

[(2024) 129 TAX 702 (H.C. Lah.)]

[IN THE LAHORE HIGH COURT, LAHORE]

Present: Shahid Karim and Rasaal Hasan Syed.

SERVICE GLOBAL FOOTWEAR LIMITED & others

Versus

**FEDERATION OF PAKISTAN
through Secretary Revenue Division & others**

**ICA No.48745 of 2023
decided on 04.06.2024**

INCOME TAX ORDINANCE, 2001 (XLIX OF 2001)

Section: 4C & Division 11B of Part-1 of First Schedule - Super tax on higher earning persons - Retrospective application to tax year 2022 - Inherent discrimination - Challenge to Section 4C before Single Judge of Lahore High Court - Upholding retrospective application of section 4C by the Single Judge in chamber - **Appeal against -**

FACTS

This appeal and a cluster of appeals have assailed the judgment by a learned Single Judge of this Court. In a set of constitutional petitions the learned Single Judge dismissed the challenge to section 4C of the Income Tax Ordinance, 2001 in its retrospective application to tax year 2022 and upheld it with regard to inherent discrimination which lies in Division IIB of Part I of First Schedule. Both the taxpayers (petitioners before the learned single bench) and Federal Board of Revenue (FBR) have come in appeals.

ARGUMENTS

Learned counsel for the appellant, Ms. Asma Hamid, Advocate argued in this Court that while doing so the learned Single Judge did not advert to the material placed on record (though it was referred in passing the impugned judgment). Primarily, three sets of documents have been relied upon by learned counsel for the appellants to contend that the creation of separate class of persons was permissible under Article 25 of the Constitution and was in consonance with the constitutional mandate.

DCISION

(a) Certain sectors cannot be isolated from similarly placed persons and taxed at a higher rate - Our precedents do not countenance such discrimination which has been held to be unconstitutional and contrary to the rule of law. Certain sectors without any intelligible criteria cannot be isolated from rest of the persons similarly placed and sought to be taxed at a

higher rate than those persons who earn an income in the same bracket. This is precisely the holding of the Sindh High Court, Islamabad High Court and the learned Single Judge. We do not find any illegality or error in the holding of the learned Single Judge in this respect. In the above analysis, we concur in the result reached by the Islamabad High Court and Sindh High Court (where similar challenges were brought). We have, however, arrived at the same result by another route.

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(b) Rights conferred at the end of a tax year are past and closed transactions - In conclusion, it is held that appeals by appellants/taxpayers at (Appendix A) are allowed. The part of the impugned judgment that upholds the retrospective application of section 4C by the use of the words “for the tax year 2022” is set aside. It is declared that, notwithstanding these words, the rights conferred on the appellants at the end of tax year 2022 on 30th June 2022 are past and closed transactions and cannot be impaired or whittled away by the use of these words. In sum, super tax under Section 4C cannot be imposed on these appellants for the tax year 2022. This obviously includes appellants with special tax year.

[Page 744]B.

Cases Referred to:

Mehreen Zebun Nisa v. Land Commissioner Multan (PLD 1975 S.C 397); *Muhammad Hussain v. Muhammad and others* (2000 SCMR 367); *H.M Extraction Ghee & Oil Industries (Pvt.) Ltd. v. FBR* (2019 SCMR 1081); *Al-Samrez Enterprise v. Federation of Pakistan* (1986 SCMR 1917); *Molasses Trading & Export (Pvt.) Limited v. Federation of Pakistan & others* (1993 SCMR 1905); *Secretary of State for Social Security v. Tunnickliff* [1991] 2 All ER 712; *Compania General de Filipinas v. Collector of Internal Revenue* (1927) 275 US 87, 100); *Commissioner of Income Tax, Peshawar v. Messrs Islamic Investment Bank Ltd.* (2016 SCMR 816); *Fawad Ahmad Mukhtar and others v. Commissioner Inland Revenue (Zone-II), Regional Tax Office, Multan and another* (2022 SCMR 426); *Lonas v. State* (1871) 3 Heisk. (Tenn.) 287, 306-307 and *Shahnawaz (Pvt.) Ltd. through Director v. Pakistan through the Secretary, Ministry of Finance, Government of Pakistan, Islamabad and another* (2011 PTD 1558).

M/s Salman Akram Raja, Malik Ahsan Mehmood, Imtiaz Rasheed Siddiqui, Shahzad Ata Elahi, M. Ajmal Khan, Shahbaz Butt, Waseem Ahmad Malik, Shahryar Kasuri, M. Shoaib Rashid, Mustafa Kamal, M. Mansha Sukhera, Naveed A. Andrabi, Ali Sibtain Fazli, Shazib Masood, Hasham Ahmad Khan, Jawad Jamil Malik, Raza Imtiaz Siddiqui, Haris Irfan, Umair Ahmad, H.M. Majid Siddiqui, Jamshed Alam, M. Abubakar,

Basharat Ali, Faisal Rasheed, Furqan Naveed Chaudhry, Khurram Shahbaz Butt, Nadir Ali Sherazi, Mian Abdul Bari Rashid, Usman Khalil, Asfandyar Khan Tareen, Javed Iqbal Qazi, Malik Bashir Ahmad Khalid, Hafiz M. Shahzad, Abdul Waheed, M. Hamzah, Sheikh Aqeel Ahmad, Waqas Ahmad Mir, Salman Zaheer Khan, Mudassar Shujaiddin, Muhammad Ijaz Ali Bhatti, Hassan Kamran Bashir, Rafae Naguib Saigal, Shahid Pervez Jami, Muhammad Zulqarnain, Sumair Saeed Ahmad, Muhammad Asif, Qamar uz Zaman, Khalil ur Rehman, Farhan Shahzad, Muhammad Javed Arshad, Naeem Munawar, Ghulam Mujtaba, Muhammad Asif Rana, Muhammad Idrees Aslam, Muhammad Shaban, M. Mubashir Baig, Talib Hussain Chaudhry, Waleed Khalid, Adil Umar Bandial, Muhammad Arslan Raza, Muhammad Bilal Pervaiz, Mian Muhammad Arshad Iqbal, Uzair Sajid, Rana Muhammad Afzal Razzaq Khan, Mohsin Majeed, Hammad Khan, Hafeez Ullah Maan, Ch. Razzaq Ahmad Muhammad Rashid Ali, Syed Imtiaz Hussain Shah, Nazakat Abbas Bhatti, Tanveer Ahmad, Muhammad Usman Akram Sahi, Khawaja Omer Ghias, Muhammad Mussadiq Islam, Hassan Maqsood Ahmad, Nadeem Shahzad Hashmi, Barrister M. Bilal Ramzan, Malik Tanveer Ahmad Awan, Asad Rahim Khan, Muhammad Iftikhar Ali, Faiz-e-Azhar, Ms. Nimra Arshad, Khalil Ahmad Bhulla, Arslan Saleem Chaudhry, M. Siddique Butt, Dr. Murtaza Elahi, M.A Rizwan Kamboh, Mian Zulfiqar Ali, Azeem Ullah Virk, Omer Wahab, Rana Usman Habib, Ahsan Sial, Ms. Naureen Fauzia, Ray Mukhtar, Alamdar Hussain, Mahmood Arif, Asmar Tariq, Syed Nawazish Hussain, Hafiz M. Tanveer Nasir, Iftikhar Nawaz Gujjar, M. Waqr Akram, Sajjad Ali, Zohaib Hashim, Khurram Saleem, Ibrahim Hassan, Hammad Hussain, Muhammad Muqaddam Sukhera, Saqib Qadeer, Muhammad Shabbir Hussain, Asad Butt, Tourqeer Ahmad Ranjha, Raja Hamza Anwar, Abad ur Rehman, M. Umer Tariq Gill, Hamza Shahram Sarwar, Asad Zameer Tarar, Madiha Farooq Sheikh, Ashiq Ali Rana, Ali Hussain Gillani, Muhammad Hussain, Syed Fadil Hashmey, Jahangir Hassan Dogar, Ch. Waseem Akram, Zeeshan Asif Warraich, Mehar Saghir Ahmad, Saqib Qadeer, Muhammad Abrar, Yasir Hamid, Azeem Suleman, Jawwad Jamil Malik, Muhammad Hameed Bukhsh, Dr. Rizwan Ahmad, Hassan Pervaiz, Faisal Anwar Minhas, Asif Amin Goraya, Shahzaib ul Hassan Chattha, Malik Muhammad Zarif, Ghulam Abbas Haral, Ali Ijaz Shah and Zeeshan Ijaz, Advocates for Appellants/Taxpayers.

Ms. Asma Hamid, Syed Muazzam Ali Shah, Shahzad Ahmad Cheema, Malik Abdullah Raza, Ahmad Pervaiz, Ms. Scheherzade Shaharyar, Ch. Muhammad Zafar Iqbal, Muhammad Yahya Johar, Sohaib Aziz, Muhammad Bilal Munir, A.W. Butt, Imran Rasool, Shahjahan Khan, Ms. Riaz Begum, Sardar Muhammad Sadiq Tahir, Ms. Samra Malik, Mohsin Ali, Barrister Ahtsham Mukhtar, Omer Iqbal Khawaja, Muhammad Danish Zubairi, Anas Irtiza Awan, Muhammad Ashraf Nawaz Cheema, Qadeer Ahmad Kalyar, Jahanzeb Inam, Raja Abdul Qadeer, Muhammad Akram

Awan, Ch. Imtiaz Elahi, Rana Irfan Ali, Humaira Bashir Chaudhry, Murad Ali Khan Marwat, Yasir Islam Chaudhry, Ali Umrao, Jawwad H. Tarar, Hassan Safdar Khan, Ahad Asif, Sidra Qamar, Ikhtlaq Ahmad, Ahsan Ul Haq, Falak Sher Khan, Hassan Ali, Ms. Sana Azhar, Mustafa Khalid, Khadija Amjad Wazir, Shahram Anwar, Rana Muhammad Akram, Muhammad Haseeb Rana and Nasir Abbas Zafar Malik Advocates for Respondents/Departments.

Mr. Asad Ali Bajwa, D.A.G with Muhammad Majid Chaudhry, C.I.R Lahore and Tehsin Sadiq Tarar, Addl. Commissioner, RTO Gujranwala for Federation.

Date of hearing: 16.05.2024

J U D G M E N T

[The Judgment of the Court was delivered by Shahid Karim, J.]

– This appeal and a cluster of appeals have assailed the judgment by a learned Single Judge of this Court. In a set of constitutional petitions the learned Single Judge dismissed the challenge to section 4C of the Income Tax Ordinance, 2001 in its retrospective application to tax year 2022 and upheld it with regard to inherent discrimination which lies in Division IIB of Part I of First Schedule. Both the taxpayers (petitioners before the learned single bench) and Federal Board of Revenue (FBR) have come in appeals.

The Scheme of Law:

2. Section 4C was inserted in the Income Tax Ordinance, 2001 (“**the Ordinance**”) through Finance Act, 2022 and provides that:

4C. Super tax on high earning persons.– (1) *A super tax shall be imposed for tax year 2022 and onwards at the rates specified in Division IIB of Part I of the First Schedule, on income of every person:*

Provided that this section shall not apply to a banking company for tax year 2022.

(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 the Ordinance, excluding amounts specified 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 losses under Fourth, Fifth, Seventh and Eighth Schedules.*

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

(5) Where the tax is not paid by a person liable to pay it, the Commissioner shall recover the 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 tax as these apply to the collection of tax under the Ordinance.

(5A) The provisions of section 147 shall apply on tax payable under this section.

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

3. Section 4C imposed a super tax on high-earning persons (a term used in the budget speech by Finance Minister) and did so for the tax year 2022 and onwards at the rates specified under Division IIB of Part I of the First Schedule on income of every person (“**Division IIB**”). Division IIB at the relevant time stated the rate of tax under Section 4C to be the following:

S.No	Income under section 4C	Rate of tax
(1)	(2)	(3)
1.	Where income does not exceed Rs. 150 million	0% of the income
2.	Where income exceeds Rs. 150 million but does not exceed Rs. 200 million	1% of the income

3.	Where income exceeds Rs. 200 million but does not exceed Rs. 250 million	2% of the income
4.	Where income exceeds Rs. 250 million but does not exceed Rs. 300 million	3% of the income
5.	Where income exceeds Rs. 300 million	4% of the income

Provided that for tax year 2022 for persons engaged, whether partly or wholly, in the business of airlines, automobiles, beverages, cement, chemicals, cigarette and tobacco, fertilizer, iron and steel, LNG terminal, oil marketing, oil refining, petroleum and gas exploration and production, pharmaceuticals, sugar and textiles the rate of tax shall be 10% where the income exceeds Rs. 300 million:

Provided further that in case of banking companies for tax year 2023, the rate of tax shall be 10% where the income exceeds Rs. 300 million.

4. Division IIB was substituted by the Finance Act, 2023 and now provides that:

S.No	Income under section 4C	Rate of tax	
		For tax year 2022	For tax year 2023 and onwards
(1)	(2)	(3)	(4)
1.	Where income does not exceed Rs. 150 million	0% of the income	0% of the income
2.	Where income exceeds Rs. 150 million but does not exceed Rs. 200 million	1% of the income	1% of the income
3.	Where income exceeds Rs. 200 million but does not exceed Rs. 250 million	2% of the income	2% of the income
4.	Where income exceeds Rs. 250 million but does not exceed Rs. 300 million	3% of the income	3% of the income
5.	Where income exceeds Rs. 300 million but does not exceed Rs. 350 million	4% of the income	4% of the income

6.	Where income exceeds Rs. 350 million but does not exceed Rs. 400 million		6% of the income
7.	Where income exceeds Rs. 400 million but does not exceed Rs. 500 million		8% of the income
8.	Where income exceeds Rs. 500 million		10% of the income.”;

5. A comparison of the two tables set out above shows that initially Division IIB contained five sets of incomes and the highest rate of tax was intended to be imposed on persons whose income exceeded Rs.300 Million. There was however a proviso inserted originally which prescribed a still higher rate of tax on certain category of persons mentioned in the proviso (**The Proviso**). This was irrespective of whether their income exceeded Rs.300 Million yet in respect of persons engaged in businesses mentioned in the proviso, the rate of tax had been imposed at 10% of their income. We harbour no doubt that section 4C embodies the theory of taxation based on ability to pay.

6. The petitioners before the learned Single Judge challenged the imposition of super tax for the tax year 2022 which, in the opinion of the petitioners, operated retrospectively and impaired the vested rights of those persons. This contention did not find favour with the learned Single Judge and the constitutional petitions to this extent were dismissed. The second contention related to discrimination inherent in the proviso to isolate a category of persons to impose a higher rate of tax simply because their incomes exceeded Rs.300 Million. This challenge was accepted by the learned Single Judge who struck down the proviso and consequently the higher rate of tax at 10% so that these petitioners were also subjected to the rate of tax at 4% of the income. This part of the judgment has been challenged in separate set of appeals by the Federal Board of Revenue (**FBR**). While the persons subjected to tax under Section 4C have brought a challenge to the portion of the judgment which dismissed the constitutional petitions on the ground of retrospectivity and the imposition of section 4C to the tax year 2022 it is made clear that the appellants do not contend that super tax is *ultra vires* or unconstitutional by its very nature but merely intend to seek the indulgence of this Court regarding the aspect of retrospectivity and the levy of super tax from the tax year 2022.

Taxpayers' Appeals: (Appendix A)

7. We shall firstly take up the appeals of the taxpayers who are aggrieved of the judgment of the learned Single Judge who refused to accept the plea that the vice of retrospectivity inhabited in the words “for the tax year 2022 and onwards” and thus rendered section 4C as unconstitutional. Appellants’ case can be captured in the following contentions:

Legislature, though having power to enact a law retrospectively, cannot do so to upset past and closed transactions and accrued rights.

8. To reiterate, section 4C was inserted on 01.07.2022 through the Finance Act, 2022. Under the law tax year 2022 ended on 30th June, 2022. This is stated in section 74 of the Ordinance whose Sub-section (1) provides that:

“(1) For the purpose of this Ordinance and subject to this section, the tax year shall be a period of twelve months ending on the 30th day of June (hereinafter referred to as ‘normal tax year’) and shall, subject to sub-section (3), be denoted by the calendar year in which the said date falls.

9. Thus, the legislature itself has defined the term ‘tax year’ to mean a period of twelve months ending on the 30th day of June and shall be denoted by the calendar year in which the said date falls. The law envisages a special tax year as well which may be allowed by the Commissioner concerned if a person applies in writing to allow him to use a 12 months’ period other than normal tax year. Some of the appellants (and petitioners before the learned Single Judge) have special tax years ending on 30th September 2021 (in the case of sugar industry) and 20.12.2021 (in respect of some other categories of taxpayers) which is an undisputed fact.

10. The arguments in this Court and the precedents to support them will be discussed during the course of this opinion and need not be separately stated.

History of super tax:

11. Ms. Asma Hamid, Advocate for FBR collated an executive summary of the brief history of super tax which may be set out below in order to lend actuality to the analysis:

1. Tax on income in addition to income tax is commonly termed, inter alia, as “super tax”. Amongst the earliest enactments that introduced the levy of super tax in the Indian sub-continent was

the Super Tax Act of 1917. Thereafter, the Legislative Council of India enacted the Super Tax Act of 1920 which repealed the Super Tax Act of 1917. It may be noted that till this period, the impost of tax in addition to income tax (i.e., super tax) was being made through separate legislative enactments until the Legislative council of India, on the recommendations of All-Indian Income Tax Committee, consolidated income tax and tax in addition to income tax (ie., super tax) in the Indian Income Tax Act, 1922. Even though the Income Tax Act, 1922 dealt with both income tax and super tax, it still maintained the distinction and identities of the two categories of taxes, and designated a separate chapter for super tax, i.e., chapter IX of the Indian Income Tax Act, 1922 which contained a distinct charging provision, and specified the definition of income and the exemptions applicable with respect to the computation of super tax. In other words, Chapter IX of the Indian Income Tax Act, 1922 was a self contained chapter dealing with the charge, assessment, collection, and recovery of super tax. It is also worth noting that even though the Indian Income Tax Act 1922 defined super tax as tax in addition to income tax, it did not include the same within income tax; the legislature, in its wisdom, clearly kept the separate identity of super tax maintained.

2. After its independence, the Islamic Republic of Pakistan adopted, as is, the Income Tax Act of 1922 as its code on direct taxation. However, from time to time, through parliamentary enactments and Ordinances, the charges levied, definitions, and computation and recovery methods were amended. Thereafter, the Income Tax Act of 1992 was repealed by the Income Tax Ordinance 1979 which, with respect to the levy of super tax, adopted a similar scheme and maintained the super tax's distinct and self contained identity. Thereafter, the promulgation of the Income Tax Ordinance, 2001 repealed the Income Tax Ordinance, 1979. Super Tax was reintroduced in the 2001 Ordinance through the Finance Act, 2015, by adding section 4B (super tax for rehabilitation of Temporarily Displaced Persons) that imposed a super tax on certain persons with retroactive effect on tax year 2015. It is important to note that in March 2011, a surcharge of income tax was initially added by section 4A through the Income Tax (Amendment) Ordinance 2011 dated 16.03.2011 and then 30.05.2011 and finally omitted by Finance Act 2014. It was a tax that was an additional charge/amount in addition to the due income tax that increased the amount of

income tax, however, it was not a distinct category of tax in the same nature as, super tax. It may be noted, however, that although the nomenclature is different, a surcharge or surtax has in common with super tax, the quality of being in addition to a charge of normal tax/increasing the amount of tax liability. It is pertinent to note the levy of surcharge by section 4A was challenged by petitioner who was a special tax year taxpayer on the ground that as its tax year 2011 had ended prior to the passing of the Ordinance through which the surcharge was levied, therefore it was not liable to pay. The Hon'ble Sindh High Court dismissed the petition, holding that a special tax year use did not in any way, entitle a taxpayer allowed to use the same, to evade tax; the judgment was assailed in the Hon'ble Supreme Court where it remained intact, hence attained finality.

3. It must be noted that section 4B of the Income Tax Ordinance, 2001 was subjected to many constitutional challenges before the Hon'ble High Courts of Sindh, Lahore and Islamabad; however, the constitutional courts of Pakistan unanimously upheld its vires and the appeal preferred by the appellants against the said decision is currently pending before the Hon'ble Supreme Court which granted leave to appeal to the appellants subject to the payment of 50% deposit of the super tax due under section 4B of the Income Tax Ordinance, 2001.

4. In the recent past, through the Finance Act of 2022, the Parliament inserted, inter alia, section 4C (Super Tax on High Earning Persons) in the Income Ordinance 2001 which imposed a super tax on certain high earning persons with retroactive effect for the tax year 2022 and onwards; except for the banking companies which were liable to pay super tax from the tax year 2023.

12. We may point out that section 4B is still part of the law and has not been repealed by the insertion of section 4C. The significance of this aspect will be adverted to in the later part of this opinion.

13. As adumbrated, the appellants submit that a right had come to vest in the appellants/ taxpayers with the close of tax year on 30th June, 2022 and any imposition of a tax could not be made to apply retrospectively. Section 4C in its current form abridges and impairs the vested rights acquired under existing law and creates a new obligation in respect of transactions or considerations already past and closed. This argument is based on precedents of the superior courts which have vouched this rule successively over the years. Reference may be made to Mehreen Zebun

Nisa v. Land Commissioner Multan (PLD 1975 S.C 397). There is not much sunlight between the appellants and FBR regarding settled rule of interpretation of statutes which holds that vested rights can indeed be taken away by express words and legislation cannot be struck down merely because it does so. Legislature is competent to give retrospective effect to an Act and thereby take away vested rights of parties. *Muhammad Hussain v. Muhammad and others (2000 SCMR 367)* and several other judgments (which may not be discussed in detail) may be cited to bring home this rule of interpretation.

14. Learned counsel for the appellants referred to the wellworn concept of three stages in the imposition of a tax: There is the declaration of liability, the assessment and lastly comes the methods of recovery if the person taxed does not voluntarily pay. These stages have, over time, been restated in the judgments of the superior courts and were relied upon in *H.M Extraction Ghee & Oil Industries (Pvt.) Ltd. v. FBR (2019 SCMR 1081)*. This concept has been used by the counsel for the appellants to argue that liability crystallized on 30th June, 2022 in respect of the appellants to pay tax as per the statute and what remained merely was the assessment part which does not depend on the liability which had already been fixed by 30th June 2022. This is the sum of the arguments of the appellants.

Retrospectivity of laws-general concepts:

15. Two treatises will be relied upon to articulate the rule of construction of revenue laws and retrospective taxation. In *A Treatise on the Law of Taxation* by Thomas M. Cooley (second edition) a brilliant exposition and methodical discussion on the principles of taxation, it has been stated that:

“...We are therefore at liberty to suppose that the two main objects had in view in framing the provisions of any tax law were, *first*, the providing a public revenue, and *second*, the securing of individuals against extortion and plunder under cover of the proceedings to collect the revenue...”

“*The question regarding the revenue laws has generally been whether or not they should be construed strictly. To express it in somewhat different language, the question is whether, when a question of doubt arises in the application of a statute to its subject matter or supposed subject matter, the doubt is not to be solved in favour of the citizen, rather than in favour of the state upon whose legislation the doubt arises, and whether such solution is not most in accord with the general principles applied in other cases. Strict construction is the general rule in the case*

of statutes which may divest one of his freehold by proceedings not in the ordinary sense judicial, and to which he is only an enforced party. It is thought to be only reasonable to intend that the legislature, in making provision for such proceedings, would take unusual care to make use of terms which would plainly express its meaning, in order that ministerial officers might not be left in doubt in the exercise of unusual powers, and that the citizen might know exactly what were his duties and liabilities. A strict construction in such cases seems reasonable, because presumptively the legislatures has given in plain terms all the power it has intended should be exercised. It has been very generally supposed that the like strict construction was reasonable in the case of tax laws."

"Statutes," says a learned and able writer, "made for the advancement of trade and commerce, and to regulate the conduct of merchants, ought to be perfectly clear and intelligible to person of their description. By the use of ambiguous clauses in laws of that sort, the legislature would be laying a snare for the subject, and a construction which conveys such an imputation ought never to be adopted. Judges, therefore, where clauses are obscure, will lean against forfeitures, leaving it to the legislature to correct the evil, if there be any..."

"The same author on another page says: "It is a well settled rule of law that every charge upon the subject must be imposed by clear and unambiguous language. Acts of parliament which impose a duty upon the public will be critically construed with reference to the particular language in which they are expressed. When there is any ambiguity found, the construction must be in favour of public; because it is a general rule that when the public are to be charged with a burden, the intention of the legislature to impose that burden must be explicitly and distinctly shown."

"In every case, therefore, of doubt, such statutes are construed most strongly against the government, and in favour of the subjects or citizens, because burdens are not to be imposed, nor presumed to be imposed, beyond what the statutes expressly and clearly import."

16. Firstly, the rule has been stated regarding framing of provisions of any tax law to provide a public revenue but at the same time to secure the individuals against extortion and plunder under cover of the procedures

to collect the revenue. The treatise delved into the question whether revenue laws are to be construed strictly or not. It goes on to state the general rule regarding the need for statutes being clear and intelligible to persons of their description and in particular statutes made for the advancement of trade and commerce which is the case in the instant matters. It reiterates the rule that in case of doubt courts must lean in favour of the subject or citizens. Learned counsel for the appellants contend that section 4C does not charge a burden on the tax year 2022 as this intention cannot be discerned clearly and explicitly from the language of section 4C.

17. On the subject of **retrospective taxation**, Thomas M. Cooley states the rule in the following terms: (p.p 291-293)

*“Retrospective taxation. The basis of an apportionment of taxes may as lawfully be retrospective as the reverse; that is to say, it may as well have regard to benefits theretofore received as to those which may be received thereafter. It has therefore been very properly held that there is no constitutional or other legal objection to the levy of taxes to pay for municipal improvements which had been previously made. Nor in apportioning the tax as between individuals is there any valid objection to making it on consideration of a state of things that may now have come to an end; as where a tax is imposed on the extent of one’s business for the preceding year, instead of upon an estimate of business for the year to come. Where taxes are levied for a series of years upon the same valuation of property, they are necessarily retrospectives, but not therefore incompetent, though one may be taxed upon property which he has long ceased to own when the tax is levied. **But there is commonly a presumption that any new tax law was not intended to reach back and take for its standard of apportionment a state of things that may no longer be in existence. “New burdens,” it is very justly said, “ought always to be prospective,” and it is reasonable to suppose the legislature has intended that they should be. Such a supposition is in harmony with the general rule of law which requires the courts to “always construe statutes as prospective and not retrospective, unless constrained to the contrary course by the rigor of the phraseology.” This is the rule not only as a construction of the grant of power, but also as to all the incidents; though remedial provision may well be presumed to have been intended to reach back for the purposes of justice. And in cases where a tax is levied to meet expenses previously incurred, or to pay the cost of something of***

which the persons to be taxed have already had the benefit, any presumption against an intent to give the law retroactive operation may be overcome by the apparent justice of such a construction.”

18. The crux of the statement set out above is that there is a presumption that any new tax law was not intended to reach back and take for its standard of apportionment a state of things that may no longer be in existence and that new burdens ought always to be prospective. Cooley relied upon the general rule of law which requires the courts to always construe statutes as prospective and not retrospective unless constrained to the contrary by the phraseology used. Elsewhere, Cooley recognised that:

“Retrospective legislation, except when designed to cure formal defects, or otherwise operate remedially, is commonly objectionable in principle, and apt to result in injustice; and it is a sound rule of construction which refuses lightly to imply an intent to enact it.”

(Thomas M. Cooley, A treatise on the constitutional limitations which Rest upon the Legislative Power of the States of the American Union 62-63).

19. Closely tied in with the above exposition, the second treatise, *Bennion, Bailey and Norbury on Statutory Interpretation, Eighth Edition* reweighs the subject in the section relating to retrospectivity (at pages 264 to 276).

20. Firstly, Bennion refers to the principle of legal policy that “except in relation to procedural matters, changes in the law should not take effect retrospectively”. Further the term ‘retrospectivity’ has been defined as “legislation is retrospective if it alters the legal consequences of things that happened before it came into force”.

21. Bennion too relies upon the general presumption against retrospectivity and the approach of the courts when determining whether legislation is intended to have retrospective effect. Underpinning the approach is a wider principle of legal policy that law should not operate retrospectively.

“The essential idea of a legal system is that current law should govern current activities. If we do something today, we feel that the law applying to it should be the law in force today, not tomorrow’s backward adjustment of it. We believe that the nature of law is such that ‘.... Those who have arranged their affairs ... in reliance on a decision which has stood for many

years should not find that their plans have been retrospectively upset.”

22. The above statement provides the underlying rationale for the presumption against retrospectivity. All taxpayers in the present context doing something today would legitimately expect that law applying to them should be the law enforced today not tomorrow's backward adjustment of it. That is how ordinary persons arrange their affairs. Bennion alluded to the maxim *lex prospicit non respicit*:

“The principle is sometimes expressed in the maxim lex prospicit non respicit law looks forward not back. As Willes J said in Phillips v Eyre retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated ought, when introduced for the first time, to deal with future acts, and ought not to change the character of past transactions carried on upon the faith of the then existing law.”

23. Despite the general principle, Bennion recognized that Parliament does have the power to produce a retrospective effect. It is further stated in the ‘Treatise’ that:

“A distinction is sometimes drawn between changes to the law in relation to events which have already taken place and changes to the law which alter existing rights or obligations or other matters but only in relation to the future. It is the latter class that throws up the most difficulties, which is only to be expected: since it is less surprising that Parliament should want to change the law for the future in relation to existing rights and obligations the question of construction is more finely balanced.”

24. The reference to legislation to reverse an unexpected decision by the courts can be used to justify the insertion of section 31 A to the Customs Act, 1969 and which was the subject matter of a decision by the Supreme Court of Pakistan which we will discuss shortly.

25. In the ‘Treatise’ by Bennion, a crucial aspect of retrospectivity and the best way it has to be viewed merits recitation. It is stated that retrospectivity is better viewed as a **question of degree** which will vary according to the context and that the degree of retrospectivity is one of the relevant factors when considering whether the general principle against retrospectivity is rebutted. The courts in the United Kingdom have looked at this question from the aspect of fairness and the interaction of several factors to determine the degree to which the statute has retrospective effect. The question of degree and element of fairness

are now added to the traditional interpretative toolkit of the courts to circumscribe the power of Parliament to legislate retrospectively.

26. Lastly, the presumption against retrospectivity has been treated in the following manner in *Reading Law: The Interpretation of Legal Texts* by Antonin Scalia and Bryan A. Garner—

“As a general, almost invariable rule, a legislature makes law for the future, not for the past. Judicial opinions typically pronounce what the law was at the time of a particular happening. Statutes, by contrast, typically pronounce what the law becomes when the statutes take effect. This point is basic to our rule of law. Even when they do not say so (and they rarely do), statutes will not be interpreted to apply to past events.”

“The presumption against retroactivity is a guide to interpretation, not a constitutional imperative, because the presumption applies even when the Constitution does not forbid retroactivity.”

Al-Samrez and Molasses Trading:

27. The appellants anchored their arguments on two judgments of the Supreme Court of Pakistan to contend that in such matters retrospectivity cannot affect rights which have already accrued and so the appellants fall outside the charge to tax. The courts, according to the learned counsel for the appellants, have discountenanced the application of taxing statutes so as to upend past and closed transactions. It is necessary to indulge in a deeper analysis of these two judgments in order to apply them to the facts of the present cases. The cardinal feature of these cases is to define the contours of retrospective legislation.

28. The arguments of the appellants in this Court centred on *Al-Samrez Enterprise v. Federation of Pakistan (1986 SCMR 1917) (Al-Samrez)* and *Molasses Trading & Export (Pvt.) Limited v. Federation of Pakistan & others (1993 SCMR 1905) (Molasses Trading)*. The basic strands of these judgments require unpacking.

29. *Al-Samrez* was a case which related to an exemption in customs duty through a notification and changes in the rate of duties by a second notification and the question arose whether the second notification would have retrospective operation so as to impair vested rights. Thus, an executive action was brought under challenge although the Supreme Court held that such a power being statutory the second notification had the force of statutory instrument and proceeded to hold that rules of statutory construction were attracted to the interpretation and determination of its legal effect. It was on this basis that the Supreme

Court held that the rule against retrospection would apply to an executive action as well and could not prejudicially affect vested rights or legality of past transactions. The issue before the Supreme Court was summarized in the following words:

“...and then comes the most relevant clause which comprises the second component included in the rate of duty, which reads as follows: “and the amount of duty that may have become payable in consequence of the withdrawal of the whole or any part of the exemption or concession from duty whether before or after the conclusion of a contract or agreement for the sale of such goods or opening of a letter of credit in respect thereof.” In order to bring out the true import and the meaning of this part of the section Supreme Court arranged the various phrases thereof and added a few words thereto placed in the brackets the text of which would then read as follows:--

- (1) Notwithstanding anything contained in any other law for the time being in force or any decision of any Court, for the purposes of sections 30 and 31, the rate of duty applicable to any goods shall include ...the amount that may have become payable in consequence of withdrawal of exemption from duty, whether (the withdrawal is) before or after the conclusion of a contract or agreement for the sale of such goods or opening of a letter of credit thereof.*

A plain reading of this text would show that by a mandate of law the rate of duty, which was a matter pertaining to the taxability or leviability of the duty, has now to include the amount not only of the duty imposed under section 18, but also the amount that would notionally become payable if the exemption is withdrawn, irrespective of whether the withdrawal takes place before or after the conclusion of a contract for the sale of goods or opening of a letter of credit. It is easy now to see that the distinction between chargeability and playability of a duty under the Act has been effectively destroyed because the rate would now include the quantified amount of duty that would be payable as a result of withdrawal of exemption from duty. The direction that, this will be the position whether the withdrawal is before or after the conclusion of a contract or opening of a letter of credit, has the effect of destroying the doctrine of vested rights on the basis of which the decision in the case of Al-Samrez Enterprise was given. In ordinary concept the rate does not include the

quantum or the total amount payable, but the legislature has mandated that it shall be included within the rate of duty by the fiction created in law. Therefore contention that the position has remained unchanged in spite of section 31-A, because its provisions have been confined to operate only for the purpose of sections 30 and 31, is not tenable, because under the changed law section 30 now not only deals with rate of duty, but the amount payable under section 18 of the Act as well as in consequence of withdrawal of exemption, destroying the vested rights that may have accrued on account of the conclusion of contract for the sale of goods or opening of a letter of credit?

30. After referring to the law applicable to the facts of the case and the nature of exemption granted by law the Supreme Court held that mere grant of exemption under Section 19 of the Customs Act, 1969 did not have the effect of modifying or altering the levy of duty under Section 18 which continues to be in force. The rule was stated that the liability for payment of duty which accrued under Section 18 was temporarily wiped off to the extent of duties which were exempted. Thereafter the Supreme Court alluded to the question as to whether in the circumstances of the case the appellants had acquired vested rights to the exemption in terms of the earlier notification or contrarily they were legally deprived of the same on the basis of second revised notification. The point of reference with regard to a vested right having come to accrue in a person was taken to be a binding contract concluded between the appellants and the foreign exporter or if steps were taken which created a vested right to the existing notification granting exemption. If these acts done by an exporter were performed in the opinion of the Supreme Court a right had come to vest which could not be taken away and destroyed in modification of the earlier notification. The Supreme Court did not hold the second notification to be *ultra vires* the powers of Government but merely stated the rule that it did not apply retrospectively to upset vested rights.

31. *Al-Samrez*, in our opinion, is not squarely relevant to the cases in hand as the said precedent merely lays a general rule regarding application of a statutory notification by executive on past transactions and concluded contracts. It alluded to the rule regarding retrospectivity and its interplay with vested rights. In *Al-Samrez* the court was not analysing a statute which specifically operated retrospectively by its letter and the intention of the legislature was clear in this regard. Therefore, as a policy of law it was held that such actions cannot be permitted to operate retrospectively. In the instant cases on the other hand section 4C incorporates a clear intention on the part of the

legislature for it to operate retrospectively and, therefore, the issues on these appeals are more nuanced and requires this Court to enter into discourse as to whether under such circumstances the Courts will frown upon such legislative intent and hold that despite clear intentions the retrospectivity would still not affect the past transactions of the appellants which have come to a close.

32. This brings us to *Molasses Trading* which is a case more in point. *Molasses Trading* considered the effect of section 31A inserted in the 1969 Act by the legislature to nullify the effect in *Al-Samrez*. The facts in *Molasses Trading* had uncanny similarity to the facts in *Al-Samrez*. Yet by that time the legislature had inserted section 31A and it fell to the Supreme Court to determine the effect of the insertion of section 31A and the clear intent of the legislature to apply it retrospectively to concluded contracts and past events. The difference between *Al-Samrez* and *Molasses Trading* therefore is that in *Molasses Trading* the effect of a retrospective statute was under consideration and so the Supreme Court was engaged to resolve the issue whether in such circumstances as well the doctrine of vested rights propounded in *Al-Samrez* would still apply. The legislature made its intention clear by the use of following words in section 31A:

“and the amount of duty that may have become payable in consequence of the withdrawal of the whole or any part of the exemption or concession from duty whether before or after the conclusion of a contract or agreement for sale of such goods or opening of a letter of credit in respect thereof”.

33. The words set out above were interpreted by the Supreme Court while issuing its holding in *Molasses Trading*. The Supreme Court accepted that section 31A nullified the effect of *Al-Samrez* as also that it had the effect of destroying the doctrine of vested rights given in *Al-Samrez*. This observation may seem a contradiction in terms while analysing the later part of the judgment and the conclusion drawn at the end of it. For, in our opinion, the Supreme Court resurrected the doctrine of vested rights yet did so in a different manner. The real issue then was framed by the Supreme Court as follows:

“The only other question that remains to be considered is, that notwithstanding the altered position produced by section 31-A depriving an importer of the right to be protected against any change in the quantum of exemption, on the basis or which he has entered into a contract for the sale of goods to be imported and opened a letter of credit or performed other acts, to what extent this section can be given retrospective effect and

whether such retrospective effect can be given so as to affect past and closed transactions.”

“...a statute cannot be read in such a way as to change accrued rights, the title to which consists in transactions past and closed or any facts or events that have already occurred...”

34. It is evident from the observation set out above that the Supreme Court, having conceded that section 31A was to be given retrospective effect, proceeded to consider whether this can be done **so as to affect past and closed transactions**. The Supreme Court reiterated the principle that “a statute cannot be read in such a way as to change accrued rights the title to which consists in transactions past and closed or any facts or events that had already occurred”. These observations in our opinion underline the concept of impermissible lawmaking and constitute a departure from the limited doctrine of vested rights which was settled in *Al-Samrez* and the Supreme Court embarked upon a broader issue relating to statutes and their effect on accrued rights, the title to which consists in transactions past and closed or any facts or events that have already occurred. Accordingly, this in the opinion of the Supreme Court comprised another species of rights which even a retrospective statute could not take away and regarding which the legislature had to adopt a different *modus operandi* which would include *inter alia* a clear enunciation of the intention in this regard. This aspect will be elaborated further while considering the effect of *Molasses Trading*. In a nub, the Supreme Court on the basis of rules settled by precedents *inter alia Mehreen Zebun Nisa* considered the question of a statute affecting transactions which had become past and events which had already occurred. This was different from concluded contracts and the assertion of vested rights on that basis. The Supreme Court referred to the settled principle that while enacting retrospective legislation the legislature creates a fiction and imagines state of affairs which do not exist. However, there are inevitable corollaries of that state of affairs which will be subjected to the rules of construction by the Courts. It is, therefore, the duty of the Court to determine the limits within which the legislature has created a fiction. It was stated that:

“It cannot straightway be held that the mere fact that section 31A has been given retrospective effect, it will affect even the past and closed transactions or all the vested rights that have accrued.”

35. Then comes the crucial point where the Supreme Court dealt with the aspect of what comprises past and closed transactions under the circumstances and for the purpose relied upon the concept of

presentation of a bill of entry under section 30 of the 1969 Act and it was held that at this point “**the levy of duty was crystallized**”. It was observed that “therefore this is the crucial point of time at which, by operation of law the liability is discharged. In other words the rights and liabilities of the importers **attained fixity on the said crucial date**....the mere fact that any proceeding remained pending for assessment of the tax by a statutory functionary for the purpose of recovery of the dues will not prevent the law from operating and producing the result by closing the transaction”. Further the Supreme Court held that:

*“...Viewed in this perspective, if effect is given to the provisions of section 31-A so as to undo the discharge of the liability which had already taken effect, it will amount to re-opening a past and closed transaction. **The simple reason is that under the existing law there was no further liability to pay the tax and by giving retrospective operation to the new dispensation a liability is being created for the payment of the tax.** I cannot see anything in the language of section 31-A, expressly or by necessary intendment, to that effect. Such result is therefore not a necessary corollary of the fiction created by the deeming provisions of section 5 of the Finance Act, 1988. Otherwise also it will be contrary’ of the principle, mentioned above, namely, that liabilities once fixed or rights created by operation of law upon facts or events, must not be disturbed by a general provision given retrospective effect unless such intention is clearly manifested by the language employed. In the case of Mehreen Zebun Nisa (supra) retrospective effect was not given to the changed law so as to invalidate certain acts of legislature, although the entry in the relevant legislative list had been changed with retrospective effect.*

36. Thus, the Supreme Court was of the view that section 31A could not operate to undo the liability which had already taken effect as this will amount to reopening a past and closed transaction. Further that liabilities once fixed or rights created by operation of law upon facts or events which have already taken place cannot be disturbed by a **general provision** giving retrospective effect unless **such intention is clearly manifested by the language employed**”. The distinction that was drawn by the Supreme Court in *Molasses Trading* so as to disapply retrospective statutory law to past transactions which have come to a close is that it would not be sufficient for the legislature to give a general retrospective operation and intend thereby to upend past and closed transactions. This cannot be taken as a necessary corollary of the fiction created by a deeming provision. Since these rights are created **by**

operation of law the liabilities have become definite and rights have been created upon facts or events which have come to pass. They cannot be disturbed by a general provision giving retrospective effect. The language employed must clearly show that changed law seeks to invalidate certain acts taken **under the law** and which have become past and closed. The distilled essence of *Molasses Trading* is that there must be a crucial date on which the liability to pay tax crystallized and there is no further liability to pay and it does not matter whether an assessment of the recovery is yet to take place. In the case of section 31A which was inserted on 01.07.1988, the date of filing of bill of entry was taken as that crucial date on which the liability to pay tax crystallized in the case of importers.

37. Applying the same reasoning to the facts of the present appeals the crystallized date would be 30th June, 2022 when the tax year ended for all of the appellants and the liability to pay tax became definite for these appellants. Applying the *ratio decidendi* of *Molasses Trading* to section 4C the words “a super tax shall be imposed for tax year 2022 and onwards” manifest a general provision which gives retrospective effect and ensnares tax year 2022 in the imposition as well. It does not clearly state that this is notwithstanding past and closed transactions and concluded rights or irrespective whether the liability had crystallized as on 30th June 2022. In the absence of such clear intention on the part of the legislature section 4C cannot be applied to disturb and upend liabilities which have been fixed and rights created by operation of law. By operation of law is meant the various provisions of the Ordinance which not only prescribe the period of a tax year but also required the taxpayers to manage their affairs for a tax year in a certain manner and the guiding polestar for the taxpayers to arrange those affairs was that their taxable income would be fixed and crystallized on 30th June 2022 and on the basis of which they were required to file their returns.

38. Thus, *Molasses Trading* formulated the doctrine of vested rights in a mutated form, given the promulgation of section 31A but in actual fact reiterated it. It held that section 31A did not affect past and closed transactions instead of vested rights previously espoused in *Al-Samrez*. In essence, this was because of the use of the words “whether before or after the conclusion of a contract or agreement for sale of such goods or opening of a letter of credit” in section 31A. Truly, the Supreme Court in *Molasses Trading* viewed section 31A in the same mould as the impugned notification in *Al-Samrez* yet eked a right out of the straightjacket of section 31A to inhere in the importers. In *Al-Samrez* concluded contracts were made the signpost while in *Molasses Trading* the bills of entry and their presentation was considered as the crucial date

to hold that it became past transaction and these remained unaffected by section 31A. That is why the Supreme Court alluded to certain concepts of rights created by operation of law which cannot be impaired or taken away by a general provision giving retrospective effect. The intention must be clearly manifest by the language employed *viz.* that rights acquired under past transaction are being taken away, too. This is the test that will guide us.

Tax as Public Law; Fairness:

39. In the United Kingdom the rule against retrospective application of legislative provisions is grounded on a different set of reasoning. The courts have invoked the concept of fairness from the public law to ascertain the degree of retrospectivity as a relevant factor. The principles to be applied in determining whether legislation is retrospective was considered by the House of Lords. Having cautioned against undue or mechanistic reliance of generalized presumptions, the U.K House of Lords applied the following statement from *Secretary of State for Social Security v Tunnick* [1991] 2 All ER 712:

“In my judgment the true principle is that Parliament is presumed not to have intended to alter the law applicable to past events and transactions in a manner which is unfair to those concerned in them unless a contrary intention appears. It is not simply a question of classifying an enactment as retrospective or not retrospective. Rather it may well be a matter of degree – the greater the unfairness, the more it is to be expected that Parliament will make it clear if that is intended.”

40. Thus, the rule was clearly laid down that it was not simply a question of classifying an enactment as retrospective or not retrospective rather it is a matter of degree, that is, **the greater the unfairness the more it is to be expected that Parliament will make it clear if that is intended.** This is the result which was achieved in *Molasses Trading* by applying different reasoning but in our opinion that too was based on the concept of fairness in classifying an enactment as retrospective or not retrospective. The House of Lords [1994] 1 AC 486, then went on to address the question of how the courts approached the question of what fairness demands:

“Precisely how the single question of fairness will be answered in respect of a particular statute will depend on the interaction of several factors, each of them capable of varying from case to case. Thus, the degree to which the statute has retrospective effect is not a constant. Nor is the value of the rights which the statute affects, or the extent to which that value is diminished or

extinguished by the retrospective effect of the statute. Again, the unfairness of adversely affecting the rights and hence the degree of unlikelihood that this is what Parliament intended, will vary from case to case. So also will the clarity of the language and by Parliament, and the light shed on it by consideration of the circumstances in which the legislation was enacted. All these factors must be weighed together to provide a direct answer to the question whether the consequences of reading the statute with the suggested degree of retrospectivity are so unfair that the words used by Parliament cannot have been intended to mean what they might appear to say.”

41. Factors relevant to reaching the decision in the House of Lords included the value and nature of the rights affected, the purpose of legislation and the hardship of the result. The emphasis in the statement set out above by the United Kingdom House of Lords was the degree of unfairness of adversely affecting the rights and the clarity of the language used by the Parliament and hence the degree of unlikelihood that this is what Parliament intended.

42. We have rarely seen the application of administrative law doctrines to tax problems. Yet both *Al-Samrez* and *Molasses Trading* represent case-law on taxpayers’ legitimate expectations and the application of underlying public law principles such as rule of law to taxation. One of the leading textbook in the field of *Tax as Public Law* (J. Tiley and G. Loutzenhisey, *Revenue Law*, 7th ed, Oxford 2012) claims that:

“Although the power to tax has been at the very centre of some of our major constitutional law disputes, including the execution of a King, there is a lack of engagement with public law issues.”

Constitutional rule:

43. Justice Oliver Wendell Holmes (U.S Supreme Court) famously said that “taxes are what we pay for civilised society.” (*Compania General de Filipinas v Collector of Internal Revenue* (1927) 275 US 87, 100). Although the rule enunciated in *Molasses Trading* was based on a general principle of legal policy to establish a presumption against retrospectivity yet in our opinion the rule rests on a higher constitutional principle. We can look to its source in the Constitution apart from its basis in general rules of public policy. If the courts concede power to the legislature to enact such and such laws which are retrospective in operation yet fence that power at the same time then it must be done by looking at the fundamental law. The reason for this is not hard to divine. We live in a constitutional democracy and the fundamental source of all laws is the Constitution. There are a number of provisions in the

Constitution which illuminate the meaning of the rule and provide sufficient justification for the rule to be applied by the courts. Article 4 of the Constitution provides that:

4. (1) To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen. Wherever he may be, and of every other person for the time being within Pakistan.

2) In particular—

(a) no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law;

(b) no person shall be prevented from or be hindered in doing that which is not prohibited by law; and

(c) no person shall be compelled to do that which the law does not required him to do. "..."

Article 23 relates to the provision as to property and provides that:

23. Every citizen shall have the right to acquire, hold and dispose of property in any part of Pakistan, subject to the Constitution and any reasonable restrictions imposed by law in the public interest.

Similarly, Article 24(1) states that:

24. (1) No person shall be deprived of his property save in accordance with law.

44. Article 4 as set out above relates to the rights of individuals to be dealt with in accordance with law and makes it an unalienable right of every citizens to enjoy the protection of law. In particular, it enjoins that no action detrimental to *inter alia* life and **property** of any person shall be taken except in accordance with law. Thus, Article 4 raises the bar of protection afforded to all citizens and persons to a constitutional pedestal. The total income earned by a taxpayer/appellants is the property of these taxpayers and cannot be taken away except in accordance with law. Since the Constitution provided this protection, therefore, it is legitimate to accept that the legislature will not make any law which would take away the property of a person and thus cause the abridgment of the fundamental right conferred upon that person. Similarly, Article 23 mandates that every citizen shall have the right to acquire and hold property which is only subject to the Constitution and any reasonable restrictions imposed by law. Once again, the term 'reasonable restriction' would not include restrictions in the nature of

retrospective laws which take away rights which have accrued to a person and in respect of actions which are past and closed. The law prescribing such a taking should be unambiguous and must by its words clearly state that it is intended to affect past and closed transactions without a manner of doubt.

45. To the same effect is the right enshrined in Article 24(1) which states that no person shall be deprived of his property save in accordance with law. Section 4C in applying the impost to tax year 2022 doubtless, deprives the appellants of the use of their property in the form of income under all heads of income for the tax year. Thus, the rule laid down in *Molasses Trading* has a constitutional basis and flows from the Constitution and must, therefore, be viewed as a right which fundamentally inheres in the appellants. Since in the United Kingdom there is no written constitution yet the courts have evolved a rule based on fairness to protect the rights of persons affected by retrospective legislation. That too in the context of United Kingdom is a constitutional principle. Although, in our Constitution, the fundamental rights are not absolute yet they cannot simply be taken away by ordinary law. They are only subject to reasonable restrictions. The law relating to acquisition readily comes to mind when considering Acts of Parliament which apply retrospectively to past and closed transactions and accrued rights. Yet the Constitution allows governments to do so subject to constitutional guarantees of public purpose and due compensation. In acquisition, there is no doubt regarding the intention to whittle away accrued rights and it is within the contemplation of all persons adversely affected by the process.

Section 4C and its impact on the appellants:

46. There is no doubt that the businesses arrange their affairs on the current state of law as they would expect to confront at the end of a tax year. There could be a myriad of financial considerations in the appreciation of businessmen, traders and merchants which impact their decision and all of them with an eye on that crucial date, that is, 30th June, 2022. Interestingly, these considerations shall vary from one business to another depending on its peculiarities. That is precisely the reason for providing the concept of a special tax year in section 74 of the Ordinance in contrast with the normal tax year. Reading through the length and breadth of the Ordinance would inform the reader of the concept underpinning the computation of taxable income. Section 9 of the Ordinance defines taxable income and provides that:

9. Taxable income.— *The taxable income of a person for a tax year shall be the total income under clause (a) of section 10 of*

the person for the year reduced (but not below zero) by the total of any deductible allowances under Part IX of this Chapter of the person for the year.

Total income is a concept given in Section 10:

10. Total Income.— *The total income of a person for a tax year shall be the sum of the*

- (a) person's income under all heads of income for the year; and*
- (b) person's income exempt from tax under any of the provisions of this Ordinance.*

Then we come to Section 11 which deals with heads of income and Sub-section (2) provides that:

(2) Subject to this Ordinance, the income of a person under a head of income for a tax year shall be the total of the amounts derived by the person in that year that are chargeable to tax under the head as reduced by the total deductions, if any, allowed under this Ordinance to the person for the year under that head.

47. So the computation of taxable income comes about by reducing the total deductions from the total amounts derived by the person in that year that are chargeable to tax under the heads of income. The provisions which follow relate to different heads of income. A large number of appellants before us would be chargeable to tax under the heads of "income from business".

48. Before we proceed further, we may refer to the concept of **income** introduced by section 4C through Subsection (2) which has been reproduced above. This definition of income for the purposes of section 4C would have to be juxtaposed against different provisions of the Ordinance so as to deduce the unfairness in applying the impost under Section 4C to the tax year 2022.

49. Section 18 relates to income from business and provides that:

"18. Income from business.— *(1) The following incomes of a person for a tax year, other than income exempt from tax under this Ordinance, shall be chargeable to tax under the head "Income from Business"—*

- (a) the profits and gains of any business carried on by a person at any time in the year;*

(b) any income derived by any trade, professional or similar association from the sale of goods or provision of services to its members.

Explanation.— For the removal of doubt, it is clarified that income derived by co-operative societies from the sale of goods, immovable property or provision of services to its members is and has always been chargeable to tax under the provisions of this Ordinance;

(c) any income from the hire or lease of tangible movable property;

(d) the fair market value of any benefit or perquisite, whether convertible into money or not, derived by a person in the course of, or by virtue of, a past, present, or prospective business relationship.

Explanation.— For the purposes of this clause, it is declared that the word ‘benefit’ includes any benefit derived by way of waiver of profit on debt or the debt itself under the State Bank of Pakistan Banking Policy Department’s Circular No.29 of 2002 or in any other scheme issued by the State Bank of Pakistan;

(e) any management fee derived by a management company (including a modaraba management company).

Explanation.— For the removal of doubt it is clarified that income subject to taxation under sections 5A, 5AA, 6, 7 and 7A shall not be chargeable to tax under this section.”

(2) Any profit on debt derived by a person where the person’s business is to derive such income shall be chargeable to tax under the head “Income from Business” and not under the head “Income from Other Sources”.

(3) Where a lessor, being a scheduled bank or an investment bank or a development finance institution or a modaraba or a leasing company has leased out any asset, whether owned by it or not, to another person, any amount paid or payable by the said person in connection with the lease of said asset shall be treated as the income of the said lessor and shall be chargeable to tax under the head “Income from Business”.

(4) Any amount received by a banking company or a nonbanking finance company, where such amount represents distribution by a mutual fund or a Private Equity and Venture Capital Fund out of its income from profit on debt, shall be chargeable to tax

under the head “Income from Business” and not under the head “Income from Other Sources”.

50. Similarly section 20 provides deductions in computing income chargeable under the head “income from business” and states that in computing the income of a person chargeable to tax under the head “income from business” for a tax year, a deduction shall be allowed for any expenditure incurred by the person in the year wholly and exclusively for the purposes of business. Similarly, section 21 relates to the heads where no deductions are allowed in computing the income of a person.

51. In a number of appeals before us the tax year for the taxpayers ends on dates prior to 30th June, 2022. In respect of these appellants the clear inference is that they have discharged a number of their liabilities prior to 30th June 2022 and in most cases these liabilities are irreversible. We concur in the instances given by the Islamabad High Court as the obligations of such companies, at least, under different laws, and which are closely tied in with the concept of financial year/tax year. The Companies Act, 2017 was one such statute to which a reference may be made. Financial year has been defined as:

“2(34)–financial year□ in relation to a company or any other body corporate, means the period in respect of which any financial statement of the company or the body corporate, as the case may be, laid before it in general meeting, is made up, whether that period is a year or not.

52. Every company, by section 132, shall hold an Annual General Meeting within one hundred and twenty days following the close of its financial year, and by section 223, must lay before the company in AGM its financial statements, since the preceding financial statements. Then in the AGM, dividends have to be declared. The appellants in these categories have already completed these steps and a host of others which are in most part, irreversible. They cannot be retracted and in the case of dividends, it is unlawful for the directors to withhold or defer its payment. On the same analogy, it is well-nigh impossible for us to conceive obligations under other laws the detriments to which the appellants are subjected in the course of their businesses.

53. Under Section 120 of the Ordinance, the concept of an assessment order has been introduced which provides that where a taxpayer has furnished a complete return of income for a tax year, the Commissioner shall be taken to have made an assessment of taxable income for that tax year and the tax due thereon **and the return shall be taken for all purposes to be an assessment order issued to the taxpayer by the**

Commissioner on the day the return was furnished. Section 120 therefore encapsulates the principle which was being argued vehemently by learned counsel for the appellants that the liability stood fixed on 30th June 2022 (for normal tax year) and what was left merely was the furnishing of return of income which by law is deemed an assessment order. The assessment order would be in respect of a taxable income for that year and the tax due thereon. The amendment to the assessment year can only be made under certain circumstances mentioned in section 122 of the Ordinance. Other than that the matters between the revenue and the taxpayer come to a close on the filing of the return of income and nothing more is required to be done. Therefore, in our opinion, section 120 of the Ordinance itself lends support to the contention raised by the appellants and crystallizes the liability on 30th June 2022.

54. Section 137 of the Ordinance would also be relevant in the context brought forth by referring to section 120. Subsection (1) of section 137 provides that:

“(1) The tax payable by a taxpayer on the taxable income of the taxpayer including the tax payable under section 113 or 113A for a tax year shall be due on the due date for furnishing the taxpayer’s return of income for that year.

55. It clearly shows that the tax payable by a taxpayer for a tax year shall be due on the due date for furnishing the taxpayer’s return of income for that year. Section 137 is inextricably linked to section 120 and is based on three stages which have been referred in earlier part of this opinion and relates to the assessment of tax while the declaration of liability has already been concluded on 30th June, 2022. This is a stage which relates to payability of tax rather than determination of liability. Thus, the conflating of various provisions of the Ordinance clearly means that the liability of a taxpayer is crystallized on 30th June, 2022 and thus for all intents and purposes the taxable income for the purposes of the Ordinance would stand determined on that date. This would take the issue in the realm of past and closed transactions which cannot be reopened without clear words to this effect in the statute. We do not discern such words to be part of section 4C of the Ordinance to conclude that past events and concluded rights have been taken away so as to impose super tax from the tax year 2022.

56. Reverting to the substantially modified concept of “income” in section 4C, it has definitely enlarged its scope. It not only includes taxable income (section 9) but also profit on debt, dividend, capital gains, imputable income etc. For example, section 39 of the Ordinance deals with “income from other sources”:

39. *Income from other sources.*— (1) *Income of every kind received by a person in a tax year, if it is not included in any other head, other than income exempt from tax under this Ordinance, shall be chargeable to tax in that year under the head “Income from Other Sources”, including the following namely:—*

(a) Dividend;

(b) royalty;

(c) profit on debt;

(cc) additional payment on delayed refund under any tax law;

(d) ground rent;

(e) rent from the sub-lease of land or a building;

(f) income from the lease of any building together with plant or machinery;

(fa) income from provision of amenities, utilities or any other service connected with renting of building;

(g) any annuity or pension;

(h) any prize bond, or winnings from a raffle, lottery, prize on winning a quiz, prize offered by companies for promotion of sale] or cross-word puzzle;

(i) any other amount received as consideration for the provision, use or exploitation of property, including from the grant of a right to explore for, or exploit, natural resources;

(j) the fair market value of any benefit, whether convertible to money or not, received in connection with the provision, use or exploitation of property;

(k) any amount received by a person as consideration for vacating the possession of a building or part thereof, reduced by any amount paid by the person to acquire possession of such building or part thereof;

(l) any amount received by a person from Approved Income Payment Plan or Approved Annuity Plan under Voluntary Pension System Rules, 2005

(la) subject to sub-section (3), any amount or fair market value of any property received without consideration or received as gift, other than gift received from relative as defined in sub-section (5) of section 85.”

57. It includes dividend, royalty, profit on debt and incomes of other kinds. This, in the ordinary course, would be part of taxable income under section 9 of the Ordinance. These streams of income have once again been subjected to super tax by including them as income for the computation of tax under Section 4C. There is no doubt in our minds that had the appellants contemplated such a levy for tax year 2022, they would have pursued a different set of commercial plans to make a lawful effort to reduce the income and, in turn, to diminish the effect of super tax. This could have been achieved in respect of all kinds of income made part of section 4C and within the standards of accounting practices in vogue.

58. This brings us to the case of Commissioner of Income Tax, Peshawar v. Messrs Islamic Investment Bank Ltd. (2016 SCMR 816) which was extensively quoted by the counsel for appellants as an authority for the proposition of accrual of liability on the last day of the tax year. The Supreme Court held that:

*“...The tax laws are a body of rules and regulations under which the State has a claim on the taxpayers so that they may pay to the State a part of their incomes at the specified rates. **This liability to pay income tax accrues on the taxpayer on the last day of the income year/accounting year, though the tax becomes payable after it is quantified in accordance with the procedures laid down in the Income Tax law.** Thus a vested right in favour of the State is created at the end of each accounting year, though the exercise of (i) making an assessment on the basis of ascertainable data of income and expenditure, or (ii) revising an assessment order where it is found that there is sufficient material to hold that the original assessment was prejudicial to the interest of the revenue, takes place at some later stage. **These procedural exercises are undertaken only with the object of reaching at the correct calculation of yearly income but the real liability to pay tax had already accrued on the last day of the income year i.e. on the last day of the accounting year thereby creating a vested right in favour of the State.** It may be understood as an expense that has already accrued but is payable later. Reference can also be made to section 9 of the Income Tax Ordinance, 1979, with regard to the creation of the charge on the basis of income year. Thus seeking revision of a tax return at any subsequent stage has nothing to do with the creation of charge on the tax-payer that has become absolute on completion of the income year/accounting year.”*

17. In light of the discussion undertaken in the preceding paragraph, it is clear that vested right to claim tax accrues on the last date of accounting year which under the repealed Income Tax Ordinance, 1979, accrued up till 30.06.2002. This right cannot be taken away, even if there had been no saving clause in the Income Tax Ordinance, 2001. such right, being a vested right, gets automatically protected under the provisions of the general law i.e. section 6 of the General Clauses Act, 1897. This vested right could have been taken away if a specific provision to that effect had been incorporated in the Ordinance, 2001 but that is not the case in the present matter. Thus irrespective of any accounting discrepancy that is sorted out on the basis of the procedural provisions of the income tax law at any subsequent stage, the charge of income tax on the taxpayer stands established on the last day of the income year/accounting year. In the present case, the last day of the last income year covered under the repealed Income Tax Ordinance, 1979, was 30.6.2002, therefore, on all income years that ended on or before 30.6.2002 the charge to recover tax had already been created on or before such date.”

59. Doubtless, the rule explicated in the ruling applies on all fours to the present appeals. It was said that the liability to pay income tax accrues on the last day of the income year. Thereafter a vested right was held to exist in favour of the State at the end of each accounting year, irrespective of procedural steps with the objects of reaching at the correct calculation of yearly income. Finally, that the charge of income tax on the taxpayers stands established on the last day of the income year. If the Supreme Court found a vested right to exist in favour of the State, the converse must be true as well and the appellants can rightfully argue that their liabilities stood determined on 30.06.2022 and on this basis only can the State exercise the vested right so conferred, to saddle them with taxes.

60. Further reliance was placed on *Fawad Ahmad Mukhtar and others v. Commissioner Inland Revenue (Zone-II), Regional Tax Office, Multan and another (2022 SCMR 426)* and the following observations:

“...Now, it is well established as a fundamental principle of income tax law that each tax year is a separate unit of account and taxation and the law has to be applied as it stood in respect of that tax year alone...”

61. Thus, the nature of a tax year and its significance was underlined as a fundamental principle of tax law. All liabilities that accrue in a tax year are past and closed transactions.

Rights:

62. The holding in *Al-Samrez* and *Molasses Trading* has blurred the line between a vested right and right under past and closed transaction. This, in our opinion, has been unnecessarily muddled over the years by governments in the assertion of their dominant position. We intend to remove the cobwebs surrounding the subject to lend clarity to it. This will entail a deeper analysis on a jurisprudential level of what was intended by the use of two different terms by the Supreme Court in these cases.

63. What then is a right and how are we to understand the language of rights? Clearly right (like duty) does not denote any entity whether physical, mental or fictional. We do not seek to answer these conceptual questions in this opinion but will merely seek light from some of the concepts articulated by legal scholars and academicians, who have grouped rights in various ways. Most frequently, both philosophers and jurists have explained the notion of rights as a correlative with duties (or obligations) and this seems to be the whole idea permeating *Al-Samrez* and *Molasses Trading*. The right in one person logically implies a duty in another.

64. In the essay written on *Rights* by Alan R. White, Ferens Professor of Philosophy in the University of Hull (a seminal piece of literature), he noted that:

“Quinn v. Leatham, Allen v. Flood, Mogul Steamship Co. v. McGregor, and the later case of Sorrell v. Smith, make it quite clear that a right of A to pursue his own business does not imply a duty of B to refrain from (lawful) interference. Even in the usual passages quoted from Lords Lindley, Bowen, Halsbury, Ashbourne, and Parker the most that is said is that the duty correlative to a right is to refrain from unlawful or unjustified interference. Fry J. in Mogul Steamship Co. at 625 characterized the plaintiff’s right to trade as ‘not an absolute right, but a qualified – a right conditioned by the like right in the defendant’s, and Mathews J. in Allen v. Flood at 26 said that the right could be invaded in fair competition. Cave J., whom Hohfeld quoted with approval as carefully distinguishing a right and a liberty, as indeed he does in Allen v. Flood at 29, held at 30 and 33 that it was ‘undoubted law’ that a trader had a right to carry on business without disturbance except in the way of

fair competition – compare North J. at 40, Lord Ashbourne at 113, Lord Shand at 166 and 173. And when Channel J. distinguished, in Starey v. Graham referred to by Hohfeld, between a ‘right’ in the popular sense and a legal right, although he equated the former with something not forbidden by the law, he did not relate the latter to any correlative duty. Furthermore, later famous trade-dispute cases, such a Crofter Hand Woven Harris Tweed Co Ltd. V. Veitch and Rooks v. Barnard and Others, take the same view, as does the Trade Disputes Act 1906 s. 3, which may even allow interference by unlawful acts, such as breach of contract.

In fact, what seems to have happened in regard to the right to carry on one’s trade is that its legal protection has diminished gradually over the years in the interest of trade competition and union disputes from earlier more stringent safeguards rather than, as Hohfeldians assume, that it has become, or always was, merely a privilege or liberty. Allen v. Flood etc are simply landmarks in this change.”

65. The inference is that a right to carry on trade and its legal protection has diminished gradually and does not imply a duty to refrain from lawful interference (Thus flows the power of legislature to enact a law retrospectively which would be a lawful invasion of the right).

66. Wesley Newcomb Hohfeld’s 1913 article *Fundamental Legal Conceptions as Applied in Judicial Reasoning* 23 *Yale L. J.* 16 (1913) is a brilliant piece. The architecture and arguments in the article remain relevant even today. Hohfeld recognised the looseness of the usage and said that:

“As already intimated, the term “rights” tends to be used indiscriminately to cover what in a given case may be a privilege, a power, or an immunity, rather than a right in the strictest sense; and this looseness of usage is occasionally recognized by the authorities.”

He quoted with approval the language of Justice Sneed in *Lonas v State* (1871) 3 *Heisk. (Tenn.)* 287, 306-307:

“The state, then, is forbidden from making and enforcing any law which shall abridge the privileges and immunities of citizens of the United States. It is said that the words rights, privileges and immunities, are abusively used, as if they were synonymous. The word rights is generic, common, embracing whatever may be lawfully claimed.”

67. The emphasis, of course, is on the words “lawfully claimed” which means within the limits prescribed by law. Rights have synonymously been used as privilege, liberty or a legal claim to do.

68. Now we turn to the definition of ‘right’ and its different forms given in *Black’s Law Dictionary, ninth edition by Bryan A. Garner*:

“*accrued right. A matured right; a right that is ripe for enforcement (as through litigation).*”

“*legal right. 1. A right created or recognized by law. The breach of a legal right is usu, remediable by monetary damages. 2. A right historically recognized by common-law courts. Cf. equitable right. 3. The capacity of asserting a legally recognized claim against one with a correlative duty to act.*”

“*vested right. A right that so completely and definitely belongs to a person that it cannot be impaired or taken away without the person’s consent.*”

69. The term ‘vested right’ as used in *Al-Samrez* is basically a right that completely and definitely belongs to a person and cannot be impaired or taken away without the persons’ consent. It was in this context it was held that that right flowed from the existing notification and could not be altered by the second notification retrospectivity. In *Molasses Trading*, on the other hand, the notion of past and closed transaction was used. Yet this would also imply a right to inhere in a person on a transaction becoming past and closed! Such a right would, in our opinion, have proximity to the term ‘accrued right’ defined above. It would be a right that is ripe for enforcement, against all, including the legislature, and founded on a set of rules having provenance in the Constitution and settled legal principles. It is also a legal right asserting a legally recognized claim against one with a correlative duty to act.

70. This distinction was sought to be elaborated by Munib Akhtar, J. (in the Sindh High Court), with his usual erudition, in *Shahnawaz (Pvt.) Ltd. through Director v. Pakistan through the Secretary, Ministry of Finance, Government of Pakistan, Islamabad and another (2011 PTD 1558)*:

““11. *The general principles applicable in relation to vested rights, and the extent to which they can be retrospectively affected, are well-settled and have been stated and reaffirmed many times...*

12. *As even this brief account shows, some care must be taken to properly analyze the nature of the right under consideration. This is all the more so because (especially in the realm of fiscal statutes) past and closed transactions appear to stand on a*

footing higher than vested rights. This is clearly established by the decision in Molasses Trading and Export (Pvt.) Ltd. v. Federation of Pakistan and others 1993 SCMR 1905, a case relied on by learned counsel for the petitioners. The case was concerned with the grant of an exemption under the Customs Act, 1969. An exemption (which is granted by a notification issued under section 19 of the Act) can be regarded as a 'bare' right, one that can be availed of by the concerned importer. In the well-known case of Al-Samrez Enterprise v. Federation of Pakistan 1986 SCMR 1917, it was held that if the importer altered his position in reliance on the notification (e.g., by entering into a contract or opening a letter of credit), he acquired a vested right in the exemption, to which he remained entitled even if the exemption itself stood withdrawn by the time the goods arrived in Pakistan. The 'bare' right, in other words, had been transformed into a vested right. In order to undo the effect of this decision, section 31 A was added to the Customs Act (by the Finance Act, 1988), and it was deemed always to have been part of the said Act. Thus, its position was, as presently relevant, similar to that of section 214C of the 2001 Ordinance. The question before the Supreme Court in Molasses Trading was whether section 31A had retrospectively destroyed the vested rights recognized in Al Samrez (the goods in question having been imported before 1-7-1988). The Supreme Court unanimously held that the answer to this question was in the affirmative. However, by a majority, it was also held that those cases in which the bills of entry had been filed by or before 30-6-1988 (i.e., before the Finance Act, 1988 came into force) had become past and closed transactions, and section 31A did not apply to them, notwithstanding the absolute terms in which it had, ostensibly, been given retrospective effect. The reason why the rights in those cases had gone from being vested rights to become past and closed transactions was that, in respect of customs duties, the levy of the tax stood crystallized on the date on which the bill of entry was filed. It is well-settled (see, e.g., the Ghulam Hyder Shah's case (supra)) that retrospective statutes affecting vested rights and/or past and closed transactions are to be given the narrowest effect and interpretation that is reasonably possible. Section 31-A, being concerned with undoing the effect of the Al Samrez case, was directed towards vested rights, and could not therefore affect past and closed transactions. Molasses Trading thus nicely

illustrates both how rights can move along the ‘scale’ referred to above, and the distinction that exists between vested rights and past and closed transactions. In relying on this case, the petitioners clearly claim that their rights in the present case should be regarded as past and closed transactions, and hence remain unaffected by section 214C. Section 177 (under which the rights are claimed) must therefore be carefully analyzed in order to ascertain whether there are at all any rights thereunder and if so, whether they can be regarded as vested rights and/or as past and closed transactions.”

71. In our opinion, however, it would not be proper to derive meaning out of *Al-Samrez* and *Molasses Trading* purely on the basis of the use of different terms to denote rights. They proceeded on facts materially different from one another. In *Al-Samrez*, the issue was relating to an executive action sought to be applied retrospectively so as to whittle away rights. This was discountenanced by the Supreme Court and in essence, the rule underpinning the decision was promissory *estopple* or one akin to it. The notion of vested rights was used to stonewall the executive’s attempt to undo concluded contracts made on the basis of the promise contained in the original notification. Regarding facts *in pari materia*, the rule expounded in *Al-Samrez* still applies.

72. *Molasses Trading*, on the other hand, was about legislature’s competence to enact laws retrospectively and thus constituted a challenge to the sovereign power of the State. One can see that a far more formidable challenge was required to be mounted than the one in *Al-Samrez*. The Supreme Court conceded that Parliament has power to legislate retrospectively so as to impair vested rights. But, while doing so, carved out an exception for past and closed transactions. Here one will notice on a fuller reading of *Molasses Trading* that at different places, the terms ‘vested rights’ and ‘past and closed transactions’ have been used interchangeably by the Supreme Court. The Supreme Court observed that “if effect is given to the provisions of section 31A...a liability is being created for the payment of the tax. I cannot see anything in the language of section 31A, expressly or by necessary intendment, to that effect”. Then the crucial words follow:

“Such result is therefore not a necessary corollary of the fiction created by the deeming provisions of section 5 of the Finance Act, 1988. Otherwise also it will be contrary’ of the principle, mentioned above, namely, that liabilities once fixed or rights created by operation of law upon facts or events, must not be disturbed by a general provision given retrospective effect unless

such intention is clearly manifested by the language employed. In the case of Mehreen Zaibun Nisa (supra) retrospective effect was not given to the changed law so as to invalidate certain acts of legislature, although the entry in the relevant legislative list had been changed with retrospective effect.”

73. It follows indubitably that merely relying on fundamental rights will not suffice for they are not absolute and do not draw a distinction on the basis of past transactions. They will not be abridged if the legislature does not clearly express the intention of undoing past and closed transactions so as to take away those rights as well. Unless this is done, rights guaranteed by Articles 4, 23 and 24 protect these transactions and keep them inviolate.

74. In summation, the nub of the arguments is that it will not serve any useful purpose to put a strained construction on words to draw a distinction between a vested right and one flowing from past and closed transactions. Both belong to the species of legal rights that so completely and definitely vest in a person that they cannot be impaired or taken away. Hence, the legislature intending to take them away retrospectively, must use words which are clear, explicit and categorical leaving nothing to imagination. This is because, while doing so, the legislature is making breath-taking inroads upon individuals' rights to due process and property. We do not discern any such intention in the use of the words “for tax year 2022” in section 4C to impair the rights of appellants under past and closed transactions.

ICA No.47905 of 2023 & connected appeals: (Appendix B)

75. This appeal concerns with portion of the impugned judgment which determines the aspect of discrimination which, according to the learned counsel for the appellants before the learned Single Judge, inheres in the proviso to Division IIB of Part I of the First Schedule to the Ordinance (**The Proviso**). The Proviso has been set out above and to reiterate provides separate class of persons engaged in the business of airline, automobiles, beverages, cement, chemicals, cigarettes and tobacco, fertilizer, iron and steel, LNG terminal, oil marketing, oil refining, petroleum and gas exploration and production, pharmaceuticals, sugar and textiles. In respect of this class of persons the rate of tax was 10% where the income exceeds Rs.300 Million. It will be recalled that the original Division IIB was inserted by Finance Act, 2022 and was substituted by Finance Act, 2023. In its original form different slabs had been provided which gave the income of taxpayers and in case it exceeded Rs.150 Million a tax under Section 4C was imposed by the legislature. Where the income exceeded Rs.300 Million, the rate of tax

was 4% of the income. The Proviso created a separate class within the class of taxpayers earning income exceeding Rs.300 Million and which constitute businesses enumerated above. The case of the appellants before the learned Single Judge was that this was outwith the authority of the Parliament and offended Article 25 of the Constitution. This argument weighed with the learned Single Judge who proceeded to strike down the Proviso. The Sindh High Court as well as Islamabad High Court were also swayed by these arguments and all three Courts have held the Proviso to be discriminatory.

76. Learned counsel for the appellant, Ms. Asma Hamid, Advocate argued in this Court that while doing so the learned Single Judge did not advert to the material placed on record (though it was referred in passing the impugned judgment). Primarily, three sets of documents have been relied upon by learned counsel for the appellants to contend that the creation of separate class of persons was permissible under Article 25 of the Constitution and was in consonance with the constitutional mandate.

77. We will, at this juncture, reiterate the rule regarding classification vouched by the superior Courts and need not refer to the case law extensively which has been done by learned Single Judge and respectfully adopt the citations of precedents and their reliance for enunciation of the principles regarding Article 25 of the Constitution. In a nub, classification can only be reasonable if it is based on intelligible criteria having nexus to the object sought to be achieved. Further, classifications created on the basis of a separate class of persons which are similarly placed will not offend the fundamental right enshrined in Article 25 of the Constitution.

78. The first document is a purported policy statement regarding imposition of super tax on highearning persons which seems to be the intention in enacting section 4C of the Ordinance. This policy statement has ostensibly been prepared to pitch for the imposition of tax under Section 4C and seeks to target the rich to pay their due share in the economy in order to generate additional 215 billion to bridge fiscal gap. For the purpose, super tax on high-earning persons was deemed as the solution being a tax on windfall profits of high-earning persons. This policy statement and its contents perhaps translated ultimately in the imposition of super tax but interestingly the slabs of income were confined to taxpayers whose income exceeded Rs.300 Million and the rate of tax was 4%. The policy statement identified major sectors including the oil marketing sector, oil refinery sector, chemical sector etc. but did not at any place in the policy statement suggest that these sectors be treated differently and a higher rate of tax of 10% be imposed

in respect of these sectors. It seems that this document merely states a fact on the basis of data compiled by the managers who formulated the policy statement that 4% rate of tax must be imposed on sectors which have earned windfall profits. This policy statement however did not find its way in the financial proposals of the Federal Government introduced before the National Assembly as Finance Bill 2002. Division IIB as proposed in the Finance Bill was to the following effect:

Income under section 4C	Rate of tax
Where income does not exceed Rs.300 million	0% of the income
Where income exceeds Rs.300 million	2% of the income

79. As explicated, there were only two streams of income which were sought to be taxed under Section 4C and the rate of tax with regard to income exceeding Rs.300 Million was 2%. This can also be gleaned from budget speech of the Finance Minister which merely stated that a tax on high-earning persons was sought to be imposed who would be required to pay 2% tax on annual income of Rs.200 Million or more. It was during the speeches while the Finance Bill was being considered that the Finance Minister introduced the notion of another category of high-earning individuals which ultimately found mention in the Proviso. Be that as it may, the Proviso was part of taxation measure ultimately enacted as a tax by National Assembly.

80. The second set of documents relied upon by learned counsel for the appellant relates to annual reports of some of the companies comprised in the sectors enumerated in the Proviso. These documents were referred by learned counsel for the appellant in order to bring home the submission that the companies comprised in these sectors have made windfall profits during these tax years to compel the legislature to impose a different rate of tax on these sectors. The precise submission is that this would create a separate class of persons and prescribing a different rate of tax regarding this class of persons would not be offensive of Article 25 of the Constitution. With regard to these documents suffice to say that although the annual reports relating to tax included in the Proviso have been placed on record as also data from the companies listed on Pakistan Stock Exchange, none of the documents relate to other companies which earn an income which exceeds Rs.300 Million but do not constitute part of the companies enumerated in the Proviso. It is, therefore, difficult to assess on the basis of data produced before us or the learned Single Judge that only these companies were making windfall profits and none of other persons within the bracket of persons having income which exceeds Rs.300 Million. If this were

intended then the legislature ought to have created a separate and distinct category for taxpayers to be taxed at a different rate of tax on the basis that they were making windfall profits.

81. The third document relied upon by learned counsel for the appellant is a data produced in Court during the course of arguments and which was not confronted to the respondents and data compiled by LTO, Lahore regarding collection of super tax in respect of different category of taxpayers including taxpayers liable to pay at the rate of 10% and the ones who are liable to make the payment at 4%.

82. We are afraid that we cannot rely upon this document which is unverified and secondly has not been confronted to the respondents to rebut these statistics. Thirdly, the data is restricted to LTO Lahore and cannot be a determining factor with regard to issue of discrimination.

83. The issue at the heart of this litigation in respect of discrimination is that different rates of taxation have been provided in Division IIB. The Proviso identifies and narrows down certain sectors of businesses which, in the opinion of the legislature, generate windfall profits and, therefore, must be taxed at a different rate. While doing so, the fact has been ignored that there may be a number of persons who earn income exceeding Rs.300 Million and who may also be making windfall profits. Those persons have been exempt from payment of tax at the rate of 10% and would be happy to be dealt a lesser rate of tax at 4%. This is the discrimination writ large on the face of the Proviso and which, we believe, has now been rectified by substitution through Finance Act, 2023 where income exceeding Rs.500 Million has been imposed a rate of taxation at 10%. Therefore, the anomaly has now been corrected by the legislature and a rate of tax across the board in respect of a particular category of taxpayers has been imposed. Our precedents do not countenance such discrimination which has been held to be unconstitutional and contrary to the rule of law. Certain sectors without any intelligible criteria cannot be isolated from rest of the persons similarly placed and sought to be taxed at a higher rate than those persons who earn an income in the same bracket. This is precisely the holding of the Sindh High Court, Islamabad High Court and the learned Single Judge. We do not find any illegality or error in the holding of the learned Single Judge in this respect.

84. In the above analysis, we concur in the result reached by the Islamabad High Court and Sindh High Court (where similar challenges were brought). We have, however, arrived at the same result by another route.

A

85. In conclusion, it is held that:

- i. *The appeals by appellants/taxpayers at (Appendix A) are **allowed**. The part of the impugned judgment that upholds the retrospective application of section 4C by the use of the words “for the tax year 2022” is set aside. It is declared that, notwithstanding these words, the rights conferred on the appellants at the end of tax year 2022 on 30th June 2022 are past and closed transactions and cannot be impaired or whittled away by the use of these words. In sum, super tax under Section 4C cannot be imposed on these appellants for the tax year 2022. This obviously includes appellants with special tax year.*
- ii. *ICA No.47905 of 2023 and connected appeals filed by the department (Appendix B) are **dismissed**.*

Order accordingly.

Appendix-A

Sr. No.	I.C.A. Nos.	Title
1.	47911/2023	M/s. Educational Services Pvt. Ltd. vs. Federation of Pakistan, etc.
2.	47906/2023	M/s. Nestle Pakistan Ltd., etc. vs. Federation of Pakistan, etc.
3.	48732/2023	Fatima Fertilizer Company Ltd., etc. vs. Federation of Pakistan, etc.
4.	48730/2023	Altern Energy Limited, etc. vs. Federation of Pakistan, etc.
5.	48735/2023	Del Project Pvt. Ltd., etc. vs. Federation of Pakistan, etc.
6.	48728/2023	JDW Sugar Mills Limited vs. Federation of Pakistan, etc.
7.	48729/2023	M/s. Service Industries Ltd., etc. vs. Federation of Pakistan, etc.
8.	48736/2023	Descon Oxychem Pvt. Ltd. vs. Federation of Pakistan, etc.
9.	48740/2023	Almoiz Industires Ltd. vs. Federation of Pakistan, etc.
10.	48737/2023	Del Processing Pvt. Ltd, etc. vs. Federation of Pakistan, etc.

11.	48741/2023	Tariq Glass Industries Ltd., etc. vs. Federation of Pakistan, etc.
12.	48747/2023	Coca Cola Beverages Pakistan Ltd. vs. Federation of Pakistan, etc.
13.	48749/2023	Pak Arab Refinery Ltd. vs. Federation of Pakistan, etc.
14.	48753/2023	M/s. Shezan International Ltd. vs. Federation of Pakistan, etc.
15.	49274/2023	Junaid Ahmad Zia, vs. Federation of Pakistan, etc.
16.	49272/2023	M/s. Din Properties Pvt. Ltd. vs. Federation of Pakistan, etc.
17.	49269/2023	Anjum Nisar, etc. vs. Federation of Pakistan, etc.
18.	49267/2023	M/s. Nimir Chemicals Pakistan Ltd. vs. Federation of Pakistan, etc.
19.	49266/2023	M/s. Borjan Pvt. Ltd. vs. Federation of Pakistan, etc.
20.	49226/2023	M/s. Rudolf Pakistan Pvt. Ltd. vs. Federation of Pakistan, etc.
21.	49298/2023	M/s. Noon Sugar Mills Ltd. vs. Federation of Pakistan, etc.
22.	49223/2023	Ajmair Foods Pvt. Ltd. vs. Federation of Pakistan, etc.
23.	49138/2023	BPS (Pvt.) Limited vs. Federation of Pakistan, etc.
24.	49230/2023	M/s. Digital World Pakistan Pvt. Ltd. vs. Federation of Pakistan, etc.
25.	49237/2023	M/s. DWP Technologies Pvt. Ltd. vs. Federation of Pakistan, etc.
26.	49243/2023	Haji Sheikh Noor ud Din & Sons vs. Federation of Pakistan, etc.
27.	49295/2023	Eagle Cables Pvt. Ltd. vs. Federation of Pakistan, etc.

28.	49294/2023	M/s. Ittehad Chemicals Ltd. vs. Federation of Pakistan, etc.
29.	49283/2023	M/s. Sufi Oil Extraction Pvt. Ltd. vs. Federation of Pakistan, etc.
30.	49286/2023	Hamza Vegetable Oil Refinery & Ghee Mills Pvt. Ltd. vs. Federation of Pakistan, etc.
31.	49282/2023	M/s. Trust Pack Industries Pvt. Ltd., vs Federation of Pakistan, etc.
32.	49285/2023	M/s. K.S.F Tri-Zone Industries Pvt. Ltd vs. Federation of Pakistan, etc.
33.	49289/2023	Tariq Ullah Sufi vs. Federation of Pakistan, etc.
34.	49291/2023	Daewoo Pakistan Express Bus Service Ltd. vs. Federation of Pakistan
35.	49296/2023	M/s. Sialkot International Airport vs. Federation of Pakistan, etc.
36.	49299/2023	M/s. Tandlianwala Sugar Mills vs. Federation of Pakistan, etc.
37.	49300/2023	M/s. SGM Sugar Mills Ltd. vs. Federation of Pakistan, etc.
38.	49421/2023	Ibrahim Holdings Pvt. Ltd. vs. Federation of Pakistan, etc.
39.	49456/2023	Eithad Sugar Mills Ltd. vs. Federation of Pakistan, etc
40.	49424/2023	Olympia Chemicals Ltd. vs. Federation of Pakistan, etc.
41.	49428/2023	D.G Khan Cement Company Ltd. vs. Federation of Pakistan, etc.
42.	49420/2023	Tetra Pak Pakistan Ltd. vs. Federation of Pakistan, etc.
43.	49419/2023	Total Parko Pakistan Ltd. vs. Federation of Pakistan, etc.
44.	49427/2023	Nishat Hotels and Properties Ltd. vs. Federation of Pakistan, etc.
45.	49415/2023	Ibrahim Fibres Ltd. vs. Federation of Pakistan, etc.

46.	49446/2023	Shahid Nadeem Siddiqi vs. Federation of Pakistan, etc.
47.	49447/2023	Khalid Hadayat Ullah Sufi vs. Federation of Pakistan, etc.
48.	49449/2023	M/s. Valley Forge Pvt. Ltd. vs. Federation of Pakistan, etc.
49.	49450/2023	M/s. Pioneer Cement Ltd. vs. Federation of Pakistan, etc.
50.	49454/2023	Shahzad Saleem vs. Federation of Pakistan, etc.
51.	49455/2023	M/s. Millac Foods Pvt. Ltd. vs. Federation of Pakistan, etc.
52.	49499/2023	M/s. Ashraf Sugar Mills Ltd. vs. Federation of Pakistan, etc.
53.	49481/2023	M/s. Sefam Pvt. Ltd. vs. Federation of Pakistan, etc.
54.	49488/2023	M/s. Transfopower Industries Pvt. Ltd. vs. Federation of Pakistan, etc.
55.	49505/2023	Rashida Khanam vs. Federation of Pakistan, etc.
56.	50021/2023	M/s. Panther Tyres Ltd. vs. Federation of Pakistan, etc.
57.	55304/2023	Qarshi International Pvt. Ltd. vs. Federation of Pakistan, etc.
58.	55295/2023	Qarshi Research Pvt. Ltd. vs. Federation of Pakistan, etc.
59.	50255/2023	M/s. Nimir Industrial Chemicals Ltd. vs. Federation of Pakistan, etc.
60.	50256/2023	M/s. Nimir Industrial Chemicals Ltd. vs. Federation of Pakistan, etc.
61.	55302/2023	Qarshi Research Pvt. Ltd International Ltd. vs. Federation of Pakistan, etc.
62.	50054/2023	Kohat Cement Company Ltd. vs. Federation of Pakistan, etc.
63.	50023/2023	M/s. Hunza Sugar Mills (Pvt.) Ltd. vs. Federation of Pakistan, etc.

64.	50062/2023	Muhammad Kaleem Butt vs. Federation of Pakistan, etc.
65.	50064/2023	M/s. Trust for Education & Development of Deserving Students vs. Federation of Pakistan, etc.
66.	50060/2023	M/s. Pakistan Cricket Board (PCB) vs. Federation of Pakistan, etc.
67.	50026/2023	Yawar Khurshid Butt vs. Federation of Pakistan, etc.
68.	50025/2023	M/s. Lottee Akhtar Beverages Pvt. Ltd. vs Federation of Pakistan, etc.
69.	50059/2023	Daewoo Pakistan City Bus Service vs. Federation of Pakistan, etc.
70.	50057/2023	M/s. Alliance Sugar Mills Pvt. Ltd. vs. Federation of Pakistan, etc.
71.	50055/2023	M/s. Kashf Foundation vs. Federation of Pakistan, etc.
72.	50114/2023	Babar Ali Foundation vs. Federation of Pakistan, etc.
73.	50024/2023	Fazal Cloth Mills Ltd. vs. Federation of Pakistan, etc.
74.	50063/2024	Fazal Holdings Pvt. Ltd. vs. Federation of Pakistan, etc.
75.	50110/2023	M/s. National Feeds Ltd. vs. Federation of Pakistan, etc.
76.	50069/2023	M/s. Punjnad Feeds Ltd. vs. Federation of Pakistan, etc.
77.	50153/2023	Sohail Ahmed Kabir vs. Federation of Pakistan, etc.
78.	50115/2023	Muhammad Faisal Ghafoor vs. Federation of Pakistan, etc.
79.	50112/2024	Saba Amir Prop M/s. Aamir & Sons vs. Federation of Pakistan, etc.
80.	50067/2023	Medequips (SMC) Pvt. Ltd. vs Federation of Pakistan, etc.

81.	50022/2023	Fast Cables Ltd. vs. Federation of Pakistan, etc.
82.	50160/2023	Haleeb Foods Limited vs. Federation of Pakistan, etc.
83.	50163/2023	M/s. Pattoki Sugar Mills Ltd. vs. Federation of Pakistan, etc
84.	50078/2023	M/s. Bata Pakistan Limited vs. Federation of Pakistan, etc.
85.	50157/2023	M/s. Outfitters Stores (Private) Ltd. vs. Federation of Pakistan, etc.
86.	50066/2023	Lahore Grammar School Pvt. Ltd. vs. Federation of Pakistan, etc.
87.	50077/2023	M/s. Beacon Impex (Pvt.) Ltd. vs. Federation of Pakistan, etc.
88.	50075/2023	M/s. Masood Textile Mills Ltd. vs. Federation of Pakistan, etc
89.	50080/2023	Nishat Chunian Limited vs. Federation of Pakistan, etc
90.	50252/2023	M/s. Quide-E-Azam Thermal Power Pvt. Ltd. vs. Federation of Pakistan, etc.
91.	50056/2023	M/s. Zameen Media Pvt. Ltd. vs. Federation of Pakistan, etc.
92.	50061/2023	M/s. Medical Equipment and System vs. Federation of Pakistan, etc.
93.	50058/2023	M/s. Crescent Hahuman Ltd. vs. Federation of Pakistan, etc.
94.	50262/2023	M/s. Masood Spinning Mills Ltd. vs. Federation of Pakistan, etc.
95.	50249/2023	Kohinoor Textile Mills Ltd. vs. Federation of Pakistan, etc.
96.	55940/2023	M/s. Akram Cotton Mills Ltd. vs. Federation of Pakistan, etc.
97.	55938/2023	M/s. Ghani Chemical Industries Ltd. vs. Federation of Pakistan, etc.
98.	55946/2023	M/s. Techverx vs. Federation of Pakistan, etc.

99.	55956/2023	Sheraz Jahngir Monnoo vs. Federation of Pakistan, etc.
100.	55963/2023	Mobiserve Pakistan Pvt. Ltd. vs. Federation of Pakistan, etc.
101.	55930/2023	Danish Kaisar Mannoo vs. Federation of Pakistan, etc.
102.	55950/2023	Shahbaz Alam Monnoo vs. Federation of Pakistan, etc.
103.	55879/2023	Khalid Bashir vs. Federation of Pakistan, etc.
104.	55871/2023	M/s. Crescent Textile Mills Ltd. vs. Federation of Pakistan, etc.
105.	55285/2023	National Transmission & Dispatch Co. Ltd. vs. Federation of Pakistan, etc.
106.	55936/2023	M/s. Reliance Weaving Mills Ltd. vs. Federation of Pakistan, etc.
107.	55887/2023	M/s. Azgard Nine Ltd. vs. Federation of Pakistan, etc.
108.	55952/2023	M/s. A.J Holding Pvt. Ltd. vs. Federation of Pakistan, etc.
109.	55931/2023	M/s. Sufyan Malik Ayub, etc. vs. Federation of Pakistan, etc.
110.	55943/2023	M/s. Sarena Textile Industries (Pvt) Ltd. vs. Federation of Pakistan, etc.
111.	55947/2023	Syed Shamshad Hussain vs. Federation of Pakistan, etc.
112.	55290/2023	Honda Atlas Cars Pakistan vs. Federation of Pakistan, etc.
113.	54464/2023	Highnoon Laboratories Ltd. vs. Federation of Pakistan, etc.
114.	55970/2023	Kausar Ghee Mills Ltd. vs. Federation of Pakistan
115.	55866/2023	Muhammad Rafi Chaudhary vs. Federation of Pakistan, etc.
116.	55995/2023	Standard Spinning Mills Pvt. Ltd. vs. Federation of Pakistan, etc.

117.	56290/2023	M/s. Suraj Fertilizer Industries Pvt. Ltd. vs. Federation of Pakistan, etc.
118.	56285/2023	M/s. Aziz Industries vs Federation of Pakistan, etc.
119.	56171/2023	M/s. Asian Food Industries Ltd. vs. Federation of Pakistan, etc.
120.	56098/2023	Sabirs Vegetable Oils (Pvt.) Ltd. vs Federation of Pakistan, etc.
121.	55860/2023	M/s. Loftex Limited vs. Federation of Pakistan, etc.
122.	55846/2023	M/s. JW Vendor City Pvt. Ltd. vs. Federation of Pakistan, etc.
123.	57063/2023	Mrs. Samina Laeeq Uddin Ansari vs. Federation of Pakistan, etc.
124.	55923/2023	Olympia Oil Pvt. Ltd. vs. Federation of Pakistan, etc.
125.	56141/2023	M/s. HNR Company Pvt. Ltd. vs. Federation of Pakistan, etc.
126.	56144/2023	Resham Textile Industries Ltd. vs. Federation of Pakistan, etc.
127.	55852/2023	Sitara Petroleum Service Pvt. Ltd. vs. Federation of Pakistan, etc.
128.	56179/2023	M/s. Rafhan Maize Products Co. Ltd. vs. Federation of Pakistan, etc.
129.	57008/2023	Sikandar Mustafa Khan vs. Federation of Pakistan, etc.
130.	55850/2023	Oiltrade (Pvt.) Ltd. vs. Federation of Pakistan, etc.
131.	55849/2023	Shahid Iqbal Khan Lodhi vs. Federation of Pakistan, etc.
132.	56345/2023	M/s. Millat Equipment Limited vs. Federation of Pakistan, etc.
133.	57022/2023	Sohail Bashir Rana vs. Federation of Pakistan, etc.

134.	57067/2023	M/s. Highnoon Laboratories Limited vs. Federation of Pakistan, etc.
135.	56286/2024	Mian Salman Ahsan vs. Federation of Pakistan, etc.
136.	57020/2023	Laeq Uddin Ansari vs Federation of Pakistan, etc.
137.	56282/2023	Sohaib Javed vs. Federation of Pakistan, etc.
138.	55854/2023	M/s. Sheekhoo Sugar Mills Ltd. vs. Federation of Pakistan, etc
139.	56291/2023	Usman Ahsan vs. Federation of Pakistan, etc.
140.	56280/2023	Muhammad Siddique vs. Federation of Pakistan, etc.
141.	56277/2023	Ali Ahsan vs. Federation of Pakistan, etc.
142.	56119/2023	M/s. Corn Products International Inc. USA vs. Federation of Pakistan, etc.
143.	56355/2023	M/s. Millat Tractors Limited vs. Federation of Pakistan, etc.
144.	56278/2023	Muhammad Umer vs. Federation of Pakistan, etc.
145.	56279/2023	Javed Arshad Bhatti vs. Federation of Pakistan, etc.
146.	56351/2023	Millat Industrial Products Ltd. vs. Federation of Pakistan, etc.
147.	56281/2023	Muhammad Saqib vs. Federation of Pakistan, etc.
148.	56153/2023	Omer Saeed, etc. vs. Federation of Pakistan, etc.
149.	56174/2023	Packages Real Estate (Pvt.) Ltd., etc. vs. Federation of Pakistan, etc.
150.	56150/2023	Fatima Fertilizer Company Ltd., etc. vs. Federation of Pakistan, etc.
151.	57068/2023	M/s. J.K Spinning Mills Ltd., vs. Federation of Pakistan, etc.

152.	56101/2023	Gas & Oil Pakistan Ltd. vs. Federation of Pakistan, etc.
153.	55902/2023	Ramzan Sugar Mills Ltd. vs. Federation of Pakistan, etc.
154.	55853/2023	M/s. Lahore Feeds Ltd. vs. Federation of Pakistan, etc.
155.	56165/2023	Sadiq Vegetable Ghee Mills Ltd. vs. Federation of Pakistan, etc.
156.	56275/2023	Mian Muhammad Ahsan vs. Federation of Pakistan, etc
157.	56134/2023	Digital Imaging Systems vs. Federation of Pakistan, etc
158.	56294/2023	Sarmik Pvt. Ltd., etc. vs. Federation of Pakistan, etc.
159.	56175/2023	Shahzor Feeds Pvt. Ltd. vs. Federation of Pakistan, etc
160.	56092/2023	W. Brothers, etc. vs Federation of Pakistan, etc
161.	55913/2023	SS Oil Mills Ltd. vs. Federation of Pakistan, etc.
162.	55978/2023	JK Dairies Pvt. Ltd. vs. Federation of Pakistan, etc.
163.	55894/2023	M/s. Eastern Spinning Mills Pvt. Ltd. vs. Federation of Pakistan, etc.
164.	55918/2023	Mukhtar Feeds vs. Federation of Pakistan etc.
165.	55993/2023	Hi Tech Feed Pvt. Ltd. vs. Federation of Pakistan, etc.
166.	56114/2023	Raees Iftikhar vs. Federation of Pakistan, etc.
167.	56110/2023	United Industries Ltd. vs. Federation of Pakistan, etc.
168.	56127/2023	Muhammad Azam vs. Federation of Pakistan, etc.
169.	55906/2023	M/s. Ploy Pack (Pvt.) Ltd. vs. Federation of Pakistan, etc.

170.	56155/2023	My Petroleum Pvt. Ltd. vs. Federation of Pakistan, etc.
171.	56222/2023	Ab Metal Works Pvt. Ltd., etc. vs. Federation of Pakistan, etc.
172.	56159/2023	Tahir Iqbal vs. Federation of Pakistan, etc.
173.	55286/223	Bedouin Pvt. Ltd. vs. Federation of Pakistan, etc.
174.	56223/2024	Muhammad Nasir vs. Federation of Pakistan, etc.
175.	57566/2023	M/s. Synthetic Products Enterprises Ltd. vs. Federation of Pakistan, etc.
176.	57599/2023	Ambition Apparel vs. Federation of Pakistan, etc.
177.	57621/2023	Muhammad Riaz vs. Federation of Pakistan, etc.
178.	57619/2023	Muhammad Ishaq vs. Federation of Pakistan, etc.
179.	57644/2023	M/s. Citi Housing Pvt. Ltd. vs. Federation of Pakistan, etc.
180.	57641/2023	Amer Ishaq Malik vs. Federation of Pakistan, etc.
181.	68365/2023	RYK Mills Ltd. vs. Federation of Pakistan, etc.
182.	66737/2023	M/s. HNB Sons (Pvt.) Ltd. vs. Federation of Pakistan, etc.
183.	72279/2023	Prosperity Weaving Mills Ltd., etc. vs. Federation of Pakistan, etc.
184.	84025/2023	Aslam Energy (Pvt.) Ltd. vs. Federation of Pakistan, etc.
185.	20801/2024	Aamir Hafeez Ibrahim vs. Federation of Pakistan, etc.
186.	21777/2024	Lasani Cotton Corporation vs. Federation of Pakistan, etc.
187.	17378/2024	Asia Ghee Mills Pvt. Ltd. vs. Federation of Pakistan, etc.

Appendix-B

Sr. No.	I.C.A. Nos.	Title
1.	47905/2023	Commissioner Inland Revenue vs. Service Global Footwear Ltd., etc.
2.	57826/2023	Commissioner Inland Revenue vs. Zahid Irshad Batta
3.	57360/2023	Commissioner Inland Revenue vs. Javeria Aijaz
4.	49211/2023	Commissioner Inland Revenue vs. M/s. Aziz Industries, etc.
5.	49210/2023	Commissioner Inland Revenue vs. Sitara Chemicals, etc.
6.	55841/2023	Commissioner Inland Revenue vs. Mian Muhammad Ahsan
7.	55848/2023	Commissioner Inland Revenue vs. Saba Amir
8.	55862/2023	Commissioner Inland Revenue vs. Malik Muhammad Taveer
9.	55880/2023	Commissioner Inland Revenue vs. Zahid Hussain Ch.
10.	55886/2023	Commissioner Inland Revenue vs. Muhammad Asif Peer
11.	56170/2023	Commissioner Inland Revenue vs. Laeeq ud Din Ansari
12.	55987/2023	Commissioner Inland Revenue vs. Haleema Begum
13.	55865/2023	Commissioner Inland Revenue vs. M/s. Arshad Corporation Pvt. Ltd.
14.	57772/2023	Commissioner Inland Revenue vs. M/s. Yaseen Brothers
15.	57831/2023	Commissioner Inland Revenue vs. Noor Elahi, etc.
16.	55885/2023	Commissioner Inland Revenue vs. M/s. Rafhan Maize Products Company, etc.
17.	55889/2023	Commissioner Inland Revenue vs. M/s. Best Fibers Pvt. Ltd.

18.	55892/2023	Commissioner Inland Revenue vs. M/s. Arshad Textile Mills Ltd. etc.
19.	55896/2023	Commissioner Inland Revenue vs. Abdullah Fibres Pvt. Ltd., etc.
20.	55905/2023	Commissioner Inland Revenue vs. Diamond Exports Industries Pvt. LTd., etc.
21.	55847/2023	Commissioner Inland Revenue vs. M/s. Style Pvt. Ltd.
22.	55925/2023	Commissioner Inland Revenue vs. China East Resources
23.	55927/2023	Commissioner Inland Revenue vs. Muhammad Akmal Khan
24.	56173/2023	Commissioner Inland Revenue vs. Muhammad Asif Malik
25.	56154/2023	Commissioner Inland Revenue vs. Ingredion Inc. USA
26.	56149/2023	Commissioner Inland Revenue vs. Shereen Hanif
27.	55868/2023	Commissioner Inland Revenue vs. Ishtiaq Steel Industry
28.	55856/2023	Commissioner Inland Revenue vs. M/s. Citi Pharma Ltd.
29.	55869/2023	Commissioner Inland Revenue vs. M/s. Nishat Mills Ltd., etc.
30.	55864/2023	Commissioner Inland Revenue vs. High Noon Laboratories Ltd.
31.	55863/2023	Commissioner Inland Revenue vs. M/s. Chiesi Pharmaceutical Pvt. Ltd.
32.	56210/2023	Commissioner Inland Revenue vs. M/s. Tecverx
33.	56142/2023	Commissioner Inland Revenue vs. M/s. Khawaja Javaid Iqbal
34.	56137/2023	Commissioner Inland Revenue vs. Mukhtar Feeds
35.	55842/2023	Commissioner Inland Revenue vs. Muhammad Afzal Butt

36.	55844/2023	Commissioner Inland Revenue vs. Mudassar Ahmad
37.	56135/2023	Commissioner Inland Revenue vs. M/s. Computer Tips
38.	57126/2023	Commissioner Inland Revenue vs. M/s. Lal Din Engineering Pvt. Ltd., etc.
39.	56133/2023	Commissioner Inland Revenue vs. Shahid Hameed Khawaja
40.	56065/2023	Commissioner Inland Revenue vs. Faryad Ali
41.	55893/2023	Commissioner Inland Revenue vs. Syed Iftikhar ul Hassan Zaidi
42.	56225/2023	Commissioner Inland Revenue vs. Reesham Textile Industries Ltd.
43.	56214/2023	Commissioner Inland Revenue vs. M/s. Challenge Apparels Ltd., etc.
44.	56347/2023	Chief Commissioner Inland Revenue vs. D.G Khan Cement
45.	56245/2023	Commissioner Inland Revenue vs. M/s. Hasnain Textile Mills Ltd., etc.
46.	56340/2023	Commissioner Inland Revenue vs. Star Corporation Ltd.
47.	56152/2023	Commissioner Inland Revenue vs. Prosperity Weaving Mills Ltd., etc.
48.	56126/2023	Commissioner Inland Revenue vs. M/s. Kohat Cement Company Ltd., etc.
49.	58856/2023	FBR through Commissioner Inland Revenue vs. National Fertilizer Corporation Pakistan Pvt. Ltd.
50.	56212/2023	Commissioner Inland Revenue vs. M/s. Zahid Jee Textiles Mills Ltd., etc.
51.	58828/2023	FBR through Commissioner Inland Revenue vs. Madequips (SMC) Pvt. Ltd.
52.	57622/2023	Commissioner Inland Revenue vs. JK Spinning Mills Ltd., etc.

53.	58892/2023	FBR through Commissioner Inland Revenue vs. M/s. Ambition Apparel Glaxo Town
54.	58877/2023	FBR through Commissioner Inland Revenue vs. M/s. Cotton Web Limited
55.	56352/2023	Commissioner Inland Revenue vs. Hi tech Lubricants Ltd., etc.
56.	56112/2023	Commissioner Inland Revenue vs. M/s. H.A Fibers Pvt. Ltd.
57.	57816/2023	Commissioner Inland Revenue vs. W. Brothers, etc.
58.	56091/2023	Commissioner Inland Revenue vs. M/s. Synthetic Products Enterprises Ltd., etc.
59.	57813/2023	Commissioner Inland Revenue vs. M/s. Copper World, etc.
60.	56356/2023	Commissioner Inland Revenue vs. Outfitters Store Pvt. Ltd.
61.	57703/2023	Commissioner Inland Revenue vs. M/s. Eithad Chemical Ltd., etc.
62.	56099/2023	Commissioner Inland Revenue vs. Monsanto Pakistan Pvt. Ltd.
63.	57696/2023	Commissioner Inland Revenue vs. M/s. Eithad Sugar Mills Ltd.
64.	57822/2023	Commissioner Inland Revenue vs. Mian Mudaser Aziz
65.	57814/2023	Commissioner Inland Revenue vs. M/s. Brother Metal Traders, etc.
66.	58849/2023	FBR through Commissioner Inland Revenue vs. Asgard Nine Ltd.
67.	57627/2023	Commissioner Inland Revenue vs. Pak Arab Fertilizer Limited, etc.
68.	57567/2023	Commissioner Inland Revenue vs. Muhammad Umair Nawaz, etc.
69.	57577/2023	Commissioner Inland Revenue vs. M/s. SGM Sugar Mills Limited, etc.

70.	57654/2023	Commissioner Inland Revenue vs. Mr. Shah Nawaz Pervaiz Akhtar, etc.
71.	57595/2023	Commissioner Inland Revenue vs. M/s. Bashir Ahmad Chinioti
72.	57631/2023	Commissioner Inland Revenue vs. Hussain Ali Shah, etc.
73.	57602/2023	Commissioner Inland Revenue vs. Maqbool Textile Mills Ltd., etc.
74.	57668/2023	Commissioner Inland Revenue vs. Tandlianwala Sugar Mills Ltd., etc.
75.	57584/2023	Commissioner Inland Revenue vs. M/s. Ghani Chemical Industries Ltd., etc.
76.	57606/2023	Commissioner Inland Revenue vs. M/s. Nimir Resins Ltd., etc.
77.	57628/2023	Commissioner Inland Revenue vs. M/s. Yaseen Brothers, etc.
78.	57614/2023	Commissioner Inland Revenue vs. Nisar Spinning Mills Pvt. Ltd, etc.
79.	56241/2023	Commissioner Inland Revenue vs. M/s. Pioneer Cement, etc.
80.	56211/2023	Commissioner Inland Revenue vs. M/s. Shams Textile Mills Ltd., etc.
81.	56145/2023	Commissioner Inland Revenue vs. M/s. Sargodha Jute Mills Ltd., etc.
82.	57610/2023	Commissioner Inland Revenue vs. Masood Spinning Mills Ltd., etc.
83.	56357/2023	Commissioner Inland Revenue vs. Indus Home Ltd., etc.
84.	57586/2023	Commissioner Inland Revenue vs. M/s. Fatima Fertilizer Ltd., etc.
85.	56073/2023	Commissioner Inland Revenue vs. Nishat Chunian Ltd., etc.
86.	57579/2023	Commissioner Inland Revenue vs. M/s. Crescent Textile Mills Ltd., etc.

87.	56139/2023	Commissioner Inland Revenue vs. M/s. D.G Khan Company Ltd., etc.
88.	57574/2023	Commissioner Inland Revenue vs. M/s. Nimir Industrial Chemicals Ltd., etc.
89.	57591/2023	Commissioner Inland Revenue vs. M/s. Shakam Industries Pvt. Ltd.
90.	56213/2023	Commissioner Inland Revenue vs. M/s. Standard Spinning Mills, etc.
91.	56121/2023	Commissioner Inland Revenue vs. M/s. H.A Fibres Pvt. Ltd., etc.
92.	56220/2023	Commissioner Inland Revenue vs. M/s. Gharibwal Cement Ltd., etc.
93.	58885/2023	FBR through Commissioner Inland Revenue vs. M/s. Combined Fabrics
94.	55882/2023	Commissioner Inland Revenue vs. M/s. Beacon Impex Pvt. Ltd., etc.
95.	56100/2023	Commissioner Inland Revenue vs. Shahtaj Sugar Mills Ltd., etc.
96.	56106/2023	Commissioner Inland Revenue vs. Gohar Textile Mills Pvt. Ltd., etc.
97.	55858/2023	Commissioner Inland Revenue vs. M/s. Ahmed Fine Weaving Ltd., etc.
98.	56096/2023	Commissioner Inland Revenue vs. Coca Cola Beverages Pakistan Ltd., etc.
99.	56076/2023	Commissioner Inland Revenue vs. Crescent Bahuman Ltd., etc.
100.	55911/2023	Commissioner Inland Revenue vs. Tetra Pak Pakistan Ltd., etc.
101.	55916/2023	Chief Commissioner Inland Revenue vs. Pak Arab Refinery Ltd., etc.
102.	55861/2023	Commissioner Inland Revenue vs. M/s. Ahmad Hassan Textile, etc.
103.	56147/2023	Commissioner Inland Revenue vs. Javed Arshad Bhatti

104.	56111/2023	Commissioner Inland Revenue vs. Ingression Inc. USA, etc.
105.	56124/2023	Commissioner Inland Revenue vs. Sheikh Zafar Mahmood
106.	56348/2023	Commissioner Inland Revenue vs. Olympia Chemicals Ltd., etc.
107.	55875/2023	Commissioner Inland Revenue vs. Surriya Feroz
108.	56166/2023	Commissioner Inland Revenue vs. Lottee Akhtar Beverages Pvt. Ltd., etc.
109.	56354/2023	Commissioner Inland Revenue vs. Henkel Industrial Adhesives Pakistan Pvt. Ltd., etc.
110.	55873/2023	Commissioner Inland Revenue vs. Style Textile Pvt. Ltd., etc.
111.	55991/2023	Commissioner Inland Revenue vs. Tauseef Enterprises Pvt. Ltd., etc.
112.	56151/2023	Commissioner Inland Revenue vs. Muhammad Salman Khan
113.	55989/2023	Commissioner Inland Revenue vs. JDW Sugar Mills Ltd., etc.
114.	56339/2023	Commissioner Inland Revenue vs. Muhammad Faisal Ghafoor, etc.
115.	55921/2023	Commissioner Inland Revenue vs. Amin Akhtar Sheikh
116.	56128/2023	Commissioner Inland Revenue vs. Khalid Bashir
117.	56337/2023	Commissioner Inland Revenue vs. Petroleum Pvt. Ltd., etc.
118.	56107/2023	Chief Commissioner Inland Revenue vs. Reliance Weaving Mills Ltd., etc.
119.	56160/2023	Commissioner Inland Revenue vs. Anjum Nisar, etc.
120.	56113/2023	Commissioner Inland Revenue vs. Master Textile Mills Ltd., etc.
121.	56343/2023	Commissioner Inland Revenue vs. Khalid Shafique Spinning Mills Ltd., etc.

122.	55982/2023	Commissioner Inland Revenue vs. Bismillah Textile Ltd., etc.
123.	56156/2023	Commissioner Inland Revenue vs. K.B Enterprises
124.	56136/2023	Commissioner Inland Revenue vs. Junaid Ahmad Zia
125.	56344/2023	Commissioner Inland Revenue vs. Ibrahim Fibres Ltd., etc.
126.	56069/2023	Commissioner Inland Revenue vs. Muhammad Azam
127.	55999/2023	Commissioner Inland Revenue vs. Tariq Glass Industries Ltd., etc.
128.	56228/2023	Commissioner Inland Revenue vs. Akram Cotton Mills Ltd., etc.
129.	56054/2023	Commissioner Inland Revenue vs. Nimir Chemicals Pak. Ltd., etc
130.	56058/2023	Commissioner Inland Revenue vs. Kamal Textile Pvt. Ltd., etc.
131.	55878/2023	Commissioner Inland Revenue vs. Pak Kuwait Textile Ltd., etc.
132.	56062/2023	Commissioner Inland Revenue vs. Sadaqat Ltd., etc.
133.	56040/2023	Commissioner Inland Revenue vs. Fazal Holdings Pvt. Ltd., etc.
134.	56082/2023	Commissioner Inland Revenue vs. Mansanto Company, etc.
135.	56093/2023	Chief Commissioner Inland Revenue vs. Fazal Cloth Mills Ltd., etc.
136.	56085/2023	Commissioner Inland Revenue vs. Riaz Textile Mills Pvt. Ltd., etc.
137.	56066/2023	Commissioner Inland Revenue vs. Shekhoo Sugar Mills Ltd., etc.
138.	56087/2023	Commissioner Inland Revenue vs. Interloop Limited, etc.

139.	56162/2023	Commissioner Inland Revenue vs. Total Parko Pakistan Ltd., etc.
140.	56089/2023	Commissioner Inland Revenue vs. Millat Tractors Ltd., etc.
141.	56037/2023	Chief Commissioner Inland Revenue vs. Almoiz Industries Ltd., etc.
142.	56077/2023	Commissioner Inland Revenue vs. Cht. Pakistan Pvt. Ltd., etc.
143.	56046/2024	Commissioner Inland Revenue vs. Eastern Spinning Mills Ltd.
144.	56031/2024	Chief Commissioner Inland Revenue vs. Fatima Sugar Mills Ltd., etc.
145.	56027/2023	Commissioner Inland Revenue vs. Kay Emms Pvt. Ltd., etc.
146.	56342/2023	Commissioner Inland Revenue vs. Masood Textile Mills Ltd.
147.	56021/2023	Commissioner Inland Revenue vs. Honda Atlas Cars Pak Ltd., etc.
148.	56349/2023	Commissioner Inland Revenue vs. Naubahar Bottling Company Ltd.
149.	56338/2023	Commissioner Inland Revenue vs. Ideal Spinning Mills Ltd., etc.
150.	56346/2023	Chief Commissioner Inland Revenue vs. Descon Oxychem (Pvt.) Ltd., etc.
151.	56336/2023	Commissioner Inland Revenue vs. M.K Sons Pvt. Ltd., etc.
152.	55867/2023	Commissioner Inland Revenue vs. Shezan International Ltd.
153.	56132/2023	Commissioner Inland Revenue vs. M/s. Sarena Textile Industries Pvt. Ltd., etc.
154.	56115/2023	Commissioner Inland Revenue vs. Muhammad Ishaq
155.	56143/2023	Commissioner Inland Revenue vs. Muhammad Kaleem Bhatti

156.	56167/2023	Commissioner Inland Revenue vs. M/s. Trust for Education & Development
157.	56164/2023	Commissioner Inland Revenue vs. Muhammad Sattar Anjum
158.	55840/2023	Commissioner Inland Revenue vs. Muhammad Rafi Chaudhary
159.	57032/2023	Commissioner Inland Revenue vs. M/s. Flow Petroleum Pvt. Ltd.
160.	57016/2023	Commissioner Inland Revenue vs. M/s. Ashraf Sugar Mills Ltd.
161.	57040/2023	Commissioner Inland Revenue vs. M/s. Pattoki Sugar Mills Ltd.
162.	57017/2023	Commissioner Inland Revenue vs. M/s. Flow Petroleum Pvt. Ltd.
163.	57035/2023	Commissioner Inland Revenue vs. Ms. Noon Sugar Mills Ltd.
164.	57090/2023	Commissioner Inland Revenue vs. M/s. Najam Hafeez Prop CNS Engineering
165.	57026/2023	Commissioner Inland Revenue vs. M/s. Aziz Industries