

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Agha Faisal, J.
Abdul Mobeen Lakho, J.

CP D 713 of 2024

National Bank of Pakistan

vs.

Federation of Pakistan & Others

(And connected matters, particularized in the Schedule¹ hereto.)

Muhammad Farogh Naseem, Khalid Jawed Khan, Qazi Umair Ali, Lubna Pervez, Mariam Salahuddin, Shahrukh Farogh Naseem, Sagar Ladhani, Abdul Rehman Adeed, Saima Anjum, Pooja Kalpana, M. Umer Akhund, Uzair Qadir Shoro, Syed Muhammad Aijaz and Muhammad Imran Khan, advocates for the petitioners.

Shahzaib Masud, Ahmed Mujtaba and Saqib Soomro, advocates for the Federal Board of Revenue.

Zia-ul-Haq Makhdoom
Additional Attorney General

Mirza Nasar Ahmed
Additional Attorney General

Kashif Nazeer
Assistant Attorney General

Alizeh Bashir
Assistant Attorney General

Dates of hearing

18th & 20th February 2025

Date of announcement

20th February 2025

JUDGMENT

Agha Faisal, J. A tax was imposed upon *windfall*² gains of the banking sector, demonstrated to have been realized on account of sudden foreign currency fluctuations. The *vires* of the law was assailed in 2023 and by virtue of the interim orders obtained the effect of the law stood suspended.

¹ The Schedule hereto shall be read as an integral constituent hereof.

² A benefit in the form of profit not caused by the recipient.

Historical perspective

2. The imposition of windfall tax is certainly not a new phenomenon, either internationally or even domestically. The United Kingdom enacted the Energy (Oil and Gas) Profits Levy Act 2022 imposing windfall tax and thereafter the rate of tax was retrospectively increased from twenty five to thirty five percent. In the European Union, fifteen out of twenty seven countries imposed the levy in 2022-2023³. Greece imposed a ninety percent windfall tax on electricity producers in 2022. Croatia imposed a thirty three percent windfall tax in 2022. Italy imposed a forty percent windfall tax on banking companies in 2023, having effect from financial year 2021⁴.

3. Closer to home, the Excess Profits Tax Act 1940 (“EPTA”) and the Business Profits Tax Act 1947 (“BPTA”) were enacted in similar circumstances; albeit in the context of the Government of India Act 1935. EPTA imposed a tax on *excess profits* arising out of certain businesses and the BPTA imposed a special tax on income arising from certain businesses. Interestingly, the enactments contemplated the enforcement of the respective tax with retrospective effect.

Factual context

4. Section 99D⁵ (“99D”) was inserted⁶ in the Income Tax Ordinance 2001 (“Ordinance”) vide the Finance Act 2023 and it provisions for additional tax on specific income, profits and gains. SRO 1588 (I) of 2023 (“SRO”) was issued on 21.11.2023 in exercise of powers conferred vide 99D. The statutory

³ <https://taxfoundation.org/research/all/eu/eu-windfall-profits-taxes-oil-gas/>.

⁴ https://www.ey.com/en_gl/technical/tax-alerts/italian-parliament-passes-italian-windfall-tax-for-banks.

⁵ 99D. Additional tax on certain income, profits and gains.– (1) Notwithstanding anything contained in this Ordinance or any other law for the time being in force, for any of the last three tax years preceding the tax year 2023 and onwards, in addition to any tax charged or chargeable, paid or payable under any of the provisions of this Ordinance, an additional tax shall be imposed on every person being a company who has any income, profit or gains that have arisen due to any economic factor or factors that resulted in windfall income, profits or gains. (2) The Federal Government may, by notification in the official Gazette, – (a) specify sector or sectors, for which this section applies; (b) determine windfall income, profits or gains and economic factor or factors including but not limited to international price fluctuation having bearing on any commodity price in Pakistan or any sector of the economy or difference in income, profit or gains on account of foreign currency fluctuation; (c) provide the rate not exceeding fifty percent of such income, profits or gains; (d) provide for the scope, time and payment of tax payable under this section in such manner and with such conditions as may be specified in the notification; and (e) exempt any person or classes of persons, any income or classes of income from the application of this section, subject to any conditions as may be specified in the notification. (3) The Federal Government shall place before the National Assembly the notification issued under this section within ninety days of the issuance of such notification or by the 30th day of June of the financial year, whichever is earlier.

⁶ Entry 7CB was also added to the Seventh Schedule of the Income Tax Ordinance 2001.

provision coupled with the SRO envisage the imposition of *windfall tax* and the same was assailed in these petitions.

5. The petitioners sought the common purpose of having windfall tax struck down, however, predicated their cause of action upon receipt of notices to amend assessment⁷ served thereupon per section 122(9) of the Ordinance. It is settled law that such notices are not *ordinarily* assailable directly in writ jurisdiction⁸.

Respective arguments

6. Dr. Farogh Nasim spearheaded the case of the petitioners and articulated that 99D and the SRO ought to be struck down as being unconstitutional. It was his primary argument that 99D envisaged retrospective taxation; unsustainable on the touchstone that the tax liability of the assessee had become a past and closed transaction at close of tax year / submission of relevant returns. He further added that the statutory provision was indefensible as it was alien to Entry 47 of the Constitution and was capable of being discriminatory. It was his case that the SRO was ultra vires of 99D, failed to determine as required, issued during a caretaker period and not placed before the Parliament in the requisite time, hence, ought to be struck down.

7. Mr. Khalid Jawed Khan did not question the *vires* of 99D and his challenge was confined to impugning the SRO. Per learned counsel, it merited being quashed as it amounted to an illegal delegation of statutory authority; infringed *Mustafa Impex*; did not conform to the requirements laid out in 99D and vitiated the protection available in law to a past and closed transaction. Notwithstanding the foregoing, it was articulated, in the alternate, that if the instrument was upheld then the petitioners may be provided the opportunity of an assessment.⁹

8. It was the Federal Board of Revenue's case¹⁰ that the petitions ought to be dismissed as windfall tax was retrospective by nature; there was no constitutional defect in its imposition; and the SRO was *placed* before the

⁷ Available at page 107 onwards in CP D 5741 of 2023 and at page 25 onwards in CP D 713 of 2024. These two petitions are articulated to be representative of the entire set of petitions by the petitioners' learned counsel.

⁸ Judgment dated 15.09.2022 rendered in *DCIR vs. Digicom Trading (CA 2019 of 2016)*; *CIR vs. Jahangir Khan Tareen* reported as 2022 SCMR 92; *Dr. Seema Irfan & Others vs. Federation of Pakistan & Others* reported as PLD 2019 Sindh 516; *Deputy Commissioner Income Tax / Wealth Tax Faisalabad vs. Punjab Beverage Company (Private) Limited* reported as 2007 PTD 1347.

⁹ The remaining learned counsel for the petitioners adopted the arguments as aforesaid.

¹⁰ Advocated by Mr. Shazib Masud.

Parliament within the stipulated time. Mr. Mirza Nasar Ahmed¹¹ adopted the aforesaid and complimented that determination is a subjective concept and in any event since banks have been added to the 7th Schedule of the Ordinance, therefore, the petitions must fail.

Scope of determination

Maintainability

9. Heard and perused. The initial issue to consider is the aspect of maintainability. *Prima facie* the present challenge is actuated by issuance of notices to amend assessment, ostensibly in the nature of show cause notices, issued by revenue to the assessee. Authority has been recorded supra¹² to demonstrate that such notices are not ordinarily assailable directly in writ jurisdiction. However, Mr. Khalid Jawed Khan guided our cognizance to ten *prior in time* judgments¹³ of the Supreme Court, rendered by five member and three member benches respectively, to sanction consideration of orders / notices, related to a fiscal right based on a statutory instrument requiring no factual determination, issued without jurisdiction, illegal on the face of the record and / or mala fide; and there was no endeavor before us to displace the jurisdiction so recognized. Therefore, no occasion stood demonstrated to non-suit the petitioners on the anvil of maintainability.

Remit of adjudication

10. The Constitutional courts are endowed with the jurisdiction to declare a legislative enactment as unconstitutional and the anvil for such determination was demarcated by the Supreme Court in *Imrana Tiwana*¹⁴, wherein the pertinent law was collated and it was articulated that there was a presumption in favor of constitutionality and a law must not be declared unconstitutional

¹¹ Learned Additional Attorney General Pakistan; appearing on notice per Order XXVII-A CPC.

¹² Paragraph 5 herein.

¹³ Five member bench judgments – *S A Haroon vs. Collector of Customs* reported as PLD 1959 SC 177 at page 177 B; *Pakistan vs. Qazi Ziauddin* reported as PLD 1962 SC 440 at page 449 H (*B Z Kaikaus J.*); *Nagina Silk Mill vs. ITO Lyallpur* reported as PLD 1963 SC 322 (*S A Rahman J.*). Three member bench judgments – *Lt. Col. N M A Khan vs. Controller of Estate Duty* reported as PLD 1961 SC 119 at page 127/8 E (*B Z Kaikaus J.*); *Usmania Glass vs. Sales Tax Officer Chittagong* reported as PLD 1971 SC 205 at page 209 B (*Wahiduddin J.*); *Murree Brewery vs. Pakistan* reported as PLD 1972 SC 279 at page 287 A (*Salahuddin Ahmed J.*); *Edulji Dinshaw Limited vs. ITO* reported as PLD 1990 SC 399 at pages 414, 415 & 422 (*Abdul Kadir Shaikh J.*); *Julian Hoshang Dinshaw Trust vs. ITO* reported as 1992 SCMR 250 at page 255 B & C (*Muhammad Afzal Lone J.*); *Attock Cement vs. Collector Customs* reported as 1999 PTD 1892 at page 1903 E & G; *CIT vs. Eli Lilly* reported as 2009 SCMR 1279 at page 1341 P (*Iftikhar Muhammad Chaudhry CJ.*).

¹⁴ Per *Mian Saqib Nisar J.* in *Lahore Development Authority vs. Imrana Tiwana* reported as 2015 SCMR 1739.

unless the statute was placed next to the Constitution and no way could be found in reconciling the two; where more than one interpretation was possible, one of which would make the law valid and the other void, the Court must prefer the interpretation which favored validity; a statute must never be declared unconstitutional unless its invalidity was beyond reasonable doubt; a reasonable doubt must be resolved in favor of the statute being valid; a Court should abstain from deciding a Constitutional question, if a case could be decided on other or narrower grounds; a Court should not decide a larger Constitutional question than was necessary for the determination of the case; a Court should not declare a statute unconstitutional on the ground that it violated the spirit of the Constitution unless it also violated the letter of the Constitution; a Court was not concerned with the wisdom or prudence of the legislation but only with its Constitutionality; a Court should not strike down statutes on principles of republican or democratic government unless those principles were placed beyond legislative encroachment by the Constitution; and mala fides should not be attributed to the Legislature. In summation, it is the duty of the Court to make every effort to save legislation. Following the path so illumined, we now proceed to appraise the challenge to 99D and the SRO on the said anvil.

Section 99D Income Tax Ordinance 2001

11. In order for 99D to be struck down, the provision would have to be declared to be fatally irreconcilable with the Constitution. The petitioners appear to have a mutually inconsistent stance in this regard. While Dr. Farogh Nasim advocated for obliteration of the provision, Mr. Khalid Jawed Khan did not assail the vires thereof. Mindful of the inconsistency of positions articulated, we now proceed to consider the vires of the statutory provision on the anvil designed by the Supreme Court.

Legislative competence

12. *Syed Mansoor Ali Shah J* described¹⁵ Article 142 of the Constitution as the fountainhead of legislative competence. It is observed that there is no restriction upon a legislature regarding enactment of laws having retrospective effect; save that such power is subject to the Constitution. The Supreme Court has interpreted *subject to the Constitution* to be a reference to instances

¹⁵ In *Commissioner Inland Revenue vs. Mekotex (Private) Limited* reported as *PLD 2025 Supreme Court 1168*.

where the Constitution itself imposes a restriction on the exercise of legislative power or prescribes a specific manner for the exercise of legislative power¹⁶.

13. The Parliament's competence to impose taxes on income is enshrined in the Constitution. Article 260 defines taxation to include any tax or duty, whether general, local or special, and states that the term tax shall be construed accordingly. The very article also goes further to define tax on income to *include* a tax in the nature of an excess profits tax or a business profits tax etc. The Fourth Schedule to the Constitution enumerates the Federal Legislative List and entries 47 and 48 thereof befall the taxes on income¹⁷ and on corporations squarely within the exclusive domain of the Federal Parliament. Article 77 requires that a tax is to be levied for the purposes of the Federation by *or under the authority of* an Act of Parliament. Suffice to summate that the Constitution specifically empowers the Parliament to levy a tax on excess profits; upon corporations; by or under the authority of sub Constitutional legislation.

Retrospective taxation – vested right

14. Our jurisdiction recognizes the concept of retrospective taxation; as seen in the edicts of *Army Welfare Trust*¹⁸, *Molasses Trading*¹⁹, *Annoor Textiles*²⁰ and *Dewan Textiles*²¹. It is imperative to mention that this issue was recently deliberated, in *Mekotex*²², and the controversy, if any remained, is clinched by the observations of the Supreme Court that a legislature that is competent to make a law on a particular subject also has the power to legislate such a levy with retrospective effect and can, by legislative fiat, even take away vested rights. Therefore, when legislature gives retrospective effect to a law, either by express provision or by necessary implication, no protection can be afforded to vested rights contrary to the law. In *mutatis mutandis* application of the binding authority cited supra, the challenge to the vires of

¹⁶ Per Mian Saqib Nisar J. in *Lahore Development Authority vs. Imrana Tiwana* reported as 2015 SCMR 1739.

¹⁷ Other than agriculture income.

¹⁸ Per Ajmal Mian J in *Army Welfare Trust Sugar Mills Limited vs. Federation of Pakistan* reported as 1992 SCMR 1652.

¹⁹ Per Zaffar Hussain Mirza J in *Molasses Trading & Export vs. Federation of Pakistan* reported as 1993 SCMR 1153 – The legislature has within the bounds of the Constitutional limitations, the power to make such law and give it retrospective effect so as to bind even past transactions.

²⁰ Per Ajmal Mian J in *Annoor Textile Mills Limited vs. Federation of Pakistan* reported as PLD 1994 Supreme Court 568 – Retrospective effect can be given by the legislature and merely because a particular party is burdened with certain liabilities, in consequence of the operation of the law, does not mean that any of his rights have been legally infringed.

²¹ Per Syed Jamshed Ali J in *Collector Central Excise & Sales Tax vs. Dewan Textile Mills Limited* reported as 2007 SCMR 1153 – Retrospective increase in rate of duty upheld.

²² Per Syed Mansoor Ali Shah J in *Commissioner Inland Revenue vs. Mekotex (Private) Limited* reported as PLD 2025 Supreme Court 1168.

99D on the touchstone of retrospective legislation cannot be sustained and no further deliberation is merited in such regard by a High Court.

Entry 47

15. Entry 47 of the Fourth Schedule to the Constitution deals with the power to tax income; agricultural income excluded. Such entries, denoting legislative domain, interpreted by *Ajmal Mian J* in *Elahi Cotton*²³, are required to be liberally construed and not viewed in a narrow pedantic manner. In the *PIDC case*²⁴ levy of tax twice on the same income was also recognized. The judgments of this Court in the issue of Super Tax, pertaining to the challenge to sections 4B and 4C of the Ordinance respectively, also follow and uphold the afore stated interpretation of the law.

16. Interestingly, the judgment of this Court rendered in *Shell*²⁵, whereby the vires of section 4C of the Ordinance were under challenge, demonstrates that Mr. Khalid Jawed Khan had insisted that in *Elahi Cotton* the presence of a non-obstante clause was crucial to saving the levy and in *PIDC* the existence of the express phrase “*in addition to*” was considered crucial. Perusal of the verbiage of 99D demonstrates that the provision is endowed with both qualifications highlighted by Mr. Khalid Jawed Khan.

17. Article 260 of the Constitution defines tax on income to specifically include a tax in the nature of an excess profits tax. Entry 47 empowers the Parliament to enact legislation in respect of taxing income and the same appears to have been done per insertion of 99D in the Ordinance. Petitioners’ counsel had attempted to befall 99D within the ambit of a regulatory measure, as opposed to taxation²⁶, however, no case could be made out before us to accord sanction to the argument.

Capable of being discriminatory

18. The law with respect to discrimination in fiscal matters is well settled. Article 25²⁷ of the Constitution mandates equality, however it allows for differential treatment of persons not similarly placed under a reasonable classification; provided that the reasonable classification has to be based upon

²³ *Elahi Cotton Mills Limited vs. Federation of Pakistan* reported as PLD 1997 SC 582.

²⁴ *Pakistan Industrial Development Corporation vs. Pakistan* reported as 1992 SCMR 891.

²⁵ *Shell Pakistan Limited vs. Federation of Pakistan* reported as 2023 PTD 607. Specific reference is made to paragraph 17 thereof.

²⁶ Reliance was placed upon *Sapphire Textile Mills vs. Federation of Pakistan* reported as 2021 PTD 971.

²⁷ All citizens are equal before law and are entitled to equal protection of law...

intelligible differentia having a nexus with the object sought to be achieved²⁸. *Hakimsons*²⁹ deliberated upon the issue of discrimination, in the context of fiscal legislation, and maintained that it has to be established from the legislation that it has discriminated within the same class of persons and in order for the law to be struck down and it must be demonstrated that the said law is not based on intelligible criteria, devoid of nexus with the purpose of the law³⁰. *I A Sherwani*³¹ was relied upon to observe that equal protection of law does not envisage that every citizen is to be treated alike in all circumstances, however, it does contemplate that persons similarly situated or similarly placed are to be treated alike. It was maintained that 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. The Supreme Court has also dealt with this concept perennially, including in *Azam Shah*³² and *Tariq Mahmood*³³.

19. Petitioners' counsel was requested to identify as to how 99D offended Article 25 of the Constitution; in the light of the interpretation afforded per judgments of the Superior courts. He categorically stated that his apprehension was that the provision was *capable of being used in a discriminatory manner*. Respectfully, a statutory provision could not be struck down on the basis of apprehensions and / or surmises.

Subjecting 99D to the anvil demarcated by the Supreme Court

20. The petitioners were not in unison in so far as challenge to the vires of 99D was concerned, The arguments articulated to impugn the Constitutionality thereof could not be sustained in view of the deliberation supra, therefore, no case stood made out to impeach the constitutionality of 99D upon the touchstone of *Imrana Tiwana*³⁴.

²⁸ Per Umar Atta Bandial J in *Hadayatullah vs. Pakistan* reported as 2022 SCMR 1691.

²⁹ Per Muhammad Junaid Ghaffar J in *Hakimsons Impex vs. Federation of Pakistan* reported as 2024 PTD 451 / PLD 2024 Sindh 132.

³⁰ *Sheraz Kaka vs. Federation of Pakistan* reported as 2018 PTD 336.

³¹ 1991 SCMR 1041.

³² Per Muhammad Ali Mazhar J in *Syed Azam Shah vs. Pakistan* reported as 2022 SCMR 1691.

³³ Per Umar Munib Akhter J in *CIR Peshawar vs. Tariq Mehmood* reported as 2021 SCMR 440.

³⁴ Per Mian Saqib Nisar J. in *Lahore Development Authority vs. Imrana Tiwana* reported as 2015 SCMR 1739.

SRO 1588 (I) of 2023

21. The petitioners were unified in so far as the challenge to the SRO was concerned. The instrument was impeached upon allegations of having run afoul of the Constitution, its parent statutory provision, the Elections Act 2017 and edicts of the apex Court.

Placing before Parliament

22. Petitioners' counsel drew attention to section 99D(2)(3) of the Ordinance to demonstrate that the notification, issued pursuant hereto, has to be *placed* before the Parliament within ninety days of the issuance thereof or the 30th day of the financial year; whichever is earlier. It was his case that the SRO was not placed before the Parliament in time. The SRO is shown to have been issued on 21.11.2023 and it was placed before the Parliament on 16.02.2024³⁵. A cursory back of the envelope calculation undeniably suggested that the *placing* was within time.

Ultra vires of 99D

23. The next argument was that the SRO was *ultra vires* to 99D; on the premise that the SRO sought retrospective effect, stated to be alien to the subsection (1) of the statutory provision itself. The plain language of the provision demonstrates that imposition covers *any of the last three tax years preceding the tax year 2023* and onwards. It is our view that retrospectivity is clearly contemplated in the provision, therefore, no occasion arises to consider the SRO incongruent thereto. The Constitutionality of retrospectivity *per se* has already been deliberated supra and no occasion arises for repetition.

24. It was also insisted that the determination, required to be undertaken by the Federal Government per section 99D(2)(b), was absent from the SRO. The provision specifically contemplates determination of windfall profits on account of foreign currency fluctuation. In so far as windfall profits from foreign currency fluctuation are concerned, the SRO appears to have identified the relevant sector, being banking companies; and predicates the determination *inter alia* upon a five year arithmetic mean, gleaned from the respective annual returns in the sector, relative to the gains in the tax year sought to be taxed. Therefore, no dissonance of the SRO from 99D could be demonstrated on this count either.

³⁵ Admitted by respondents' learned counsel and a copy of the delivery receipt was also placed on record.

Mustafa Impex³⁶ & the Elections Act 2017

25. It was contended that the SRO was issued during the caretaker Government era, hence, fell afoul of the edict in *Mustafa Impex*. The argument was calibrated upon interpretation of section 230 of the Elections Act 2017 to suggest that the reference to the Federal Government, in 99D, was to be construed as a reference to only an elected government and not a caretaker government.

26. *Prima facie* 99D does not qualify Federal Government as being elected or caretaker and does not appear to preclude the issuance of the relevant notification in either scenario. Section 230 of the Elections Act 2017 requires a caretaker government to *inter alia* perform functions necessary to run the affairs of Government; be impartial; and take actions in the public interest that are not irreversible by the future elected Government. No argument was articulated before us to suggest that the imposition of windfall tax was anything but necessary to run the affairs of Government, impartial, in the public interest and reversible by the subsequent elected Government. There is also no cavil to the SRO having been issued / sanctioned by the Federal Government, hence, no violation of *Mustafa Impex* stood demonstrated before us.

Unlawful delegation

27. It was also alleged that the powers exercised per the SRO amounted to unlawful delegation of authority. Article 77 of the Constitution has been discussed supra and it states that no tax shall be levied except by or under the authority of an Act of Parliament. Clearly there is a twofold path contemplated for a levy; i.e. directly or via statutory delegation. The present scenario suggests that while the requisite ingredients are defined per statute, 99D, a subsequent clearly demarcated determination is delegated to the Federal Government. The concept of delegated legislation needs no introduction and has been addressed exhaustively by the Supreme Court in *Zaibtun³⁷*, *Muhammad Ashraf³⁸*, *Elahi Cotton³⁹*, *Cynamid⁴⁰* and *Mustafa Impex⁴¹*.

³⁶ Per Saqib Nisar J in *Mustafa Impex vs. Government of Pakistan* reported as PLD 2016 Supreme Court 808.

³⁷ Per Zaffar Hussain Mirza J in *Zaibtun Textile Mills limited vs. Central Board of Revenue* reported as PLD 1983 Supreme Court 358.

³⁸ Per Zaffar Hussain Mirza J in *Government of Pakistan vs. Muhammad Ashraf* reported as PLD 1993 Supreme Court 176.

³⁹ Per Ajmal Mian J in *Elahi Cotton Mills Limited vs. Federation of Pakistan* reported as PLD 1997 SC 582 - Reference is made to paragraph 15 thereof.

⁴⁰ Reported as PLD 2005 Supreme Court 495 - Reference is made to paragraph 15 thereof.

⁴¹ Reference is made to paragraphs 66, 67 and 68 thereof.

Recently the law has been exhaustively reiterated by a Division Bench of this Court in *Mal Pakistan*⁴² and the by apex Court in *Shahtaj*⁴³.

28. While Article 77 of the Constitution contemplates levy of tax under the authority of the Parliament, Article 97 thereof stipulates that the executive authority of the federation shall extend to matters with respect to which the Parliament has the power to make laws; including exercise of rights, authority and jurisdiction. Delegation is contemplated to achieve the object of the statute and test to determine the validity thereof is to see whether it amounts to abdication of the function of the legislature. The essential functions of the legislature, i.e. promulgation, modification, repeal etc., are envisaged to be exercised by the legislature only, however, no exercise of such power by the Federal Government is manifest from the SRO.

29. The edicts referred to supra have crystallized the doctrine of impermissible excessive legislative authority and without reproducing the dicta it is observed that the petitioners remained unable to befall the SRO within the confines thereof.

Conclusion

30. In view of the deliberation herein précised, the challenge to the imposition of windfall tax could not be substantiated before us. Therefore, these petitions were dismissed in Court, upon conclusion of the arguments, per our short order dated 20.02.2025; operative constituent whereof is reproduced herein below:

“These petitions challenged the *vires* of section 99D of the Income Tax Ordinance 2001 and the corollary SRO 1588 (I) of 2023 dated 21.11.2023; pertinent to the imposition of *Windfall Tax*. For reasons to be recorded, these petitions, along with all pending applications, are hereby dismissed.

Dr. Farogh Naseem made an oral motion, on behalf of the petitioners, seeking for the aforesaid order to be suspended for a month. Per learned counsel, interim orders had been subsisting in

⁴² Per Muhammad Junaid Ghaffar J in *Mal Pakistan (CP D 1089 of 2016)* – reference is made to paragraph 3 thereof.

⁴³ Per Athar Minallah J in *Shahtaj Sugar Mills vs. Government of Pakistan* reported as 2024 SCMR 1656 - Reference is made to paragraphs 7, 10 and 12 thereof.

these petitions since 2023, as represented vide the interim order dated 07.12.2023 in CP D 5741 of 2023 and connected petitions.

The interim orders, subsisting till today, specified that “...*the operation of impugned SRO 1588(I)/2023 dated 21.11.2023 will remain suspended in all petitions...*”. In the event that the oral motion was granted, the necessary effect would have been to resurrect the aforesaid order and perpetuate the suspension of the relevant law, notwithstanding that the challenge to the *vires* thereof had already been dismissed.

The Supreme Court has deprecated the tendency to render interim orders having the effect of suspending a law. It has been consistently illumined, especially in revenue matters, that interim orders, having the effect of suspending a law, ought not to be passed. There is a plethora of edicts to such effect, including *Aitzaz Ahsan*⁴⁴, *Aijaz Jatoi*⁴⁵; *Dunlop*⁴⁶; as recently emphasized by the Supreme Court in *Pakistan Oilfields*⁴⁷.

It is our considered view that grant of the oral motion would militate against the edicts of the Supreme Court, including as cited supra. Therefore, we do hereby respectfully deny the oral motion for suspension.”

These are the reasons for our short order. The office is instructed to place copy hereof in each connected file.

Judge
(03.04.2025)

Judge
(03.04.2025)

⁴⁴ Per Muhammad Haleem CJ. in *Federation of Pakistan vs. Aitzaz Ahsan & Others* reported as *PLD 1989 Supreme Court 61*.

⁴⁵ Per Shafiur Rehman J. in *Aijaz Ali Khan Jatoi vs. Liaquat Ali Khan Jatoi* reported as *1993 SCMR 2350*.

⁴⁶ Per Chinnappa Reddy J. in *Assistant Collector of Central Excise vs. Dunlop India Limited* reported as *AIR 1985 Supreme Court 330*.

⁴⁷ Per Syed Mansoor Ali Shah J. in order dated 29.02.2024, rendered in *Commissioner Inland Revenue, Large Taxpayers Office vs. Pakistan Oilfields Ltd. Rawalpindi & Others (Civil Petitions 3472 to 3475 of 2023)*.

Schedule

CP D 5741 of 2023 - HBL vs. Federation of Pakistan & Others	CP D 5742 of 2023 - Habib Metropolitan Bank vs. Federation of Pakistan & Others
CP D 5743 of 2023 - Bank Al Falah Ltd. vs. Federation of Pakistan & Others	CP D 5744 of 2023 – Standard Chartered Bank (Pakistan) Ltd. vs. Pakistan & Others
CP D 5745 of 2023 - Summit Bank Ltd. vs. Federation of Pakistan & Others	CP D 5746 of 2023 - Meezan Bank Ltd. vs. Federation of Pakistan & Others
CP D 5778 of 2023 - Citibank N.A. vs. Federation of Pakistan & Others	CP D 5779 of 2023 - Al Baraka Bank Pakistan Ltd. vs. Federation of Pakistan & Others
CP D 5780 of 2023 - Industrial & Commercial Bank of China Ltd. vs. Pakistan & Others	CP D 5781 of 2023 - Dubai Islamic Bank Pakistan Ltd. vs. Pakistan & Others
CP D 5790 of 2023 - JS Bank Ltd. vs. Federation of Pakistan & Others	CP D 5791 of 2023 - Bank Islamic Pakistan Ltd. vs. Federation of Pakistan & Others
CP D 5792 of 2023 - UBL vs. Federation of Pakistan & Others	CP D 5938 of 2023 - Sindh Bank Ltd. vs. Federation of Pakistan & Others
CP D 6051 of 2023 - Samba Bank Ltd. vs. Federation of Pakistan & Others	CP D 6070 of 2023 - Deutsche Bank AG, Pakistan vs. Federation of Pakistan & Others