manner.”*

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