

APPELLATE TRIBUNAL INLAND REVENUE, MULTAN BENCH,
MULTAN

ITA No.42/MB/2025
(Tax Year 2023)
MA(Stay) No.245/MB/2025

M/s. Suncrop Pesticides, Multan.
Reg. No.1347581

...Appellant

Versus

The CIR, Zone-II, LTO, Multan.

...Respondent

Appellant by: Mr. M. Imran Ghazi, Advocate.
Respondent by: Mr. Akhtar Suraj, DR

Date of Hearing: 30.05.2025
Date of Order: 02.06.2025

ORDER

Mian Abdul Bari Rashid (Member):

1. The titled miscellaneous application as well as appeal has been preferred by the appellant, M/s Suncrop Pesticides, against the order dated 31.01.2025 passed by the learned Deputy Commissioner Inland Revenue (DCIR), Unit-1, Range-A, Zone-II, LTO Multan, under Section 4C of the Income Tax Ordinance, 2001 (hereinafter referred to as "the Ordinance") for the tax year 2023.



2. Brief facts of the case emanating from record are that the appeal arises from the imposition of super tax under Section 4C of the Ordinance for the tax year 2023. The appellant challenges the determination of super tax liability and contends that the DCIR's order is bad in law, based on misinterpretation and misapplication of legal provisions, and lacks proper factual and legal basis. The taxpayer is engaged in the manufacture and sale of agrochemical products, electronically filed its income tax return for tax year 2023, declaring taxable income amounting to Rs.852,158,941/- and tax chargeable of Rs.295,532,778/- scrutiny of the return revealed that the taxpayer failed to discharge its super tax liability under Section 4C of the Ordinance resulting in a computed liability

of Rs.91,405,195/-. A notice under Section 4C was issued to the taxpayer on 25.11.2023. Multiple opportunities for compliance and hearings were provided, however, the taxpayer failed to satisfy the DCIR regarding the discharge of its liability prompting the issuance of an order determining super tax payable under Section 4C totaling Rs.91,405,195/- after allowing a partial adjustment for Rs.10 million paid under CPR. The remaining balance was determined as Rs.75,215,894/-.

3. The learned AR reiterated the grounds of appeal and argued that the impugned order passed by the DCIR is bad in law and contrary to the facts of the case. He contended that the DCIR erred in imposing super tax under Section 4C of the Ordinance without determining the taxable income and that the levy of super tax under Section 4C contravenes the provisions of Article 2 of the Constitution of Pakistan, 1973. The learned AR further submitted that the DCIR erred in applying Section 4C without appreciating the applicant's detailed reply thereby passing a non-speaking order which is against the principle of fair trial defined under Article 10A of the Constitution.
4. The learned AR also contended that the DCIR failed to recognize that Section 4C leads to impermissible double taxation, lacking any non-obstante or deeming provision to justify its imposition. He argued that the DCIR ignored the principle of strict interpretation of fiscal statutes which requires that any ambiguity in a charging provision should be resolved in favor of the taxpayer. It was further argued that the imposition of super tax under Section 4C is discriminatory lacking any intelligible differentiation or rational nexus with the object of classification thus violating Article 25 of the Constitution. He stressed that the demand created under Section 4C is unlawful, being arbitrary and without jurisdiction, thereby offending the applicant's rights under Article 13 of the Constitution.
5. The AR submitted that the increase in super tax rates introduced through Section 7(27)(A)(1A) of the Finance Act, 2023 applicable



to tax year 2023 is confiscatory, arbitrary, and unconstitutional, disturbing the applicant's vested rights and impacting closed transactions. He argued that such imposition impinges on the applicant's constitutional rights under Articles 4, 5, 9, 10A, 18, and 25 of the Constitution and is therefore unlawful and without legal effect. The AR concluded that legislature has not, in express words, mandated retrospective effect and mere mention of the tax year would not save the offending provision.

6. The learned DR supported the order of the DCIR and argued that the issue of Section 4C has been settled by the honorable Lahore High Court Lahore in case reported as 2024 PTD 1271 where the honorable Lahore High Court Lahore has set-aside the retrospectivity of the Section 4C to the extent of the year 2022, however, Section 4C's applicability for the year 2022 onwards has been established.



7. We have heard the respective parties at length and perused the record. As regards applicability of the Section 4C for the period 2022 onwards is concerned, we are in agreement with the learned DR that same is settled by the honorable High Court in afore stated judgment. The operating part of the said judgment is reproduced hereunder:

"85 In conclusion, it is held that:

- i. *The appeals by appellant /taxpayers at (Appendix A) are allowed. The part of the impugned judgement 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 passed and closed transactions and cannot be impaired or withheld away for 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."*
8. The appellant conceded that he is willing to pay tax at the rate of 4% as it had done its tax planning according to this rate which was prevalent at the start of the tax year. He argued that the rate of 10% was imposed vide Finance Act 2023 at the end of the tax

year; therefore, it could not be applied retrospectively. The appellant submitted that the ratio on the basis of which retrospectivity of Section 4C was decided squarely applies to the retrospective increase of the rate of tax.

9. Although the contention of the taxpayer carries weight, we are of the considered view that we cannot in exercise of our jurisdiction under the Ordinance embark upon the examination of the proposed argument in as much as Division IIIB of Part I of the First Schedule of the Ordinance explicitly states the rates of tax "for the tax year 2023" and as a creature of the Ordinance we are bound to apply its provisions in the absence of any ambiguity in the same. Whether the phraseology "for the tax year 2023" is sufficient or not for giving it retrospective operation is a question that can only be answered by the superior Courts.



10. With reference to appellants grounds of appeal and arguments, it is essential to emphasize the jurisdiction and powers of this Tribunal. This Tribunal is a creature of statute governed by the provisions of the Ordinance. Its jurisdiction is limited to examining the legality, factual correctness, and procedural compliance of the orders passed by the lower tax authorities namely the Commissioner Inland Revenue (Appeals) and the Assessing Officers. The Tribunal cannot strike down or declare a statutory provision ultra vires the Constitution. That power lies exclusively with the superior judiciary i.e. the Honorable High Courts and the Supreme Court of Pakistan under Articles 199 and 184(3) of the Constitution.
11. The Tribunal's role is to interpret and apply the law as it stands unless a provision has been expressly struck down or declared inapplicable by the competent superior courts. In the present case although certain High Courts have provided interpretive guidance regarding the applicability and rate of super tax under Section 4C none have completely invalidated the section. Therefore, the Tribunal is duty-bound to apply the provision as enacted while taking into consideration any interpretive directions provided by

the superior judiciary. The doctrine of judicial hierarchy obliges the Tribunal to follow binding judgments of the superior courts, where applicable, and to refrain from independently adjudicating upon the constitutionality or legislative competence of a provision. It is also made clear that the Tribunal does not possess the jurisdiction to entertain constitutional arguments such as violation of fundamental rights or ultra vires contentions against Section 4C. Such issues must be raised before and decided by the superior judiciary.

12. The appellant further argued that it has excess tax paid and reflected as refundable income tax amounting to Rs.93,438,682/-, and that the demand of tax should be satisfied from this refundable amount. In support of this contention, the appellant produced its return of income filed under Section 114(1) of the Ordinance which substantiates its stance. This argument carries considerable weight as Section 170(3) of the Ordinance explicitly provides:



170. Refunds.

(3) Where the Commissioner is satisfied that tax has been overpaid, the Commissioner shall —

(a) apply the excess in reduction of any other tax due from the taxpayer under this Ordinance;

(b) apply the balance of the excess, if any, in reduction of any outstanding liability of the taxpayer to pay other taxes; and

(c) refund the remainder, if any, to the taxpayer.

13. The return of income filed by the appellant constitutes a statutory declaration which upon filing under Section 120 of the Ordinance attains the status of an assessment order of the Commissioner. The appellant has rightly argued that although it did not adjust the tax under Section 4C in its return this omission does not preclude its right to seek adjustment of the same. We find merit in this argument of the learned AR as Section 170(3) explicitly mandates that such adjustment can and should be made against the excess refundable tax.

14. In view of the foregoing, the matter is remanded to the DCIR to consider the adjustment of the demand of tax created under Section 4C from the refundable tax declared and pending in the appellant's return of income. The appellant is directed to appear before the DCIR and furnish all requisite application, evidence, documents and records necessary for proper determination of the said adjustment.



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15. Since, the appeal preferred by the taxpayer has been decided in earlier part of this order remanding the case to the DCIR, therefore, instant miscellaneous application seeking grant of stay stands infructuous accordingly.

[Signature]
(Mian Abdul Bari Rashid)
Member

[Signature]
(Ch. Muhammad Azam)
Member

Appeal No.	ITA 44/MB/25
Date of Order	2-6-25
TRUE COPY OF ORDER FORWARDED TO	
1. APPELLANT	<i>[Signature]</i>
RESPONDENT	<i>[Signature]</i>
<p><i>[Signature]</i> 18.6.25</p> <p>ASSISTANT REGISTRAR APPELLATE TRIBUNAL PUNJAB AND REVENUE LAHORE</p>	