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 <b>Federal Board of Revenue</b> Government of Pakistan	
<b>OFFICE OF THE DIRECTOR LAW-II</b> <b>DIRECTORATE OF LAW, LAHORE</b>	
No. <u>61</u>	Dated: <u>13</u> /04/2020

URGENT  
COURT MATTER

The Chief Commissioners Inland Revenue,  
LTU, CRTO and RTO-II Lahore, CRTO Karachi,  
Regional Tax Offices Gujranwala, Sialkot, Sargodah,  
Faisalabad, Multan and Bahawalpur.

Chief (I-IV)  
 SS(LI-SC)  
 SS(T-I)  
 SS(T-II)  
 Chief (L-IV)  
 SS(LI-FC)  
 SS(L-A&A)  
 Chief (L-III)  
 S(LDT)  
 S(LIDT)  
 SPS

**Subject:- JUDGMENT PASSED IN ICA NO.134758 OF 2018 TITLED AS D.G. KHAN CEMENT COMPANY LIMITED ETC VS FEDERATION OF PAKISTAN – IMPOSITION OF SUPER TAX THROUGH SECTION 4B OF THE INCOME TAX ORDINANCE, 2001**

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 It may be placed on FBR's website

Kindly refer to the subject cited above.

Brief facts of the case are that imposition of super tax through Section 4B of the Ordinance of 2001 for rehabilitation of temporarily displaced persons was challenged by taxpayers through various writ petitions before learned Single Bench of this Court, which were dismissed vide consolidated judgment dated 22.12.2017, passed in W.P. No.38612 of 2015, declaring the levy of Super Tax as constitutional and valid.

The taxpayers (73 cases) challenged the decision of the learned Single Bench of the Lahore High Court Lahore in Intra Court Appeals (ICA) on the following grounds;

- The impugned levy is for a specific purpose, which is a characteristic of 'cess' or "fee" and does not come within the ambit of "tax";
- It could not be enacted through a money bill, by invoking provisions of Article 73 of the Constitution as impugned levy does not come within any of the clauses mentioned in sub Article (2) & (3) of Article 73 of the Constitution; and
- Normal procedure, as provided under Article 70, was required to be adopted to impose impugned levy;

During the course of proceedings, the undersigned personally assisted the Hon'able Division Bench of the Lahore High Court, Lahore and argued that the super tax is a tax and not a fee. Moreover, a tax can be charged by specifying any purpose in the levy. In support of the contentions reference was made to the cases of Sohail Jute Mills Ltd., Pakistan Industrial Development Corporation, Elahi Cotton Mills Ltd.,

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Messrs Lahore Polypropylene Industries (Private.) Ltd. and others v. Federation of Pakistan and others (2012 PTD 1003), Durrani Ceramics, Lahore Development Authority through D.G. and others v. Ms. Imrana Tiwana and others (2015 SCMR 1739), Workers' Welfare Funds, Human Resources Development, Islamabad through Secretary and others v. East Pakistan Chrome Tannery (Pvt.) Ltd. through G.M. (Finance), Lahore and others (PLD 2017 Supreme Court 28), Sindh Revenue Board through Chairman Government of Sindh and another v. The Civil Aviation Authority of Pakistan through Airport Manager (2017 SCMR 1344), Syed Nasir Ali and 33 others v. Pakistan through Secretary Ministry of Law, Islamabad and 3 others (2010 PTD 1924) and M/s Colony Sugar Mills Ltd. v. Province of Punjab and others [(2016) 114 TAX 307].

The Hon'able Court in this landmark judgment has discussed the above referred judgements in detail and has laid down following principles regarding concept of taxation, legislative authority to levy tax and the basis on which a levy can be challenged under Article 199 of the Constitution of Islamic Republic of Pakistan 1973;

1. Both "tax" and "fee" are compulsory exaction of money by the public authorities. However, tax is a common burden for raising revenue, which becomes part of public revenue of the State whereas fee is exacted for a specific purpose and for rendering services or providing privilege to particular individuals or a class or a community or a specific area. For a levy to be a "fee", relationship between purpose and the persons from whom levy is being exacted, is also to be established. From reading of the provisions of Section 4B of the Ordinance of 2001, it is clear that revenue generated through impugned levy would be used for rehabilitation of temporarily displaced persons and no favour, privilege or advantage is being extended to persons paying the levy. Therefore, in absence of essential element of quid pro quo, the impugned levy does not seem to be covered under the term "fee".
2. Another prominent feature of "tax" is that it is a common burden for raising revenue, which becomes part of public revenue of the State. The Annual Budget Statement duly mentioned the impugned levy i.e. super tax as sum required to meet other expenditures which the Federal Government proposed to make from the Federal Consolidated Fund.
3. It is the firm stance of the Government that the impugned levy is a tax and, unless it is rebutted in material particulars, there is no reason to assume that impugned levy is not a tax. The budget speech delivered by the Finance Minister in budget sessions for the year 2015-2016 clearly shows what the Government intended to do through the impugned levy.
4. The Government was clear to impose a "tax" and use it on general population, significantly large in number, of FATA and Khyber Pakhtunkhwa. Mere mentioning of above purpose would not detract the impugned levy from the domain of "tax".



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5. The impugned levy comes within the domain of Clause (a) of Paragraph (2) of Article 73. Thus, was rightly enacted by adopting procedure provided in Article 73 of the Constitution.
  6. Legislature is empowered to classify persons or properties into different categories subject to different rates of tax but same class / similarly situated persons cannot be treated unequally. The Legislature enjoys greater latitude for classification in the field of taxation. The class of persons, on the basis of income, has been set apart in one category, fulfilling the requirement of reasonable classification. As long as there is uniformity within each group, there is no discrimination. Furthermore, in fiscal statute, element of discrimination can neither be pleaded nor such statute can be struck down at the touchstone of Article 25 of the Constitution.
  7. The Legislature can impose more than one tax on income under Entry 47 of the Fourth Schedule to the Constitution.
  8. An entry in a legislative list cannot be construed narrowly or in a pedantic manner but it is to be given liberal construction.
  9. The term "taxes on income" used in Entry 47 nullifies the argument of the appellants with regard to double taxation. Even otherwise, impugned levy has been imposed through a clear and independent provision, having its separate charge assessment and recovery mechanism. Intention of the Legislature in imposing super tax, besides the income tax already imposed, by way of Section 4B of the Ordinance of 2001, is very much clear.
  10. The power to levy taxes is a sine qua non for a state in so far as the same is essential for purposes of generating financial resources, and the utilization of those resources for welfare of the people at large. The legislature enjoys plenary power to impose taxes within the framework of the Constitution, and this power rests on necessity as it is an essential and inherent attribute of sovereignty belonging as a matter of right to every independent State or Government and by exercising such powers, mala fide cannot be attributed to the legislature
  11. Once, legislature has exercised such power within the framework of the Constitution, it cannot be contended by the appellants that, by levying such tax and exercising such powers, the legislature intends to retain money or benefits which in justice, equity and good conscience belong to the appellants, in order to bring their case within the parameters of principles of unjust enrichment
  12. Where validity of a statute or provision thereof, is questioned and there are two interpretations, one which makes the law valid, is to be preferred over the other, which will render it void. The criteria before the Court, for determining the vires of a provision of law, is that the Court must be able to hold beyond any iota of doubt that violation of the Constitutional provisions was so glaring that the legislative provision under challenge could not stand. Without such violation of Constitutional provisions, the law made by the Legislature, cannot be declared bad.
  13. Motive of the Legislature, in passing a statute or its provision thereof, is beyond any scrutiny of Courts nor can the Courts examine whether the Legislature had applied its mind to the provisions of a statute before passing it. Propriety, expediency and necessity of a law are to be determined by the legislative authority and not by the Courts.



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14. While examining a law, enacted through legislative process provided under the Constitution, power of the Court was limited to examine whether the provision of law was repugnant, inconsistent or in conflict with the provisions of the Constitution, whether legislature had legislative competence as envisaged in the Constitution, and whether the legislation violated or abridged fundamental rights guaranteed by the Constitution. A statute must be interpreted to advance the cause of statute and not to defeat it. Courts cannot sit in judgment over the wisdom of the legislature, except on two grounds on which the law laid down by the legislature can be struck down by the Courts, namely, lack of legislative competence and violation of any of the fundamental rights guaranteed in the Constitution or of any other Constitutional provision.

The Hon'able Court has dismissed all the appeals of the taxpayers on the issue of vires of Section 4B of the Income Tax Ordinance, 2001.

In order to determine the revenue impact of the judgement you are requested to provide detail of super tax involved in these appeals for the tax years 2015 to 2019 on the following format by **07-05-2020**;

S#	Appeal No.	Titled of the case	Amount of Super Tax (T.Y.2015 to 2019)	Amount of Default Surcharge	Total Amount of Super Tax	Recovered / deposited	Balance recoverable
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Encl: (As above)

  
(Dr. Ishtiaq Ahmad Khan)  
Director Law-II

Copy to;

1. The SA to Chairman, Federal Board of Revenue, Islamabad
2. The Member (Legal), Federal Board of Revenue, Islamabad
3. The Member (Operation), Federal Board of Revenue, Islamabad



**JUDGMENT SHEET  
IN THE LAHORE HIGH COURT, LAHORE.  
JUDICIAL DEPARTMENT**

**ICA No.134758 of 2018**

**D.G. Khan Cement Company Limited & another  
Versus**

**Federation of Pakistan through Secretary Revenue, Islamabad & others**

**J U D G M E N T**

Date of hearing: 27.02.2020.

Appellants by: M/s. Imtiaz Rashid Siddiqui, Khawaja Farooq Saeed, Mansoor Usman Awan, Muhammad Ajmal Khan, Asif Hashmi, Shehryar Kasuri, Raza Imtiaz Siddiqui, Muhammad Mohsin Virk, Habib ur Rehman, Shahzad Hassan, Mian Shah Behram Sukhera, Aleem Raza, Mian Azeem Sarwar, Khurram Shehzad Gondal, Shahid Sarwar, Muhammad Amin Goraya, Shahbaz Butt, Khurram Shahbaz Butt, Muhammad Akram Babar, Muhammad Azam Chughtai, Farooq Raza, Rana Muhammad Afzal, Jamshed Alam, Qadeer Ahmad Klayar, Sabeel Tariq Maan, Muhammad Asif, Muhammad Hamza Sheikh, Mian Ashiq Hussain, Syed Shahab Qutab, Mian Tariq Hassan, Khawaja Riaz Hussain, Shahzeen Abdullah, Mohsin Mumtaz, Asghar Laghari, Mian Abdul Ghaffar, Omer Wahab, Noreen Fouzia, Muhammad Azhar Khan Joiya, Abdullah Akhtar Butt, Shahid Sharif, Salman Zaheer Khan, Ali Usman, Hassan Ali, Dania Mukhtar, Shehzad Ata Elahi, Habib-ur-Rehman, Chaudhary Muhammad Ali, Salman Zaheer Khan, Khurram Saleem, Majid Jehangir, Usman Khalil, Rana Muhammad Mehtab, Muhammad Imran Rashid, Sohail Anjum Virk, Javed Abbas Sial, Miss Muqaddas Zohra, Khurram Riaz Kahloon, Farhan Shahzad, Mian Abdul Ghaffar, Muhammad Ahsan Nawaz, Muhammad Talha, Rai Amir Ejaz Kharal, and Saadat Ali Saeed, Advocates.

Respondents by: M/s. Monim Sultan and Zahid Sikandar, Assistant Attorney Generals for Federation of Pakistan along with Dr. Ishtiaq Ahmad Khan, Director Legal FBR.

M/s. Liaquat Ali Chaudhary, Sarfraz Ahmad Cheema, Shahzad Ahmad Cheema, Adeel Shahid Karim, Mrs. Kausar Parveen, Ch. Muhammad Yasin Zahid, Chaudhary Muhammad Zafar Iqbal, Mrs. Riaz Begum, Saad Bin Ghazi, Faraz Anser, Aamer Khan, Falak Sher Khan, Sahar Iqbal, Zafar Iqbal Bhatti, Chaudhary



Rehmat Ali, Rana Muhammad Mahtab, Muhammad Saleem Chaudhary, Ijaz Mehmood Chaudhary, Hammad-ul-Hassan Hanjra, Ibrar Ahmad, Syed Zain-ul-Abideen Bukhari, Syed Tasaddaq Murtaza Naqvi, Shahid Sarwar Chahil, Saeed Dogar, Muhammad Yahya Johar and Mubashar A Malik, Advocates / Legal Advisors for respondent department.

**MUHAMMAD SAJID MEHMOOD SETHI, J.-** This consolidated judgment shall decide instant appeal, along with connected cases detailed in Schedule appended herewith, as common questions of law and facts are involved in these cases.

2. Through instant appeal, appellants have challenged the consolidated judgment dated 22.12.2017, passed by learned Single Bench of this Court in **W.P. No.38612 of 2015**, whereby writ petitions filed by appellants, challenging the provisions of Section 4B of the Income Tax Ordinance, 2001 (**"the Ordinance of 2001"**) regarding levy of Super Tax, being *ultra vires* the Constitution of the Islamic Republic of Pakistan, 1973 (**"the Constitution"**), were dismissed.

3. Brief facts of the case are that imposition of super tax through Section 4B of the Ordinance of 2001 for rehabilitation of temporarily displaced persons was challenged by appellants through various writ petitions before learned Single Bench of this Court, which were dismissed vide consolidated judgment dated 22.12.2017, passed in **W.P. No.38612 of 2015**, declaring the levy of Super Tax as constitutional and valid. It was further held that Annual Budget Statement duly mentioned Super Tax as sum required to meet other expenditure which the Federal Government proposed to make from the Federal Consolidated Fund, thus, the same was in accordance with the mandate of Article 80 of the Constitution and was imposed / promulgated through a proper procedure and also did not amount to double taxation. It was also observed that the mere fact that the Government mentioned the purpose for which the revenue was being generated did not preclude it of being a 'tax'.



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4. Mr. Imtiaz Rashid Siddiqui, Advocate, opened his arguments by reading Articles 7, 77, 97, 141, 142 & 151 of the Constitution in order to re-visit legislative domain of the Federation and Provinces. However, he conceded that Article 151 does not have any relation with Article 77 of the Constitution, particularly the phrase "purposes of the Federation". He submits that the Federation has to legislate exercising normal procedure by getting bill passed from both the houses, whereas to legislate under Article 77, extra ordinary procedure is adopted and bill is passed through the National Assembly. He adds that Article 151 has nexus with Article 142 and not Article 77 of the Constitution. He explains that sovereignty given in the Constitution to the Provinces has not been taken away by Article 151. It only ousts some powers of the Provinces only to the extent and purposes / subjects mentioned in said Article. He concludes that imposition of impugned levy by the Federation under the Ordinance of 2001 for the purpose of rehabilitation of temporarily displaced persons cannot be allowed to be read through Article 151 of the Constitution.

Continuing arguments, learned counsel has read entries No.25 & 26 from obsolete concurrent list of the Constitution. He submits that prior to 18<sup>th</sup> Amendment, the social welfare might have been a subject of Federal legislation, but after 18<sup>th</sup> Amendment, these words are not found remotely in entries available under Fourth Schedule, therefore, any legislation including the impugned levy in the name of social welfare is not available to the Federal legislature. Distinguishing 'fee' and 'cess' from tax, he submits that impugned levy being of specific purpose is outside the ambit of tax and referred to Messrs Quetta Textile Mills Limited through Chief Executive v. Province of Sindh through Secretary Excise and Taxation, Karachi and another (PLD 2005 Karachi 55) and Federation of Pakistan through Secretary M/o Petroleum and Natural Resources and another v. Durrani Ceramics and others (2014 SCMR 1630), Workers' Welfare



Funds, M/o Human Resources Development, Islamabad and others v. East Pakistan Chrome Tannery (Pvt.) Ltd. through G.M. (Finance), Lahore and others (PLD 2017 SC 28). Elaborating his argument, learned counsel submits that a specific purpose levy being outside the ambit of tax is outside the ambit of competence of Federal Legislature through Money Bill. He contends that special purpose levy can only be imposed through ordinary mode of legislation. Without prejudice to his argument on competence, learned counsel submits that the purpose of rehabilitating the displaced persons occurred in 2015 and this levy was introduced, however, it is continuing till today through yearly Finance Acts without showing whether this levy is spent for the purpose and purpose is alive, whereas, as per his information, the purpose is no more. He elaborates that the special purpose levy should not and could not be a part of the National Finance Commission under Article 160, which provides mechanism for distribution of collected tax whereas a specific purpose levy has to be spent for that purpose alone as is mandated by the legislature.

Mr. Mansoor Usman Awan, Advocate, one of learned counsel for appellants, submits that impugned levy is not a tax, as tax could not be levied for specific purpose. He explains that taxing powers of Federation are marked from Entry 43 to 53, which can be levied by invoking Article 73 of the Constitution. He submits that purpose as shown in the Budget speech in fact could not be achieved through the impugned levy. He submits that impugned levy does not come within any of the areas mentioned in Article 160, however, amounts collected through impugned levy is subject to recommendation of the National Finance Commission ("NFC") and has to be distributed between Federation and the Provinces. He argues that Section 4B(1) and annual budget statement show that the amounts collected would not go into the divisible pool. He contends that there is no mechanism in the Constitution for spending special purpose levy for the particular



purpose, if claimed to be levied under Entry 47. He maintains that reliance of learned Single Judge on Budget speech to uphold vires of impugned levy is against the available facts and provisions of Article 160(3). He maintains that impugned levy might fall under Entry 54 read with Entry 58 to be charged in connection with ‘purposes of Federation’ as envisaged under Article 77, yet it could not have been levied by the legislature under Article 73 of the Constitution. He concludes that any levy for specific purpose by the Federation being not part of taxes mentioned in Clause (3) of Article 160 has to be taken out of Entries 43 to 53. While referring to Durrani Ceramics Case supra, learned counsel submits that Gas Infrastructure Development Cess (‘GIDC’) was declared as fee and levy of GIDC was declared ultra vires for being levied by invoking procedure under Article 73. In support of his contentions, he has relied upon Sohail Mills Ltd. and others v. Federation of Pakistan through Secretary, Ministry of Finance and others (PLD 1991 Supreme Court 329), Pakistan Industrial Development Corporation v. Pakistan through the Secretary, Ministry of Finance (1992 SCMR 891) and Pakcom Limited and others v. Federation of Pakistan and others (PLD 2011 Supreme Court 44).

Mr. Muhammad Asif Hashmi, Advocate, one of learned counsel for appellants, submits that impugned levy cannot be imposed on imputable income as mentioned in Section 4B(2) & (3) of the Ordinance of 2001. He has referred the definition of ‘imputable income’ under Section 2(28A) and submits that the amount reflecting against the paid tax as income is taken as imputable income but the same is an imaginary figure, which does not spell out a taxing event, which is *sine qua non* for taxing. He has placed reliance on the judgment reported as Pakistan International Freight Forwarders Assn and others v. Province of Sindh and others [(2016) 114 TAX 413 (H.C.Kar.)].



Khawaja Saeed Ahmad, Advocate, another learned counsel for appellants, after reading paragraph 84 from the judgment in Mustafa Impex Case submits that Rules of Business are binding on the Government and after 18<sup>th</sup> amendment, social welfare is the subject of Provinces. His next argument, with reference to Messrs Elahi Cotton Mills Ltd and others v. Federation of Pakistan through Secretary M/o Finance, Islamabad and 6 others (PLD 1997 Supreme Court 582), is that presumptive tax falls within Entry 52 and once this tax is charged, no tax under Entry 47 can be charged. He argues that 'imputable income' is the income which could have been the income calculated being not taxed under presumptive tax regime; if the same transaction is again taxed, it obviously would be a case of double taxation. However, a tax already charged, if made basis, of another charge can said to have been hit by the law laid down by the august Supreme Court of Pakistan in above-referred case. While referring paragraph 22 of the judgment in Workers' Welfare Funds' Case, learned counsel reiterates his arguments that levy for specific purpose does not come within the definition of 'tax', therefore, could not be levied by the legislature under Article 73 of the Constitution. Learned counsel has also read subsection (1) of section 153 and subsection (4) of section 4B to submit that appellants have been provided protection of final taxation under these provisions, which is breached by impugned section 4B as additional levy has been levied without referring to and in presence of the protection provided by the already existing sections. He further argues that a taxpayer, falling in presumptive tax regime, cannot be taxed under the machinery provisions of the impugned section 4B of the Ordinance of 2001. He next submits that procedure of charging tax for the taxpayer falling in presumptive tax regime has not been provided, therefore, charging provisions even if applicable shall not be effective. He has placed reliance on the judgment reported as



Commissioner of Income Tax Bangalore, etc. v. B.C. Srinivasa Setty, etc. [(1981) 128 ITR 294].

While relying upon the case of Elahi Cotton Mills supra, learned counsel submits that any legislation which does not provide conditions for fixing quantum of levy, the manner for its imposition, assessment machinery, is unconstitutional. He also refers a judgment from Indian jurisdiction reported as Commissioner, Central Excise & Customs, Kerala v. M/s Larsen & Toubro Ltd. [(2016) 1 SCC 170].

5. Mr. Monim Sultan, Assistant Attorney General for Federation of Pakistan, at the outset, has produced statement showing details of Super Tax collected from tax year 2015 to 2018 along with statement showing that Federation has spent more than the amount collected under Section 4B for rehabilitation of displaced persons in Federally Administered Tribal Areas. It is apprised that all the spendings are being made by the concerned Ministry.

Dr. Ishtiaq Ahmed Khan, Commissioner Inland Revenue, Lahore, contends that tax can be charged by specifying any purpose in the levy. In support of his contentions, he has made reference to the cases of Sohail Jute Mills Ltd., Pakistan Industrial Development Corporation, Elahi Cotton Mills Ltd., Messrs Lahore Polypropylene Industries (Private.) Ltd. and others v. Federation of Pakistan and others (2012 PTD 1003), Durrani Ceramics, Lahore Development Authority through D.G. and others v. Ms. Imrana Tiwana and others (2015 SCMR 1739), Workers' Welfare Funds, M/O Human Resources Development, Islamabad through Secretary and others v. East Pakistan Chrome Tannery (Pvt.) Ltd. through G.M. (Finance), Lahore and others (PLD 2017 Supreme Court 28), Sindh Revenue Board through Chairman Government of Sindh and another v. The Civil Aviation Authority of Pakistan through Airport Manager (2017 SCMR 1344), Syed Nasir Ali and 33 others v. Pakistan through Secretary Ministry of Law, Islamabad and 3



others (2010 PTD 1924) and M/s Colony Sugar Mills Ltd. v. Province of Punjab and others [(2016) 114 TAX 307].

6. Arguments heard. Available record perused.

7. The main argument of appellants is that Super Tax, which has been levied by inserting Section 4B in the Ordinance of 2001, vide Finance Act of 2015, is not a 'tax' and is, therefore, liable to be struck down for the following reasons:

- The impugned levy is for a specific purpose, which is a characteristic of 'cess' or 'fee' and does not come within the ambit of 'tax';
- It could not be enacted through a money bill, by invoking provisions of Article 73 of the Constitution as impugned levy does not come within any of the clauses mentioned in sub-Article (2) & (3) of Article 73 of the Constitution; and
- Normal procedure, as provided under Article 70, was required to be adopted to impose impugned levy;

8. Impugned Section 4B, as inserted in the Ordinance of 2001 through Finance Act of 2015, and amended from time to time, is reproduced below:

**"4B. Super tax for rehabilitation of temporarily displaced persons.—** (1) A super tax shall be imposed for rehabilitation of temporarily displaced persons, for tax years 2015 and onwards, at the rates specified in Division IIA of Part I of the First Schedule, on income of every person specified in the said Division.

(2) For the purposes of this section, "income" shall be the sum of the following:—

- (i) profit on debt, dividend, capital gains, brokerage and commission;
- (ii) taxable income (other than brought forward depreciation and brought forward business losses) under section (9) of this Ordinance, if not included in clause (i);
- (iii) imputable income as defined in clause (28A) of section 2 excluding amounts specified in clause (i); and
- (iv) income computed, other than brought forward depreciation, brought forward amortization and brought forward business lossess under Fourth, Fifth, Seventh and Eighth Schedules.



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(3) The super tax payable under sub-section (1) shall be paid, collected and deposited on the date and in the manner as specified in sub-section (1) of section 137 and all provisions of Chapter X of the Ordinance shall apply.

(4) Where the super tax is not paid by a person liable to pay it, the Commissioner shall by an order in writing, determine the super tax payable, and shall serve upon the person, a notice of demand specifying the super tax payable and within the time specified under section 137 of the Ordinance.

(5) Where the super tax is not paid by a person liable to pay it, the Commissioner shall recover the super tax payable under subsection (1) and the provisions of Part IV, X, XI and XII of Chapter X and Part I of Chapter XI of the Ordinance shall, so far as may be, apply to the collection of super tax as these apply to the collection of tax under the Ordinance.

(6) The Board may, by notification in the official Gazette, make rules for carrying out the purposes of this section."

9. Although the terms 'Tax', 'Fee' and 'Cess' have been elaborated by the superior Courts in various pronouncements and are also subject of jurisprudential debate, but to address the main argument of the appellants, as noted above, it would be appropriate to briefly discuss ingredients of tax and distinguishing features of these overlapping concepts. Classic definition of tax has been given by Chief Justice Latham of the High Court of Australia in Matthews v. Chicory Marketing Board (60 C.L.R. 263, 276.):

"A tax is a compulsory exaction of money by public authority for public purposes enforceable by law and is not payment for services rendered"

Supreme Court of India, in the case of Sri Lakshmindra Thirtha Swamiar supra, while referring to the above definition given by Latham C.J., has discussed the essential characteristics of tax in the following words:

"This definition brings out, in our opinion, the essential characteristics of a tax as distinguished from other forms of imposition which, in a general sense, are included within it. It is said that the essence of taxation is compulsion, that is to say, it is imposed under statutory power without the taxpayer's consent and the payment is enforced by law (Vide Lower Mainland Dairy v. Orystal Dairy Ltd. [1933] A.C. 168.).



The second characteristic of tax is that it is an imposition made for public purpose without reference to any special benefit to be conferred on the payer of the tax. This is expressed by saying that the levy of tax is for the purposes of general revenue, which when collected form part of the public revenues of the State. As the object of a tax is not to confer any special benefit upon any particular individual, there is, as it is said, no element of quid pro quo between the taxpayer and the public authority (See Findlay Shirras on "Science of Public Finance", Vol. P. 203.). Another feature of taxation is that as it is a part of the common burden, the quantum of imposition upon the taxpayer depends generally upon his capacity to pay."

One of the precedents on which learned counsel for the appellants have mainly relied to argue that the impugned levy is not a tax but a cess is the judgment passed in the case of Quetta Textile Mills Ltd. (ibid). In that case, Hon'ble Sindh High Court, while relying on a number of authorities, have aptly highlighted the distinguishing features of 'Tax', 'Fee' and 'Cess' in the following words:

"Tax is compulsory exaction of money by public authority for public purposes enforceable by law. (PLD 1977 Kar. 742, 1986 CLC 533, 1990 CLC 550, NLR 1994 Tax 114). In contrast, a fee is a sort of consideration for the services rendered, which necessitate that there should be, an element of quid pro quo. Therefore co-relationship must exist between the fee charged and services rendered against it like parking fee. (PLD 1997 Kar. 604, 1990 CLC 197 and 638, 1999 SCMR 1402). It is, however, not necessary those services mathematically are proportionate or equal with the benefit to the person charged or necessarily is uniform. At the same time it may not be excessively disproportionate. (See 1990 CLC 197, PLD 1975 Lah. 748, PLD 1997 Kar. 604). A Cess is a tax confined to local area for specified object or a particular purpose. It is in fact specie of same class to which Tax belong, therefore, no quid pro quo between the services rendered and the imposition is necessary to maintain its validity (AIR 1954 282, AIR 1960 AP 234, AIR 1960 Mad. 160, AIR 1967 SC 1512, AIR 1990 SC 85). From the discussion made above, it appears that the Cess is an imposition more like tax blended with certain attributes of fee, in the sense that it is imposed for some specified and declared purpose. The imposition is correlated to the object for which it is to be used. The purpose and object either precedes or succeeds the imposition (i.e. Cess), for instance Education Cess (under Section 3 of the Workers Children (Education) Ordinance), 1972. Tobacco Development Cess (under section 11 of North-West Frontier Province Finance Act 1996) and Cess for special



development of infrastructure for smooth and safer movement of goods (under section 9 of the Sindh Finance (Amendment) Ordinance 2001. The tax realized form part of general revenue of the State. Whereas, Cess like fee is imposed for specified object and purpose, is not part of the general revenue, but must be employed for the attainment of "the purpose and object of the imposition. (Chief Commissioner v. DCM, AIR 1978 SC 1181 (para. 4-5), State of Maharashtra v. Salvation Army AIR 1975 SC 846).

(emphasis added)

10. In brief, both 'tax' and 'fee' are compulsory exaction of money by the public authorities. However, tax is a common burden for raising revenue, which becomes part of public revenue of the State whereas fee is exacted for a specific purpose and for rendering services or providing privilege to particular individuals or a class or a community or a specific area. For a levy to be a 'fee', relationship between purpose and the persons from whom levy is being exacted, is also to be established. The Courts have decided this question upon examining the facts and circumstances of each case keeping in mind the criteria for holding the levy a 'fee' or 'tax'. From reading of the provisions of Section 4B of the Ordinance of 2001, it is clear that revenue generated through impugned levy would be used for rehabilitation of temporarily displaced persons and no favour, privilege or advantage is being extended to persons paying the levy. It is not the case of appellants that impugned tax is in lieu of certain services being rendered to appellants. Therefore, in absence of essential element of *quid pro quo*, the impugned levy does not seem to be covered under the term 'fee'.

The main features of 'tax' are compulsory exaction of money by public authority for public purposes enforceable by law, that is to say, it is imposed under statutory power without the taxpayer's consent and the payment is enforced by law and its imposition does not advance any special benefit to its payer, and no element of *quid pro quo* between the taxpayer and the public authority. Another prominent feature of 'tax' is that it is a common burden for raising revenue, which becomes part of public revenue of the State. The



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Annual Budget Statement duly mentioned the impugned levy i.e. super tax as sum required to meet other expenditures which the Federal Government proposed to make from the Federal Consolidated Fund. All the aforementioned features of 'tax' are very much apparent in the impugned levy.

11. Now, the question whether mentioning of specific purpose in the impugned levy would exclude it to be a 'tax', needs determination as the learned counsel for the appellants has argued that since a specific purpose has been associated with the impugned levy, therefore, it is not a 'tax'. First of all, the element of a levy having a specific purpose cannot be taken in isolation to determine whether the levy is a 'tax' or a 'fee' or 'cess'. Regarding the characteristic of specificity of purpose in a levy / payment / contribution, Hon'ble Supreme Court of Pakistan has observed as follows in the case of Workers' Welfare Fund (ibid):

"23. ....No doubt the feature of having a specific purpose is a characteristic of a fee, which the subject contributions/ payments possess as discussed in the preceding portion of this opinion. However, there are certain other characteristics of a fee, such as quid pro quo, which must be present for a contribution or payment to qualify as a fee."

12. As far as the term 'cess' is concerned, it can either be 'tax' or 'fee', depending upon the nature of the levy as observed by the Hon'ble Supreme Court of Pakistan in the case of Durrani Ceramics. 'Cess' has been understood and defined by opinion of the courts as a tax, which raises revenue to be applied for a specific purpose. Reference in this regard can be made to Kunwar Ram Nath and others v. The Municipal Board, Pilibhit (AIR 1983 SC 930), Messrs Shinde Brothers v. Deputy Commissioner Raichur (AIR 1967 SC 1512), Shahtaj Sugar Mills v. Province of Punjab (1998 CLC 1912), Shahtaj Sugar Mills v. Province of Punjab (1998 SCMR 2492) and Quetta Textile Mills supra. However, when the element of *quid pro quo* is present in a 'cess' then it can be classified as a fee. Reference can be made to Jindal Stainless Ltd.



etc. v. State of Haryana and others [2006 (7) SCC 241], M. Chandru v. Member-Secretary, Chennai Metropolitan Development Authority and another [2009 (4) SCC 72] and Mohan Meakin Limited v. State of Himachal Pradesh and others [2009 (3) SCC 157]. Cess is a form of tax charged / levied over and above the base tax liability of a taxpayer. It is usually imposed additionally when the State or the Federal Government looks to raise funds for specific purpose. Cess is levied to develop only a particular service or sector. It is introduced to promote a particular scheme which, according to the government, needs attention as in the present case rehabilitation of internally displaced persons is intended. Cess is an imposition more like tax blended with certain attributes of fee, in the sense that it is imposed for some specified and declared purpose as observed in case of Quetta Textile Mills.

Learned Single Bench has rightly observed in the impugned judgment that in a particular case the element of a levy having a specific purpose may overlap in the case of a tax and a fee but what distinguishes a fee is its additional elements such as rendering services or providing privileges to particular individuals or a class on which that levy has been imposed. Hon'ble Supreme Court of Pakistan, in the case of Durrani Ceramics, has observed as under:

"19. Upon examining the case-law from our own and other jurisdictions it emerges that the 'Cess' is levied for a particular purpose. It can either be 'tax' or 'fee' depending upon the nature of the levy. Both are compulsory exaction of money by public authorities. Whereas 'tax' is a common burden for raising revenue and upon collection becomes part of public revenue of the State, 'fee' is exacted for a specific purpose and for rendering services or providing privilege to particular individuals or a class or a community or a specific area. However, the benefit so accrued may not be measurable in exactitude. So long as the levy is to the advantage of the payers, consequential benefit to the community at large would not render the levy a 'tax'. In the light of this statement of law it is to be examined whether the GIDC is a 'tax' or a 'fee'."



13. The stance of appellants is built on the strength of cases of Quetta Textile Mills Limited, Durrani Ceramics and Workers' Welfare Funds, which need deep reading of facts, circumstances and legal position of said cases.

In the case of Quetta Textile Mills Limited supra, vires of Sections 9 and 10 of Sindh Finance Act, 1994, as amended from time to time and the Rules, by-laws including, Sindh Development Maintenance of Infrastructure Fee Rules, 1994, and all notifications issued thereunder were challenged. The Hon'ble Karachi High Court held that the Infrastructure Development Cess has been imposed on the carriage of goods within the boundaries of the Province of Sindh, for the use of the infrastructure maintained by the Province of Sindh and said levy did not restrict or prohibit entry or exit of the goods for and from the Province. It was observed that impugned levy was within legislative competence of the Province of Sindh and not against the mandate of Article 151 of the Constitution. It is evident that the facts, circumstances and nature of levy in above-referred case are altogether different from the instant case.

Similarly, in the case of Workers' Welfare Funds supra, the question before Hon'ble Apex Court was whether the levies / contributions / payments under various laws which were amended through different Finance Acts were in the nature of a tax or not. Different statutes were analyzed with the conclusion that none of the levies in the said statutes possessed the distinguished features of a tax. It was held that since the amendments relating to the subject contributions / payments did not fall within the parameters of Article 73(2) of the Constitution, the impugned amendments in the respective Finance Acts were declared to be unlawful and ultra vires the Constitution. Said case is based on quite distinguishable facts, and unlike the nature of the levies / contributions / payments in said case, the levy impugned in the instant case possesses all the



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essential features of a tax and, as discussed above, falls squarely within the parameters of Article 73 of the Constitution.

Case of Durrani Ceramics supra, is also based on quite distinguishable facts, and nature of the levy in said case is also different from instant case. It has been observed in the said case that the question as to whether a particular levy is 'tax' or 'fee' is to be determined upon examining the facts and circumstances of each case and nomenclature would not be relevant rather it would depend upon the nature of the levy. In Durrani Ceramics, GIDC was held to be a fee, which, according to the Hon'ble Supreme Court of Pakistan, is an exaction for specific purpose and for rendering services or providing privileges to particular individuals or a class or a community etc. Furthermore, in the case of Durrani Ceramics, one of the reasons GIDC was held to be 'fee' was that GIDC, unlike the levy impugned in the instant case, was categorized as 'Non-Tax Revenue' in the Annual Budget by the Government itself. Relevant observations of the Hon'ble Supreme Court are as under:

22. ...Page-6 of the Statement contains list of Non-Tax Revenue, which under the Object Code C03916 includes 'Gas Infrastructure Development Cess'. Similarly in the Annual Budget Statement (Federal Budget 2013-14) that carries a similar worded preface, 'Gas Infrastructure Development Cess' has again been listed at C03916 as Non-Tax Revenue. Thus on the Government's own showing, as reflected in the Annual Budget, GIDC is not a 'tax'. No argument has been advanced on behalf of the appellants to explain away the categorization of GIDC as Non-Tax Revenue by the Government in the Annual Budget. This is not a mere accounting procedure as urged by Mr. Salman Akram Raja, Advocate Supreme Court, who in this context had relied upon Sheikh Muhammad Ismail & Co. v. Chief Cotton Inspector Council (supra), but were part of the Annual Budget Statements. As submitted by Mr. Makhdoom Ali Khan, Senior Advocate Supreme Court, the possible reason why the levy has been reflected as Non-Tax Revenue in the Budget was to exclude it from the divisible pool under the National Finance Commission (NFC) Award. The above determination is sufficient to hold that being a 'fee' the same could not have been imposed through a money bill and on this score the levy was liable to be struck down.



14. It is the firm stance of the Government that the impugned levy is a tax and, unless it is rebutted in material particulars, there is no reason to assume that impugned levy is not a tax. The budget speech delivered by the Finance Minister in budget sessions for the year 2015-2016 clearly shows what the Government intended to do through the impugned levy. The relevant extract from the speech is reproduced hereunder:-

"K. Revenue for Rehabilitation of Temporarily Displaced Persons: The terrorism and counter-terrorism efforts have resulted in displacement of hundreds of thousands of people of FATA and Khyber Pakhtunkhwa from their homes. The vulnerable sections of the population, women, children, elderly and sick have suffered the most. The host communities have also taken a toll. The cost of rehabilitation of these displaced persons has been estimated at 80 billion rupees. These direct affectees of the war on terror deserve the full support and facilitation of the Nation. To meet enhanced revenue needs for the rehabilitation of Temporarily Displaced Persons in a dignified and befitting manner, it is proposed to levy a one-time tax on the affluent and rich individuals, association of persons and companies earning income above Rs. 500 million in tax year 2015 at a rate of 4% of income for banking companies and 3% of income for all others. It is expected that the provinces will also contribute their due share in this national cause and the entire receipts from this source shall be utilized for rehabilitation of TDPs."

**(emphasis added)**

It is evident from the above that the Government was clear to impose a 'tax' and use it on general population, significantly large in number, of FATA and Khyber Pakhtunkhwa. Mere mentioning of above purpose would not detract the impugned levy from the domain of 'tax'. It has been appraised that there was no specific budgetary allocation for displacement and rehabilitation of said affected persons, therefore, impugned tax was imposed on the affluent and rich individuals, association of persons and companies. Provinces were also invited to contribute their due share. Thus, the entire exercise was a noble national cause and a distinct project of the Federal Government, with its own distinct features. It is clear from the preceding discussion that the impugned levy i.e. super tax



is a 'tax' for all intents and purposes. Reference can be made to Elahi Cotton Mills supra, Collector of Customs and others v. Sheikh Spinning Mills (1999 SCMR 1402), Pakistan Flour Mills Association and another v. Government of Sindh and others (2003 SCMR 162), Durrani Ceramics and Sri Lakshmindra Thirtha Swamiar supra.

Furthermore, incorporation of impugned levy in the Ordinance of 2001 clearly reflects that the legislature had intended to treat it as a tax. Reference in this regard can be made to a recent case reported as Messrs The Attock Oil Co. Ltd. v. Federation of Pakistan and anoth (2019 PTD 934), in which vires of Section 4B of the Income Tax Ordinance, 2001, were challenged and the learned Single Bench of Hon'ble Islamabad High Court observed as under:-

"9. A cumulative reading of the above provisions shows that the expression "tax" has a wide scope in the context of the Ordinance of 2001. The legislature in its wisdom and through insertion of section 4B intended the levy of super tax for rehabilitation of displaced persons. The mere incorporation of said levy in the Ordinance of 2001 leaves no doubt that the legislature had intended to treat it as a tax and not a fee. The judgments rendered by the august Supreme Court in cases titled "Federation of Pakistan through Secretary M/o Petroleum and Natural Resources and another v. Durrani Ceramics and others" [2014 SCMR 1630] and "Worker's Welfare Funds v. East Pakistan Chrome Tannery (Pvt.) Ltd." [PLD 2017 SC 28] are in respect of statutes other than the Ordinance of 2001. The distinguishing feature is the definition of tax given in the Ordinance of 2001 which, inter alia, includes fee. Section 4B and the levy thereunder is covered under the definition of "tax" provided under subsection (63) of section 2 of the Ordinance of 2001. The judgments are, therefore, distinguishable and moreover, the mandatory ingredients for treating a levy as a fee are also not fulfilled in the instant case."

15. The next question is whether Legislature was competent to impose impugned levy through a Money Bill, by invoking provisions of Article 73 of the Constitution, or normal procedure as provided under Article 70 ought to have been adopted. A bare perusal of Article 73 of the Constitution reflects that a Bill or



amendment is deemed to be a Money Bill if it contains provisions dealing with all or any of the matters enumerated in Clauses (a) to (g) of Paragraph (2) of this Article. For ease of reference, Clauses (a) & (c) of Article 73 are reproduced hereunder:-

- (a) the imposition, abolition, remission, alteration or regulation of any tax;
- (b) .....
- (c) the custody of the Federal Consolidated Fund, the payment of moneys into, or the issue of moneys from, that Fund;

It is reiterated at the cost of repetition that the Annual Budget Statement duly reflects that the impugned levy was meant to meet other expenditure which the Federal Government proposed to make from the Federal Consolidated Fund. The impugned levy also comes within the domain of Clause (a) supra, thus, was rightly enacted by adopting procedure provided in Article 73 of the Constitution.

16. So far as the argument of the learned counsel for the appellants regarding Article 160 of the Constitution is concerned, suffice it to say that violation of Article 160 of the Constitution for not including the impugned levy in the divisible pool cannot be made the touchstone for declaring the very levy as unconstitutional. Reference in this regard can be made to the case of Durrani Ceramics, relevant portion of which is reproduced below:

"43. We were, however, persuaded by the alternative argument advanced by Mr. Salman Akram Raja, Advocate Supreme Court, in the context of Article 160 of the Constitution that violation of Article 160 of the Constitution for not including the 'Cess' in the divisible pool cannot be made the touchstone for declaring the very levy as unconstitutional. On this point we would refer to the principle laid down in the case of Jaora Sugar Mills Ltd. v. State of Madhya Pradesh (ibid) where it was held:-

"The validity of the Act must be judged in the light of the legislative competence of the Legislature which passes the Act and in certain cases, by reference to the question as to whether fundamental rights of citizens have been



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improperly contravened, or other considerations which may be relevant in that behalf. Normally, it would not be appropriate or legitimate to hold an enquiry into the manner in which the funds raised by an Act would be dealt with, when the Court is considering the question about the validity of the Act itself. Validity of section 3 of the Cess Act cannot, therefore, be questioned on the ground that the cesses recovered under it are not dealt with in accordance with the provisions of Art. 266 of the Constitution."

17. Appellants have also contended that impugned levy has not been imposed uniformly and across the board rather different categories / divisions have been formulated, thus, it amounts to discrimination. This argument is not justifiable to attract the provisions of Article 25 of the Constitution. In taxation matters, a fundamental right of being treated equally was brought before the Hon'ble Supreme Court in the case of Elahi Cotton Mills. Law as enshrined by the Hon'ble Supreme Court in the judgment is reproduced hereunder:-

"46..... It may be observed that reasonable classification does not imply that every person should be taxed equally. It may be pointed out that reasonable classification is permissible provided it is based on an intelligible differentia which distinct 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 to be achieved by such classification. It may further be pointed out that different laws can be validly enacted for different sexes, persons in different age-groups, persons having different financial standings and that no standard of universal application to test reasonableness of a classification can be laid down as what may be reasonable classification in a particular set of circumstances, may be unreasonable in the other set of circumstances. The requirement of reasonable classification is fulfilled if in a taxing statute the Legislature has classified persons or properties into different categories which are subject to different rates of taxation with reference to income or property and such classification would not be open to attack on the ground of inequality or for the reason that the total burden resulting from such a classification is unequal. The question, as to whether a particular classification is valid or not, cannot be decided on the basis of advantages and disadvantages to individual assesseees which are accidental and inevitable and are inherent in every taxing statute as it has to draw a line somewhere and some cases necessarily may fall on the other side of the line."



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Division IIA of the First Schedule of the Ordinance of 2001, prescribes rate of 'Super Tax' for different years for a banking company and person other than a banking company, having income equal to or exceeding Rs.500 million, which itself creates a different and distinct class based on intelligible differentia, thus, question of discrimination would not arise. Legislature is empowered to classify persons or properties into different categories subject to different rates of tax but same class / similarly situated persons cannot be treated unequally. Even otherwise, as observed by the Supreme Court of India in M.P. v. Rakesh Kohli and another (2013 SCMR 34), the Legislature enjoys greater latitude for classification in the field of taxation. The class of persons, on the basis of income, has been set apart in one category, fulfilling the requirement of reasonable classification. As long as there is uniformity within each group, there is no discrimination. Furthermore, in fiscal statute, element of discrimination can neither be pleaded nor such statute can be struck down at the touchstone of Article 25 of the Constitution. Reliance is placed on I.A. Sharwani and others v. Government of Pakistan through Secretary, Finance Division, Islamabad and others (1991 SCMR 1041), Anoud Power Generation Limited and others v. Federation of Pakistan and others (PLD 2001 SC 340 at 349) and Elahi Cotton Mills.

18. So far as arguments of learned counsel for appellants regarding imputable income and double taxation are concerned, suffice it to say that, in absence of any constitutional / statutory prohibition or restriction on Legislature to again impose tax on the same subject matter, the same cannot be declared void or outside the powers of the Legislature. It is pertinent to mention here that the Legislature can impose more than one tax on income under Entry 47 of the Fourth Schedule to the Constitution which reads as follows:-

"47. Taxes on income other than agricultural income".



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19. It is a well-settled proposition of law that an entry in a legislative list cannot be construed narrowly or in a pedantic manner but it is to be given liberal construction. Reliance is placed on Elahi Cotton Mills supra and ICC Textile Ltd. and others v. Federation of Pakistan and others (2001 PTD 1557). The term "taxes on income" used in Entry 47 nullifies the argument of the appellants with regard to double taxation. Even otherwise, impugned levy has been imposed through a clear and independent provision, having its separate charge assessment and recovery mechanism. Intention of the Legislature in imposing super tax, besides the income tax already imposed, by way of Section 4B of the Ordinance of 2001, is very much clear. There is nothing on record which may suggest that impugned levy is unconstitutional.

20. Mr. Imtiaz Rashid Siddique, Advocate, one of the learned counsel for the appellants has argued that purpose of rehabilitating the displaced persons occurred in 2015 and the impugned levy was introduced, however, it is continuing till today through yearly Finance Acts without showing whether the purpose is alive and whether this levy is spent for the purpose. Learned counsel has stated that, as per his information, the purpose has been achieved. The Hon'ble Supreme Court, in the case of Sohail Jute Mills Ltd. and others supra, has held that it is not possible to relate the proposed expenditure with the levy to make the proposed expenditure the test for examining the validity of the levy. The relevant portion of said judgment is reproduced hereunder:-

"12. Secondly, the argument draws for its strength not so much on the nature and stage of the levy on imports, but the ultimate purpose for which the money collected was proposed to be utilized. This is not permissible within the framework of the Constitution. Article 78(1) of the Constitution provides as hereunder:-----

"All revenues received by the Federal Government, all loans raised by that Government and all moneys received by it in repayment of any loan, shall form part of a consolidated fund, to be known as the Federal Consolidated Fund:-



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Under Article 79 of the Constitution, the withdrawals from the Consolidated Fund take place under the authority of Majlis-e-Shoora.

13. It is not possible, therefore, to relate the proposed expenditure with the levy or to make the proposed expenditure the test for examining the validity of the levy."

21. It is well established that the power to levy taxes is a sine qua non for a state insofar as the same is essential for purposes of generating financial resources, and the utilization of those resources for welfare of the people at large. The legislature enjoys plenary power to impose taxes within the framework of the Constitution, and this power rests on necessity as it is an essential and inherent attribute of sovereignty belonging as a matter of right to every independent State or Government and by exercising such powers, mala fide cannot be attributed to the legislature as held in Fauji Foundation and another v. Shamimur Rehman (PLD 1983 SC 457). Once it has exercised such power within the framework of the Constitution, it cannot be contended by the appellants that, by levying such tax and exercising such powers, the legislature intends to retain money or benefits which in justice, equity and good conscience belong to the appellants, in order to bring their case within the parameters of principles of unjust enrichment as held in Sui Northern Gas Pipelines v. Deputy Commissioner Inland Revenue and others (2014 PTD 1939).

22. Khawaja Saeed Ahmad, Advocate, one of the learned counsel for appellants, submitted that, after 18<sup>th</sup> amendment, social welfare is the subject of Provinces, therefore the impugned levy could not be imposed by the Federation for rehabilitation of temporarily displaced persons. Answer to this argument is that Courts are normally concerned with the practical operation of a levy while examining its constitutionality and not the descriptive words. Even otherwise it is within the domain of Federation to levy



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taxes on income as per Entry 47 of the Federal Legislative List of the Fourth Schedule to the Constitution.

23. It is well settled that where validity of a statute or provision thereof, is questioned and there are two interpretations, one which makes the law valid, is to be preferred over the other, which will render it void. The criteria before the Court, for determining the vires of a provision of law, is that the Court must be able to hold beyond any iota of doubt that violation of the Constitutional provisions was so glaring that the legislative provision under challenge could not stand. Without such violation of Constitutional provisions, the law made by the Legislature, cannot be declared bad. Reference, in this regard, is made to State of M.P. v. Rakesh Kohli and another (2013 SCMR 34) and Badshah Gul Wazir v. Government of Khyber Pakhtunkhwa and others (PLD 2014 Peshawar 210). Motive of the Legislature, in passing a statute or its provision thereof, is beyond any scrutiny of Courts nor can the Courts examine whether the Legislature had applied its mind to the provisions of a statute before passing it. Propriety, expediency and necessity of a law are to be determined by the legislative authority and not by the Courts.

24. Needless to observe here that while examining a law, enacted through legislative process provided under the Constitution, power of the Court was limited to examine whether the provision of law was repugnant, inconsistent or in conflict with the provisions of the Constitution, whether legislature had legislative competence as envisaged in the Constitution, and whether the legislation violated or abridged fundamental rights guaranteed by the Constitution. A statute must be interpreted to advance the cause of statute and not to defeat it. Courts cannot sit in judgment over the wisdom of the legislature, except on two grounds on which the law laid down by the legislature can be struck down by the Courts, namely, lack of legislative competence and violation of any of the fundamental



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rights guaranteed in the Constitution or of any other Constitutional provision.

25. Before parting with this judgment, it is clarified that our findings are confined to vires of Section 4B of the Ordinance of 2001, however, the parties are at liberty to raise any legal or factual objections against any proceedings initiated against them before the forum concerned, which are expected to be dealt with and decided in accordance with law.

26. In view of the above, instant appeal, along with connected cases mentioned in Schedule appended herewith, is dismissed. No order as to costs.

(Shahid Jamil Khan)  
Judge

(Muhammad Sajid Mehmood Sethi)  
Judge

Announced in open Court on 28.02.2020.

Judge

Judge

APPROVED FOR REPORTING

Judge

Judge

\*Sultan/A.H.S/ Mian Farrukh\*



**SCHEDULE****DETAIL OF CONNECTED CASES**

Sr. #	CASE NUMBERS	TITLE
1.	ICA No.1273 of 2016	Mrs. Huzaima Bukhari v. The Federation of Pakistan & another
2.	ICA No.151008 of 2018	Maple Leaf Cement Factory Limited v. Federation of Pakistan & others
3.	ICA No.151870 of 2018	Muhammad Naeem Mukhtar v. Federation of Pakistan & others
4.	ICA No.151873 of 2018	Muhammad Naeem Mukhtar v. Federation of Pakistan & others
5.	ICA No.151879 of 2018	Muhammad Waseem Mukhtar v. Federation of Pakistan & others
6.	ICA No.151884 of 2018	Muhammad Waseem Mukhtar v. Federation of Pakistan & others
7.	ICA No.151888 of 2018	Sheikh Mukhtar Ahmad v. Federation of Pakistan & others
8.	ICA No.151891 of 2018	Sheikh Mukhtar Ahmad v. Federation of Pakistan & others
9.	ICA No.151896 of 2018	Muhammad Waseem Mukhtar v. Federation of Pakistan & others
10.	ICA No.151900 of 2018	Sheikh Mukhtar Ahmad v. Federation of Pakistan & others
11.	ICA No.151904 of 2018	Muhammad Naeem Mukhtar v. Federation of Pakistan & others
12.	ICA No.151909 of 2018	M/s Ibrahim Fibers Limited v. Federation of Pakistan & others
13.	ICA No.151913 of 2018	M/s Ibrahim Fibers Limited v. Federation of Pakistan & others
14.	ICA No.154425 of 2018	M/s Qarshi Industries (Pvt.) Ltd. v. Federation of Pakistan & others
15.	ICA No.154784 of 2018	M/s Educational Services (Pvt.) Limited v. Federation of Pakistan & others
16.	ICA No.159476 of 2018	M/s US Apparel and Textiles (Private) Ltd. v. The Federation of Pakistan & others
17.	ICA No.162842 of 2018	M/s IKAN Engineering Service (Pvt.) Ltd. v. The Federation of Pakistan
18.	ICA No.165570 of 2018	M/s PAK Electron Limited v. The Federation of Pakistan & others
19.	ICA No.165574 of 2018	M/s Tayyab Manzoor Tarar (AOP) v. The Federation of Pakistan & others
20.	ICA No.167988 of 2018	M/S EKO-KRC (Joint Venture) v. Federation of Pakistan & others
21.	ICA No.167990 of 2018	M/s EKO-KRC (Joint Venture) v. Federation of Pakistan & others
22.	ICA No.169544 of 2018	Reliance Commodities (Pvt.) Limited & another v. The Federation of Pakistan & others
23.	ICA No.171371 of 2018	M/s M.A. Aleem Khan & Sons (Pvt.) Limited v. Federation of Pakistan & others
24.	ICA No.185563 of 2018	M/s Alam Khan Brothers Engineering & Construction (Pvt.) Limited v. Federation of Pakistan & others
25.	ICA No.186771 of 2018	M/s OPPO Mobiles Technologies Pakistan (Pvt.) Limited v. The Federation of Pakistan & others
26.	ICA No.225135 of 2018	M/s Habib Construction Services Ltd. v. Federation of Pakistan & others
27.	ICA No.226956 of 2018	M/s Habib Rafiq (Pvt.) Ltd. v. The Federation of Pakistan & others
28.	ICA No.226957 of 2018	M/s Habib Rafiq (Pvt.) Ltd. v. The Federation of Pakistan & others
29.	ICA No.231901 of 2018	M/s Habib Rafiq (Pvt.) Ltd. v. The Federation of Pakistan & others
30.	ICA No.236708 of 2018	M/s Habib Rafiq (Pvt.) Ltd. v. The Federation of Pakistan & others
31.	ICA No.238850 of 2018	Sarwar & Company (Pvt.) Limited v. The Federation of Pakistan & others
32.	ICA No.253371 of 2018	M/s Ibrahim Fibers Limited v. Federation of Pakistan & others
33.	ICA No.255155 of 2018	DAEWOO Pakistan Express Bus Service Limited v. The Federation of Pakistan & others
34.	ICA No.256520 of 2018	M/s Albayrak Turizm Seyahat Insaat Ticaret Anonim Sirketi v. The Federation of Pakistan & others
35.	ICA No.257641 of 2018	Nishat (Chunian) Limited v. The Federation of Pakistan & others
36.	ICA No.257644 of 2018	Nishat (Chunian) Limited v. The Federation of Pakistan & others
37.	ICA No.9093 of 2019	Kohat Cement Company Limited v. Federation of Pakistan & others
38.	ICA No.9456 of 2019	M/s AZGARD Nine Limited v. The Federation of Pakistan & others
39.	ICA No.9457 of 2019	Sundar Impex (Pvt.) Limited v. Federation of Pakistan & others
40.	ICA No.9458 of 2019	Masood Impex (Pvt.) Limited v. Federation of Pakistan & others
41.	ICA No.9459 of 2019	Mr. Binyamin C/o Masood Textile Mills Limited v. Federation of Pakistan & others
42.	ICA No.9481 of 2019	M/s Maple Leaf Cement Factory Ltd. & another v. The Federation of Pakistan & others
43.	ICA No.9482 of 2019	M/s Service Industries Ltd. v. The Federation of Pakistan & others



44.	ICA No.10731 of 2019	DAEWOO Pakistan Express Bus Service Limited v. The Federation of Pakistan & others
45.	W.P. No.12589 of 2016	Haleeb Foods Limited v. Federation of Pakistan & others
46.	W.P. No.38266 of 2016	M/s 12 Pakistan (Pvt.) Limited v. Deputy Commissioner Inland Revenue & others
47.	W.P. No.7627 of 2017	M/s 12 Pakistan (Pvt.) Limited v. Assistant Commissioner Inland Revenue & others
48.	W.P. No.187298 of 2018	M/s Ingredion Incorporated v. Commissioner Inland Revenue & others
49.	W.P. No.199252 of 2018	M/s Alam Khan Brothers Engineering & Construction (Pvt.) Limited v. Federation of Pakistan & others
50.	W.P. No.201967 of 2018	M/s M.A. Aleem Khan & Sons (Pvt.) Limited v. Federation of Pakistan & others
51.	W.P. No.211563 of 2018	M/s Conopco Inc. v. Commissioner Inland Revenue & others
52.	W.P. No.215324 of 2018	M/s Habib Rafiq (Pvt.) Ltd. v. The Federation of Pakistan & others
53.	W.P. No.226851 of 2018	M/s Quaid-e-Azam Solar Power (Pvt.) Limited v. Federation of Pakistan & others
54.	W.P. No.29518 of 2019	M/s Imperial Sugar Limited v. The Federation of Pakistan & others
55.	W.P. No.12439 of 2019	Mughal Iron & Steel Industries Limited v. The Federation of Pakistan & others
56.	W.P. No.14514 of 2019	OPPO Mobile Technologies Pakistan (Pvt.) Limited v. Assistant / Deputy Commissioner (Audit) Inland Revenue & others
57.	W.P. No.16612 of 2019	M/s Alam Khan Brothers Engineering & Construction (Pvt.) Limited v. Federation of Pakistan & others
58.	W.P. No.17264 of 2019	M/s M.A. Aleem Khan & Sons (Pvt.) Limited v. Federation of Pakistan & others
59.	W.P. No.18621 of 2019	M/s MCC Ruba International Construction Company (Pvt.) Limited v. The Federation of Pakistan & others
60.	W.P. No.18622 of 2019	M/s MCC Ruba International Construction Company (Pvt.) Limited v. The Federation of Pakistan & others
61.	W.P. No.18672 of 2019	M/s Ghulam Rasool & Company (Pvt.) Limited v. The Federation of Pakistan & others
62.	W.P. No.25643 of 2019	M/s Kashf Foundation v. Federation of Pakistan & others
63.	W.P. No.30159 of 2019	M. Imran Mumtaz Government Contractor v. Federation of Pakistan & others
64.	W.P. No.30584 of 2019	Worldcall Telecom Limited v. The Federation of Pakistan & others
65.	W.P. No.34118 of 2019	United Industries Ltd. v. Federation of Pakistan & others
66.	W.P. No.39111 of 2019	Abdullah Sugar Mills Ltd. v. The Federation of Pakistan & others
67.	W.P. No.40685 of 2019	ZKB Reliable JV v. The Federation of Pakistan & others
68.	W.P. No.42104 of 2019	M/s Habib Construction Services Ltd. v. Federation of Pakistan & others
69.	W.P. No.64435 of 2019	Nishat (Chunian) Ltd. v. The Federation of Pakistan & others
70.	W.P. No.74833 of 2019	M/s Albayrak Turizm Seyahat Insaat Ticaret Anonim Sirketi v. The Federation of Pakistan & others
71.	W.P. No.3765 of 2020	M/s OPPO Mobile Technologies Pakistan (Pvt.) Limited v. Federation of Pakistan & others
72.	W.P. No.4038 of 2020	M/s Sadaqat Limited v. The Federation of Pakistan & others

(Shahid Jamil Khan)  
Judge

(Muhammad Sajid Mehmood Sethi)  
Judge