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Subject: TLQC3665= 4C Super Tax: IHC simultaneous jurisdiciton incorrect with SHC & FCCP Other matters – IHC

590+ Taxes & Levies Quick Commentary - TLQC 3665

I. BACKGROUND: (a) TLQC 3590 of 29.6.26 about Super Tax u/s 4C: WHT adjustment denied but FCCP allowed Interim relief, as KC predicted **(b)** TLQC 3609 of 10.7.26 about Super Tax u/s 4C (4): Super Tax on income Difference / rate issue, etc - IHC DB Interim Relief **(II)** For List of earlier relevant QCs, please refer to Para III.

II. EXECUTIVE SUMMARY

A. General

1. In WP 3479/2024, Meezan Bank Limited challenged the constitutional validity of Section 4C of ITO, 2001, relating to Super Tax. The Bank argued that Super Tax was unconstitutional, retrospective, discriminatory, uncertain, and amounted to double taxation. It further claimed that income from Islamic finance contracts executed before the introduction or enhancement of Section 4C should not be subjected to Super Tax, and that final-tax income, brought-forward losses, depreciation, and amortization should be excluded from its computation.

2. The Respondents / Govt opposed the petition on the grounds that the IHC lacked territorial jurisdiction because the Bank was assessed and administered by the LTO Karachi, the impugned proceedings were conducted in Karachi, and the Bank had already filed an appeal before the ATIR, Karachi. They also argued that income tax is imposed on income accrued and recognized during the relevant tax year, not on the date when the underlying Islamic financing contract was executed.

3. The Court accepted the preliminary objections. It held that the entire material cause of action arose in Karachi, where the assessment, tax proceedings, impugned order, and appellate proceedings occurred. The presence of the Federal Government or the enactment of federal legislation in Islamabad did not confer territorial jurisdiction on the Islamabad High Court. **The Court also held that the Bank could not simultaneously pursue a constitutional petition after availing the statutory remedy before the ATIR.**

4. On the substantive issue, the Court observed that Super Tax is attracted by income accruing and being recognized **during the relevant tax year, rather than by the date on which an Islamic finance contract was signed.** Therefore, income arising from Murabaha, Ijarah, Musharakah, Diminishing Musharakah, and similar arrangements may be subject to Super Tax when recognized in the relevant year, even if the underlying contract was executed earlier.

5. The Court relied upon the binding judgment in **DG Khan Cement Company Limited VS Federation of Pakistan**, **reported as 2026 PTD 625**, ***(TLQC 3493 of 29.4.26 sent earlier***

refers) which upheld the application of Section 4C to banking companies and rejected the argument that its application to banks was retrospectively unlawful. It also held that Section 4C applies to income under normal, final, minimum, and separate tax regimes without the exclusions previously claimed by the petitioner.

B. Final Decision

The petition was **dismissed as not maintainable and without merit** because:

1. The Islamabad High Court lacked territorial jurisdiction.
2. The petitioner had an adequate statutory remedy, which it had already pursued before the ATIR Karachi.
3. The principal legal issue concerning Section 4C had already been settled by the binding judgment in 2026 PTD 625.
4. No constitutional violation, jurisdictional error, or infringement of fundamental rights was established.
   Any interim orders were vacated, pending applications were disposed of, and there was **no order as to costs**.

III. DETAILS

A. Reference of Issue

1. Further to KQU 4015 of 29.7.26, **being an important matter,** we would inform you about Meezan Bank Limited VS Ministry of Finance and others, etc - WP 3479 of 2024 - IHC* (**Attachment CS512.1**) in ensuing paragraph, with emphasis ours in **bold** & **Underline** for quick reading.

B. Authentication

The document mentioned above is not available on relevant websites, as our team checks all relevant websites twice a day. However, we found the document from reliable resources as covered in KQU earlier and TLQC; hence, TLQC is being sent now.

C. Question of Law

3. The petitioner bank has filed the instant constitutional petition with the following prayer: -

> *"(i) declare section 4C to the Income Tax Ordinance, 2001, alongwith any demand notices or recovery proceedings or orders including demand of the main tax of advance tax u/s 147 of the 2001 Ordinance to be unconstitutional, while striking down the same;*
>
> *(ii) declare that for contracts of finance entered into:-*

a) prior to 1.7.2022, which have till date not matured/expired or which have matured on or after 31.12.2023, the Petitioner is not liable to pay any super tax u/s 4C of the 2001 Ordinance;

b) after 30.6.2022 and prior to 1.7.2023, which have till date not matured/expired or which have matured on or after 31.12.2023, the Petitioner is only liable to pay super tax @ 4%;

c) after 30.6.2023 and prior to 1.7.2024, the Petitioner is liable to pay super tax @ 10%;

(iii) declare that the Petitioner is fully entitled to claim any final discharge of liability under the Final or Presumptive Tax Regime with regard to any of the items mentioned in the Income Tax Ordinance, 2001, including dividends, without any impact of super tax levied u/s 4C of the Income Tax Ordinance, 2001;

(iv) declare that the Petitioner is fully entitled to all brought forward depreciation and brought forward losses under the Income Tax Ordinance, 2001, without any impact of super tax levied u/s 4C of the Income Tax Ordinance, 2001;

(v) declare that the Petitioner shall be entitled to claim imputable income as mentioned in section 2(28A) or any other provision of the Income Tax Ordinance, 2001, without any impact of super tax u/s 4C of the Income Tax Ordinance, 2001;

vi) for the purposes of the Fourth, Fifth, Seventh and Eighth Schedules, brought forward depreciation, brought forward amortization and brought forward business losses shall be reckoned, without any impact of super tax u/s 4C of the Income Tax Ordinance, 2001:

vii) permanently and pending disposal of the main petition restrain the Respondents, their officers, agents and cronies from levying, charging, imposing or ordering the Petitioner to pay super tax u/s 4C of the 2001 Ordinance or advance tax u/s 147 of 2001 Ordinance in relation to super tax in the manner that for contracts of finance entered into:-

a) prior to 1.7.2022, which have till date not matured/expired or which have matured on or after 31.12.2023, the Petitioner is not liable to pay any super tax u/s 4C of the 2001 Ordinance;

b) after 30.6.2022 and prior to 1.7.2023, which have till date not matured/expired or which have matured on or after 31.12.2023, the Petitioner is only liable to pay super tax @ 4%;

c) after 30.6.2023 and prior to 1.7.2024, the Petitioner is liable to pay super tax @ 10%."

B. Learned Council for the petitioner Submissions

1. The petitioner is a Public Limited Company engaged in the business of banking. The petitioner in the instant petition has challenged the constitutional validity of Section 4C of the Income Tax Ordinance, 2001 ("ITO 2001"), and the related provisions introduced through the Finance Act, 2023.

2. The learned counsel for the petitioner argued that the impugned levy of Super Tax is without lawful authority, unconstitutional, discriminatory, retrospective, and violative of Articles 4, 10A, 18, 23, 24, and 25 of the Constitution. It was argued that constitutional sanction for the levy of income tax is traceable to Entry 47 of Part I of the Fourth Schedule read with Articles 70(4) and 142 of the Constitution, while Section 4 is the main charging provision of the ITO, 2001. The learned counsel submitted that once income has been taxed u/s 4, it can no longer be treated as taxable income under Entry 47, therefore, the levy of Super Tax u/s 4C amounts to taxing the same income twice. According to the learned counsel Section 4C does not contain any non obstante clause, deeming provision, or express words stating that it operates in addition to the tax u/s 4. In the absence of clear legislative authority, both provisions cannot be applied to the same income, and any ambiguity in a charging provision must be interpreted in favour of the taxpayer.

3. The learned counsel further argued that Section 4C suffers from serious uncertainty regarding the taxable subject. Referring to Sections 2(29), 2(64), 9, 10, and 11 of the ITO, 2001, he submitted that although the ITO, 2001 defines "taxable income," "total income," and different heads of income, it does not clearly define the expression "income" used in Section 4C. According to him, a valid charging provision must clearly identify the person liable to tax, the taxable event, the taxable subject, and the method of calculating the tax. Since Section 4C does not provide an independent mechanism for determining the taxable income, it is vague, uncertain, and incapable of lawful enforcement. He further argued that Section 4C is not self-executing because subsection (6) authorizes the Federal Board of Revenue to frame rules for its implementation. As no such rules had been framed, the statutory mechanism remained incomplete, making the levy unenforceable.

4. The learned counsel further argued that the impugned legislation is arbitrary, unreasonable, and discriminatory. He submitted that the legislature has effectively imposed the same tax twice through differentstatutory provisions and names, which amounts to a colourable exercise of power and a fraud upon the Constitution. According to him, the combined burden of normal income tax, Super Tax, and other taxes is excessive, confiscatory, and disproportionate, seriously affecting the petitioner's ability to carry on its business. He contended that such excessive taxation violates the constitutional guarantees of freedom of trade and business, protection of property, equality before law, and due process under Articles 18, 23, 24, 25, and 10A of the Constitution. Learned counsel further submitted that Article 25 prohibits not only arbitrary classification but also legislation that is unreasonable, disproportionate, or irrational. He argued that Section 4C, because of its retrospective operation, imposition of unexpected liabilities, and lack of any rational connection with its stated objective, is violative of Article 25 of the Constitution.

5. The learned counsel for the petitioner further argued that the judgment of the Honourable FCCP in M/s DG Khan Cement's case reported as 2026 PTD 625 is distinguishable on facts and does not apply to the present case. He submitted that the said judgment mainly concerned conventional banking companies and other taxpayers, whereas the present petition relates to Islamic banking institutions operating through Shariah-compliant financing modes, including Murabaha, Ijarah, Diminishing Musharakah, and other Islamic financing arrangements. According to him, the special nature of Islamic banking transactions, their accounting treatment under the regulatory framework, and the income arising from such transactions were neither directly in issue nor specifically decided in the said judgment. Therefore, he contended that the principles laid down in the judgment Supra do not conclusively decide the present dispute, and the applicability of Section 4C to income derived from Islamic banking transactions requires independent examination by this Court.

E. IHC Deliberation - Court's Jurisdiction to Entertain the Petition

1. General

1.1 Before examining the merits of the case, this Court considers it necessary to first decide the preliminary objection relating to its territorial and constitutional jurisdiction. The issue of jurisdiction is of fundamental importance because it goes to the very root of the Court's authority to hear and decide a matter. It is a settled principle of law that jurisdiction is a creation of statute and power can only be exercised within the limits prescribed by law. Unless a Court has jurisdiction over the subject matter, the parties, and the cause of action, it cannot lawfully determine the parties' rights. Therefore, the question of jurisdiction must always be decided at the very outset before entering into the merits of the dispute.

2. Any adjudication on merits by a Court lacking jurisdiction would be without lawful authority, and every order or judgment passed in such proceedings would be void and without legal effect. For this reason, this Court deems it appropriate to first examine whether it possesses the necessary jurisdiction to entertain the present petition before considering the issues raised on the merits. In the case Jameel Qadir and another vs. Government of Balochistan, Local Government, Rural Development and Agravillas Department, Quetta and others, (2023 SCMR 1919), the Hon'ble Supreme Court held that-

> *"The term 'jurisdiction' in legal parlance means the command conferred to the Courts by law and Constitution to adjudicate matters between the parties. The jurisdiction of every Court is delineated and established to adhere to and pass legal orders. Transgressing or overriding the boundary of its jurisdiction and authority annuls and invalidates the judgments and orders. In order to deal with the different species of litigation, some Courts and Tribunals are vested with exclusive jurisdiction for taking cognizance of matters which other Courts cannot take under the rigidity or stringency of exclusive jurisdiction to deal with and decide the lis. No Court has the right to decide any lawsuit which is beyond the purview of its jurisdiction and want of jurisdiction conveys an action beyond the domain earmarked to any particular Court or Tribunal which cannot be cured, even by*

> *consent or acquiescence of parties. It is the prime duty of the Court to decide the question of jurisdiction first in case of doubts raised regarding its jurisdiction, and in any such situation it is the responsibility of the Court to endeavor to resolve the issue of jurisdiction at an early stage of the proceedings."*

1.2 The perusal of the order dated 18.12.24 reveals that notice was issued to the petitioner by the Additional CIR, Rang-A, Zone-IV, LTO, Karachi. For the sake of reference, the operative part of the order Supra is reproduced as under:-

> *"2. Learned counsel for the petitioner submits that, between the admission order dated 20.11.2024 and today, the Commissioner has initiated proceedings u/s 4C of the Income Tax Ordinance, and refers in this regard to para 7 of the notice dated 11.12.2024 issued by the Additional Commissioner of Inland Revenue, Range-A, Zone-IV, LTO, Karachi, para 7 whereof reads as follows:*
>
> *"Your income is also chargeable to super tax under the provisions of section 4C of the Ordinance. The super tax will be recomputed based on amended income u/s 122(5A) of the Ordinance. This notice should be treated as notice u/s 4C(4)/(5) read with section 122(5A) of the Ordinance."*

2. Objection to Territorial Jurisdiction

2.1 The first preliminary objection raised by the learned counsels for the respondents relates to the territorial jurisdiction of this Court. It was contended that the petitioner is admittedly assessed, regulated, and administered by the LTO, Karachi. It was further submitted that the petitioner's registered office is situated in Karachi, and all its tax returns, statements, assessments, appeals, and other proceedings under the ITO, 2001 have consistently been filed, processed, and decided before the competent tax authorities at Karachi. According to the learned counsels for the respondents, the impugned show-cause notice was issued by the Additional CIR, LTO Karachi, and the consequential order was also passed by the same authority in Karachi.

2.2 It was further pointed out that the petitioner has already invoked the statutory remedy of appeal before the Appellate Tribunal Inland Revenue at Karachi against the impugned order, thereby acknowledging the jurisdiction of the authorities situated there. On the basis of these admitted facts, the learned counsels for the respondents argued that no integral, substantial, or material part of the cause of action has arisen within the territorial limits of Islamabad as such this Court lacks territorial jurisdiction to entertain and adjudicate upon the present constitutional petition.

3. Territorial Jurisdiction Under Article 199

3.1 This Court has given its anxious and thoughtful consideration to the preliminary objection raised by the learned counsel for the respondents regarding territorial jurisdiction. It is a settled principle of constitutional law that the jurisdiction of a High Court under Article 199 of the

Constitution is confined to those cases in which the cause of action, either wholly or in part, arises within its territorial limits.

3.2 The expression "cause of action" has a well-recognized legal meaning and refers to every material, essential, and integral fact which a petitioner is required to establish in order to succeed in obtaining the relief claimed. Therefore, the existence of territorial jurisdiction must be determined by examining where the material facts giving rise to the dispute actually occurred, and not by reference to incidental or remote circumstances. It is equally well settled that the mere presence of a Federal Government office or a Federal authority at Islamabad, or the fact that a statute was enacted by the Parliament or a notification was issued by the Federal Government from Islamabad, does not, by itself, confer territorial jurisdiction upon this Court.

3.3 Unless the operative and substantial facts constituting the petitioner's grievance have arisen within the territorial limits of Islamabad, this Court cannot assume jurisdiction merely because the legislation or executive action originates from the Federal Government. The true test is whether an integral and material part of the cause of action has arisen within the territorial jurisdiction of this Court. The principle of dominant object and the doctrine of localized jurisdiction, as expounded by the Hon'ble Supreme Court in ***Taufiq Asif and others vs. General (R) Pervez Musharraf and others, (PLD 2024 SC 610)*** is as under:-

> *"11. However, the Lahore High Court, in purported exercise of its writ jurisdiction under Article 199 of the Constitution, set aside the entire proceedings of the trial, which was conducted by the Special Court against the respondent at Islamabad. The impugned judgment was passed after the final judgment convicting the respondent had been announced by the Special Court. Serious issues have been raised before us about the jurisdiction exercised by the High Court and the grounds for exercising such jurisdiction.*
>
> *<u>Territorial jurisdiction of the Lahore High Court.</u>*
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> *12. The primary contention of the learned counsel for the petitioners and the teamed AAG is that the Lahore High Court lacked territorial jurisdiction to entertain the writ petition of the respondent filed against the acts done and proceedings taken by the Special Court at Islamabad. This contention, we find, is well-founded. Any act done or proceeding taken by the Special Court at Islamabad could only be challenged, as per Article 199(1)(a)(i), before the High Court within whose territorial jurisdiction such act was done or proceeding taken, that is, the Islamabad High Court. Because of this legal position, the persons. Including the respondent's counsel Barrister Salman Safdar, who were aggrieved of some acts and proceedings of the Special Court had challenged the same in the Islamabad High Court. But the respondent, instead of agitating his grievance in the Islamabad High Court against the act done and proceeding taken by the Special Court*

> *at Islamabad, chose the forum of the Lahore High Court, and the latter court, wrongly entertained the same.*
>
> *13. The Lahore High Court assumed territorial jurisdiction in the matter, stating the reason that since the respondent also challenged, along with the acts and proceedings of the Special Court, the Federal Government's acts, i.e, the acts of filing the complaint and constituting the Special Court, it had the jurisdiction to adjudicate upon the matter. The reason is flawed and is also against the law declared by this Court in Sandalbar and Amin Textile as well as by the Lahore High Court in Sethi and Sethi. The ratio of these cases is that it is the dominant object of the petition, i.e., the main grievance agitated and the ultimate relief sought in the petition, which determines the territorial jurisdiction of the High Courts. If the ultimate relief sought relates to an act done or proceedings taken within the territorial jurisdiction of a particular High Court, no other High Court in the country can assume and exercise writ jurisdiction on the pretext that one of the reliefs sought relates to an act of a federal body."*

4. Cause of Action Determines Territorial Jurisdiction

4.1 It is a well-settled principle of law that the territorial jurisdiction of a High Court under Article 199 of the Constitution is determined not by the location of the head office or headquarters of a public authority, but by the place where the cause of action has actually arisen and where the impugned acts, proceedings, or orders have been undertaken.

4.2 Where statutory powers are exercised by an authority or functionary within a particular territorial jurisdiction, the legality of such actions is ordinarily to be examined by the High Court having territorial jurisdiction over that area. While determining the question of jurisdiction, the Court is required to apply the doctrine of the dominant object and ascertain the real nature of the dispute, the substance of the grievance, and the principal relief sought by the petitioner.

4.3 If the grievance primarily arises from actions, proceedings, or orders passed within a particular territorial jurisdiction, that jurisdiction cannot be displaced merely because the parent department, ministry, or head office of the authority is situated elsewhere. The Court must focus on the real and substantial cause of action giving rise to the litigation rather than on incidental, remote, or ancillary facts, which have no direct connection with the dispute.

4.4 Only where an integral and material part of the cause of action has arisen within the territorial limits of a High Court can that Court validly assume jurisdiction under Article 199 of the Constitution. The principle of dominant object and the doctrine of localized jurisdiction has further been discussed in ***Messrs the Communicators (Pvt) Ltd. vs. PEMRA, (W.P. No. 2172 of 2025)*** as under-

> *“6. It is a well-established principle of law that a High Court's territorial jurisdiction under Article 199 of the Constitution is invoked only where the cause of action arises within its territorial domain or where the public functionary whose action is being challenged performs functions in relation to the territory of that Court. In the present case, although PEMRA’s headquarters are located in Islamabad, the actual impugned action was carried out by its regional officer in Abbottabad, pursuant to powers delegated and exercised within the province of KPK.*
>
> *7. The doctrine of localized jurisdiction applies squarely in this case. Once a functionary of a federal institution exercises power within a specified territorial limit, as in the instant case it was done by respondent No.2 in Abbottabad, the High Court corresponding to that territory alone retains jurisdiction to adjudicate on the legality of such acts.*
>
> *8. The principle of dominant object, as consistently laid down by the superior courts, including the Islamabad High Court in Messrs AIR Ciro v. Government of Pakistan (2018 YLR 164), mandates that in order to determine the territorial jurisdiction of a High Court under Article 199 of the Constitution, the Court must identify the true and primary grievance raised in the petition. The dominant relief sought herein pertains to the annulment of the authorization letter dated 27.03.2025 and subsequent seizure proceedings undertaken by respondent No.2 in Abbottabad. All operative acts, including the issuance of the authorization, police requisition, judicial warrant, and execution of seizure, originated and culminated within the territorial jurisdiction of the province of Khyber Pakhtunkhwa. Mere location of PEMRA’s head office in Islamabad or the administrative issuance of the authority letter does not, in law, shift the jurisdiction of the High Court to Islamabad. The situs of the cause of action and not the situs of the public functionary's head office is determinative. Thus, the dominant object of the instant petition, being the challenge to field-level executive actions taken in Abbottabad, does not fall within the territorial purview of this Court. Accordingly, since no part of the cause of action arose within Islamabad and all material actions were confined to the province of KPK, this Court lacks the territorial jurisdiction to entertain the instant petition.”*

5. Karachi as the Proper Territorial Jurisdiction

5.1 In the present case, the record clearly shows that the petitioner is assessed and administered by the LTO, Karachi. The impugned proceedings were initiated, conducted, and concluded by the competent Inland Revenue authorities functioning at Karachi. The petitioner’s tax records are maintained at Karachi, and the impugned order was also passed by an authority exercising lawful jurisdiction within Karachi. It is an admitted position that the petitioner has already challenged the impugned order by filing a statutory appeal before the ATIR, Karachi.

5.2 These undisputed facts establish that every material and substantial event giving rise to the present dispute has taken place within the territorial jurisdiction of Karachi. The petitioner has not been able to point out any material fact or demonstrate that any legally enforceable right was violated within the territorial limits of Islamabad, thereby conferring jurisdiction upon this Court. The grievance raised in the present petition does not arise merely from the existence of a federal statute; rather, it arises from the implementation and enforcement of that statute through proceedings conducted by the tax authorities at Karachi. Thus, the assessment, adjudication, enforcement, and appellate proceedings are all connected with Karachi, where the entire cause of action has arisen.

5.3 The territorial jurisdiction of this Court cannot be invoked merely because the Federation of Pakistan has been impleaded as a respondent or because the impugned provisions form part of a federal law enacted by the Parliament. Such circumstances, by themselves, do not create any part of the cause of action within Islamabad. This Court is also persuaded that the petitioner has consistently accepted and invoked the jurisdiction of the tax authorities and appellate forums in Karachi in all matters relating to its assessments and tax liabilities.

5.4 Having voluntarily subjected itself to that jurisdiction throughout the proceedings, the petitioner cannot now seek to invoke the constitutional jurisdiction of another High Court in relation to the same tax dispute. Permitting such a course would amount to forum shopping, which has consistently been discouraged by the superior Courts, as it undermines the orderly administration of justice and the settled principles governing territorial jurisdiction.

6. Section 4C and Taxability of Income from Islamic Finance

6.1 Even if, for the sake of argument, the petitioner's submission is accepted that the principal issue before this Court is the interpretation of Section 4C of the Income Tax Ordinance, 2001, in relation to Islamic finance contracts, such contention does not materially advance its case. The reason is that the scope, application, and legal effect of Section 4C have already been conclusively examined and authoritatively settled by the superior Courts, including the judgment in M/s DG Khan Cement Case reported as **2026 PTD 625**. The foundation of the petitioner's case is that the applicability of Super Tax u/s 4C should be determined with reference to the date on which the underlying Islamic finance contracts, financing arrangements, investments, or banking transactions were originally executed.

6.2 According to the petitioner, if such contracts were entered into before the insertion of Section 4C, or before any subsequent enhancement in the rate of Super Tax, then the income arising from those contracts in later years cannot be subjected to the levy imposed by Section 4C. This argument is based upon the concepts of vested rights, legitimate expectation, past and closed transactions, and the alleged retrospective operation of the impugned provision. Although this submission appears attractive at first sight, it does not withstand legal scrutiny when examined in the light of the scheme and structure of the ITO, 2001. The entire argument proceeds on the incorrect assumption that the execution of a financing agreement constitutes the taxable event.

6.3 Neither the language of the Ordinance nor the settled principles of income tax law support such an interpretation. Under the constitutional and statutory framework governing fiscal legislation in Pakistan, income tax is not imposed on contracts, investments, financing arrangements, or commercial transactions merely because they have been executed. The subject of taxation is the income that accrues, arises, is derived, or is received during a particular tax year. The date on which the source of that income came into existence is entirely different from the event that gives rise to tax liability. The ITO, 2001 adopts the principle of annual taxation, whereby tax liability is determined separately for each tax year on the basis of income earned during that year, irrespective of when the underlying transaction or contract was originally entered into.

6.4 Sections 32 and 34 of the Ordinance recognize the accrual basis of accounting and require taxable income to be computed in accordance with recognized accounting principles. Consequently, what attracts tax is the income recognized during the relevant tax year and not the historical origin of the transaction from which that income eventually flows.

6.5 This distinction becomes even more significant in the case of banking companies, which are governed by the special taxation regime set out in Section 100A, read with the Seventh Schedule to the Ordinance. Rule 1 of the Seventh Schedule prescribes a separate mechanism for determining the taxable income, profits, and gains of banking companies by reference to their annual accounts prepared in accordance with the regulatory requirements of the State Bank of Pakistan, subject only to the adjustments expressly permitted under the Ordinance.

6.6 Accordingly, income generated through Islamic modes of financing, including Murabaha, Ijarah, Diminishing Musharakah, Musharakah, Modaraba, and other Shariah-compliant financing arrangements, does not become taxable merely because the underlying contracts were executed. Such contracts generally create continuing rights and obligations extending over several accounting periods and generate income gradually over time. The taxable event occurs only when such income accrues and is recognized in the books of account during the relevant tax year in accordance with the applicable accounting standards and the provisions of the ITO, 2001. It is this accrued and recognized income that forms part of the annual taxable income of a banking company and becomes liable to tax, including Super Tax u/s 4C, where the statutory conditions are fulfilled.

7. Section 4C(2) and the Seventh Schedule

7.1 The Legislature has consciously enacted a special mechanism under the Seventh Schedule to govern the taxation of income arising from Islamic financing transactions. The language of the Ordinance clearly shows that the Legislature intended this mechanism to operate independently and uniformly for all qualifying transactions. There is nothing in the Ordinance to indicate that the taxability of such income depends upon the date on which the underlying Islamic finance agreement was originally executed.

7.2 Had the Legislature intended to make the applicability of the tax provisions dependent upon the execution date of the contract, it would have expressly provided so in the law. In the absence of any such restriction, no limitation or condition can be read into the statute by implication. Therefore, the taxability of the income must be determined strictly in accordance with the provisions of the Seventh Schedule and not on the basis of the date of execution of the underlying Islamic finance contract. Accepting the petitioner's interpretation would defeat the annual scheme of taxation under the ITO, 2001, by making tax liability depend upon the date of the underlying contract rather than the income earned during the relevant tax year. Such an approach is neither supported by the language nor the scheme of the Ordinance and would create unjustified discrimination between taxpayers earning the same income in the same tax year. Section 4C(2)(iv) clearly taxes income computed under the Seventh Schedule without distinguishing between old and new contracts. The provision contains no exemption or transitional arrangement for pre-existing Islamic finance agreements. Therefore, all qualifying income is to be taxed uniformly, irrespective of when the underlying contract was executed.

8. Section 4C Levy Is Prospective, Not Retrospective

This Court is unable to accept the petitioner's argument that the levy of Super Tax u/s 4C is retrospective merely because the Islamic financing contract was executed before the provision was introduced or its rate was enhanced. Section 4C does not tax the execution of the contract; it taxes the income that accrues and is recognized during the relevant tax year. Although the contract may have been signed earlier, the income earned from it each year is a fresh taxable event governed by the law in force for that tax year. Therefore, the levy is prospective, not retrospective. Likewise, the petitioner has no vested right to remain subject to the same tax rate or fiscal regime, as the Parliament is competent to amend tax laws and apply them to income earned in future tax years.

9. No Exemption for Islamic Financing Income

9.1 Another important fact is that the petitioner itself has consistently recognized income from Islamic financing on an accrual basis and has offered such income to tax in the year in which it was recorded in its accounts under the ITO, 2001. By doing so, the petitioner accepted that the income becomes taxable in the year it accrues, regardless of when the financing contract was executed. Therefore, it cannot adopt a different position only to avoid liability u/s 4C.

9.2 Such a selective approach is contrary to the scheme of the Ordinance. Moreover, Rule 3 of the Seventh Schedule makes it clear that the accounting treatment adopted under the State Bank of Pakistan's guidelines does not affect the computation of taxable income or tax liability. In the absence of any express statutory exemption, income arising from Islamic financing remains taxable under the ITO, 2001. The interpretation proposed by the petitioner would lead to unreasonable and arbitrary results.

9.3 If accepted, two banking companies earning the same income in the same tax year and following the same accounting method could face different tax liabilities merely because their financing agreements were executed on different dates. Such a distinction has no connection with the purpose of Section 4C, which is to levy Super Tax on the income earned during the relevant tax year. Since the law does not make any distinction based on the date of the financing agreement, this Court cannot read such a condition into the statute. Therefore, the petitioner's interpretation cannot be accepted as it would defeat the object of the law and create unequal treatment among similarly placed taxpayers.

10. Final Determination on Tax Liability u/s 4C

10.1 For the reasons discussed above, this Court holds that the liability u/s 4C of the ITO, 2001, depends on the income that accrues and is recognized during the relevant tax year, and not on the date when the financing arrangement, investment, or Islamic banking contract was originally executed. The taxable event is the earning and recognition of income during the tax year in which Section 4C applies.

10.2 The date on which the source of that income came into existence is irrelevant. Accepting the petitioner's interpretation would be contrary to the annual scheme of taxation under the Ordinance, the special tax regime for banking companies under the Seventh Schedule, and the settled principles of income taxation. The same argument has also been considered in **Civil Appeal No. 1243 of 2020 titled M/s DG Khan Cement Company Limited and another vs. The Federation of Pakistan through Secretary Revenue, Islamabad and others,** which further supports the conclusion that the petitioner's contention has no support in the language or scheme of the Ordinance. The said contention was expressly examined and rejected, as is evident from paragraph 89 of the judgment, reproduced hereunder:-

> *"89. Dr. Farogh Naseem, ASC appearing for banking companies, relied heavily on Rule 7C of the Seventh Schedule to contend that the super tax imposed upon banks for Tax Year 2023 and onwards operated retrospectively in the same manner as the super tax imposed upon other taxpayers for Tax Year 2022. On that basis, it was argued that banking companies were entitled to the same relief that had earlier been granted by the Islamabad High Court. The submission, however, was found to be untenable. The Court observed that banking companies had been expressly excluded from the ambit of Section 4C for Tax Year 2022 through the proviso appended to subsection (1). Subsequently, by virtue of the Second Proviso to Division IIB of the Seventh Schedule, banks were specifically brought within the charge of super tax for Tax Year 2023 and onwards. Consequently, the issue of retrospective taxation did not arise in their case. The statutory framework had already placed banking companies on notice, prior to the enactment of the Finance Act, 2023, that Section 4C would apply to banking income from Tax Year 2023 at the prescribed rate of 10%. Since the Finance Act, 2023 did not alter or enhance that rate insofar as banks were concerned, the contention that banks were retrospectively subjected to super tax was held to be factually incorrect. The Supreme Court further held that the Islamabad High Court, in granting relief to banking companies in the Pakistan Oilfields case on this premise, had proceeded on a material misapprehension of the statutory scheme. Accordingly, that finding was declared unsustainable in law and was set aside.*
>
> *90. The Islamabad High Court, in the Fauji Fertilizer Judgment, read Section 4C down by excluding from its operation any source of income*

subject to a final or presumptive tax regime, on the ground that such income stood outside the scheme of Section 4C. In light of our discussion above, the learned Single Judge's finding proceeded on the twin premises that all sources listed in Section 4C(2)(i) are "presumptive" and that "presumptive" income stands outside the scheme of income tax. Both premises are, for the reasons discussed above, factually and legally incorrect. The learned Judge's reading-down of Section 4C on this ground cannot be sustained, and is to the extent of this finding set aside.

91. For the foregoing reasons, we hold that Section 4C validly applies to all four categories of income enumerated in sub-section (2), without distinction between the normal, final, minimum, and separate regimes of the Ordinance. The composite definition is the legislature's considered answer to the risk of discrimination between taxpayers whose incomes arise under different regimes. The imputation mechanism in sub-section (2)(iii), read with Section 28A, operates not to burden FTR taxpayers with a heavier levy but to bring them to parity with normal-regime taxpayers. Section 100B places the application of Section 4C to capital gains on listed securities beyond argument. The findings of the Islamabad High Court reading Section 4C down to exclude FTR and separate-regime income, and granting related relief to banking companies, cannot be sustained and are set aside to that extent."

11. Article 199 Jurisdiction and Alternative Remedy

Another important aspect is that the show-cause notice issued by the Additional CIR, LTO Karachi, has already been decided through a final order, against which the petitioner has filed an appeal, ITA-115/KB/2025 before the ATIR, Karachi. Having already invoked the statutory appellate remedy, the petitioner cannot simultaneously pursue the present constitutional petition on the same cause of action. It is a settled principle that where an effective and adequate alternative remedy has been availed, High Court ordinarily does not exercise its extraordinary jurisdiction under Article 199 of the Constitution. Permitting parallel proceedings before different forums would defeat the statutory scheme and is not permissible in law.

F. IHC Deliberations - Effective Statutory Remedy Under the ITO

1. Apart from the objections regarding territorial jurisdiction and parallel proceedings, the petitioner's own conduct clearly shows that an effective and adequate alternative remedy was available under the ITO, 2001. The petitioner participated in the departmental proceedings, allowed a final order to be passed, and then filed an appeal before the ATIR, Karachi. By doing so, the petitioner accepted the statutory remedy provided under the Ordinance.

2. The Ordinance provides a complete appellate mechanism for resolving tax disputes through specialized forums. It is a settled principle that High Court should not exercise its constitutional

jurisdiction under Article 199 where an effective statutory remedy exists and has already been availed of, unless exceptional circumstances are shown. Since no such exceptional circumstances exist in the present case, interference by this Court is not warranted. In **M/s Sprint Oil and Gas Services Pakistan FZC, Islamabad vs. Oil and Gas Development Company Limited (OGRA), Islamabad, (2024 PTD 221),** the Honourable Supreme Court Court held that: -

> *"8. Pakistan is a Federation comprising of four provinces and the Islamabad Capital Territory. The Constitution provides a High Court for each province and, subsequently, the Islamabad High Court was established in 2010. Each province can enact laws with regard to their respective territories, and only the High Court of the said province can interpret them. Therefore, the said four provincial laws (mentioned above in paragraph 1) could only have been interpreted by the High Court of the province in which they had been enacted, and not by the Islamabad High Court. Admittedly, the petitioner did not carry out any of the cementation works in the Islamabad Capital Territory, nor was the applicability and/or interpretation of a Federal law required, which may have required consideration by the Islamabad High Court. The Islamabad High Court, therefore, lacked jurisdiction, and should not have entertained the writ petition filed by the petitioner on this ground alone.*
>
> *9. The petitioner, however, faced other hurdles in invoking the High Court's constitutional jurisdiction under Article 199 of the Constitution which could only be invoked when no other adequate remedy is provided by law'. In the instant case the petitioner had other adequate remedy, either by invoking the arbitration clause in the contracts or by filing a suit*
>
> *10. The High Court's jurisdiction under Article 199 of the Constitution may also not be invoked when contracts have to be interpreted, and all the more so when they are technical and/or complex, as in the instant case, nor when evidence is required to be recorded. In the exercise of its writ jurisdiction, under Article 199 of the Constitution, a High Court also does not enter into the realm of disputed facts."*

G. IHC Decision

1. For the reasons discussed above, this Court is of the considered view that the present constitutional petition is not maintainable. The petitioner has failed to show that any part of the cause of action arose within the territorial jurisdiction of this Court. The record also shows that the petitioner had an adequate and effective remedy under the ITO, 2001.

2. Which it voluntarily pursued by participating in the departmental proceedings and filing an appeal before the ATIR, Karachi. Therefore, this Court cannot exercise its constitutional

jurisdiction under Article 199 of the Constitution Moreover, the main issue regarding the applicability of Section 4C of the ITO, 2001, has already been conclusively decided by the Honourable FCCP in M/s DG Khan Cement case reported as 2026 PTD 625 ***(Background refers)***, which is binding on this Court.

3. The petitioner has failed to establish any illegality, jurisdictional error, constitutional violation, or infringement of any fundamental right. Consequently, the instant constitutional petition, being not maintainable and without merits, is hereby **dismissed**. The interim order(s), if any, stand vacated, all pending applications are disposed of, and there shall be no order as to costs.

IV. LIST OF FURTHER TLQCs

(a) 3466 of 8.4.26 about Super Tax, etc: Department must decide Refund claims before Recovery - ATIR unreported order and KC views
(b) 3594 of 30.6.26 about Super Tax u/s 4C: Surcharge stayed where ultra vires declared earlier by IHC - IHC Interim relief as KC predicted and KC views
(c) 3475 of 17.4.26 about Super Tax Default Surcharge recovery stayed - SHC unreported Main Interim order found
(d) 3456 of 26.3.26 about Super Tax: FBR targets Rs 100bn Delay Surcharge and KC Views & Recommendations
(e) 3552 of 11.6.26 about NCCPL Revised CGT & Super Tax Computation for TY 2026
(f) 3477 of 20.4.26 about Super Tax: No Default Surcharge recovery, without adhering to Section 137(2) - SHC
(g) 3493 of 29.4.26 about Super Tax u/s 4B & 4C: Detailed Order released today in case of DG Khan Cement, etc
(h) 3497 of 30.4.26 about Super Tax 4C: Post S.120 Deemed Assessment, Direct Section 4C Order, without S.122 is void per ATIR & KC Views
(i) 3444 of 25.2.26 about Super Tax u/s 4C: Misapplication & Premature Recovery leading to Severe Hardship - LTBA letter
(j) 3443 of 24.2.26 about Super Tax u/s 4C: Irregularities in Enforcement - PTBA letter
(k) 3439 of 19.2.26 about Super Tax u/s 4B/4C: FCCP Super Shock and Urgent Practical Solutions required
(l) 3434 of 4.2.26 about Super tax u/s 4B/4C: Demand challenged on non-rectified ground; Recovery stayed by SHC
(m) 3431 of 1.2.26 about FCCP Short Order: Sections 4B/4C Super Tax almost intra vires Constitution details
(n) 3429 of 29.1.26 about PSX Fallen as KC predicted & may fall more, as 4B & 4C FCCP order
(o) Over 60 other commentaries on various aspects of Super Tax

V. FURTHER DETAILS & SERVICES

Should you require any clarification or explanations in respect of the above or otherwise, or require Income Tax, Federal & Provincial Sales Tax or Withholding Tax Statement, Advisory, Return Filing or Review services, please feel free to email Mr Amsal at amsal@kasbati.co with CC to info.kasbati@professional-excellence.com, asif.s.kasbati@professional-excellence.com.

Best regards for Here & Hereafter
Asif S Kasbati (FCA, FCMA & LLB)

Managing Partner
Kasbati & Co (1400+ Tax, Levies, Companies, Economy, Inflation, HR, Banking, Finance, etc
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*From: **Asif Siddiq Kasbati** <asif.s.kasbati@professional-excellence.com>*
Date: Mon, Jun 29, 2026 at 6:01 PM
Subject: TLQC3590= Super Tax u/s 4C: WHT adjustment denied but FCCP allowed Interim relief, as KC predicted

I. Background

***(1)** This refers to the related Important TLQC 3482 of 21.4.26 about Super Tax Section 4C: WHT Adjustment denied against Gross tax by IHC and KC Views & Recommendations **in trail, blue, italic and double Line (2)** Also refer to other relevant TLQCs List is given in Para III for ready reference*

II. Updated Commentary

A. Reference of Issue

*Further to KQU 3969 of 29.6.26, **being an important matter,** we would inform you about CM Pak Limited VS FOP, Secretary, Revenue Division & others, etc - FCPLA 1276 & 1277/2026 - FCCP **(Attachment 3590.1 - neither reported in any Journal nor on FCCP Web till about an hour before release of this TLQC, however, found from reliable sources)** in ensuing paragraph, with emphasis ours in **bold** & **Underline** for quick reading.*

B. Learned Counsel for the Petitioner Submissions

We have heard the learned counsel for the petitioner, who states that the High Court has gone on the wrong side in holding that the petitioner has actually challenged the vires of the law. He states that only the mechanism for recovery of advance tax adopted by the respondent was challenged before the High Court and that the case of the petitioner has not been correctly attended to. The notice issued by the respondent was challenged on the ground that it is against the mechanism provided under Section 4C of the Income Tax Ordinance, 2001. Notice to the respondents

C. Learned Counsel for the respondent Submissions

Mr. Ali Nawaz Khan, ASC, appeared on behalf of the respondent(s). He may file a concise statement before the next date of hearing. Office to fix this matter on 30.6.26.

M.A.2392/2026: Notice. Learned counsel states that on the services provided by the petitioner, on payments already tax has been withheld in advance, which is with the respondent department, which can be adjusted in response to demand. ***No coercive measure be adopted against the petitioner till the next date of hearing.***

III. KC Prediction in TLQC3482 became true

You may recall that the following was stated in para III of TLQC 3482 (in trail), hence, Alhamdolillah, our prediciton same true (like several other predictions)

"With due respect to IHC order, it is unusual order restricting interpretation only to 4C(3) and ignoring other sections OR even otherwise Constitutinal Right to adjust one type of receivable / adjustable amount of income tax, etc with another income tax payable amount OR even otherwise Other taxes.

We expect that the matter will land into Supreme Court OR Federal Constitutional Court of Pakistan.

We recommend to discuss the matter with your Legal Counsel to prepare to file a Petition, as per paragraph 2, for all IHC taxpayers. Other taxpayers may discuss the matter with their Legal Counsel to challenge the Notice (read with the IHC order) if at all received or expected to tbe received."

IV. List of Further TLQCs about section 4B/4C - with most relevant in bold, plus indication of of several other commentaries at the end

(a) 3488 of 25.4.26 about Super Tax: Deepening controversy - WHT adjustment, etc
(b) 3466 of 8.6.26 about Super Tax, etc: Department must decide Refund claims before Recovery - ATIR unreported order and KC views
(c) 3493 of 29.4.26 about Super Tax u/s 4B & 4C: Detailed Order released today
(d) 3497 of 30.4.26 about Super Tax 4C: Post S.120 Deemed Assessment, Direct Section 4C Order, without S.122 is void per ATIR & KC Views
(e) 3444 of 25.2.26 about Super Tax u/s 4C: Misapplication & Premature Recovery leading to Severe Hardship - LTBA letter
(f) 3443 of 24.2.26 about Super Tax u/s 4C: Irregularities in Enforcement - PTBA letter
(g) 3439 of 19.2.26 about Super Tax u/s 4B/4C: FCCP Super Shock and Urgent Practical Solutions required
(h) 3434 of 4.2.26 about Super tax u/s 4B/4C: Demand challenged on non-rectified ground; Recovery stayed by SHC
(i) 3431 of 1.2.26 about FCCP Short Order: Sections 4B/4C Super Tax almost intra vires Constitution details
(j) 3429 of 29.1.26 about PSX Fallen as KC predicted & may fall more, as 4B & 4C FCCP order
(k) Over 60 other commentaries on various aspects of Super Tax

V. Further Details & Services

Should you require any clarification or explanations in respect of the above or otherwise, or require Income Tax, Federal & Provincial Sales Tax or Withholding Tax Statement, Advisory, Return Filing or Review services, please feel free to email Mr Amsal at amsal@kasbati.co with CC to info.kasbati@professional-excellence.com, asif.s.kasbati@professional-excellence.com.

Best regards for Here & Hereafter
Asif S Kasbati (FCA, FCMA & LLB)

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*From: **Asif Siddiq Kasbati** <asif.s.kasbati@professional-excellence.com>*
Date: Tue, Apr 21, 2026 at 6:35 PM
Subject: TLQC3482= Super Tax Section 4C: WHT Adjustment denied against Gross tax by IHC and KC Views & Recommendations

I. BACKGROUND

(1) *We refer to TLQC 3466 of 8.4.26* ***in trail, blue, italic and double Line*** *about Super Tax, etc: Department must decide Refund claims before Recovery - ATIR unreported order and KC views* ***(2)*** *For List of other relevant QCs, please refer to* ***Para E****.*

II. EXECUTIVE SUMMARY

A. General

1. CM Pak Ltd challenged a notice *of 19.2.26 for recovery of Super Tax u/s 4C of the ITO, 2001, for TY 2023. The petitioner argued that withholding taxes should be adjustable against this liability per Sections 168 and Chapter X, claiming the notice violated statutory requirements by inflating liability and forcing refunds instead.*

2. Respondents countered *that Super Tax is an independent charge, not adjustable against normal income tax credits, citing prior FCCP rulings upholding u/s 4C as intra vires.*

B. Key Legal Issues

1. Nature of Super Tax: *Whether Section 4C imposes a distinct tax on a specially defined "income" base (e.g., excluding brought-forward losses), separate from Section 4's general income tax on "taxable income."*

2. Adjustment of Withholding Taxes: *Whether Section 4C(3)'s reference to Chapter X mandates crediting taxes deducted at source (e.g., u/s 168) against Super Tax, or limits incorporation to procedural machinery (payment, collection, recovery).*

C. IHC Analysis and Ruling

1. Independence of Super Tax: *The Court affirmed Section 4C as a standalone levy, upheld by FCC judgment 28.01. 2026 in DG Khan Cement case (TLQC3431 of 1.2.26 refer), creating a fresh charge under constitutional Entry 47. It operates on a unique income base, borrowing only Chapter X procedures, not substantive credits from Section 4.*

2. No Adjustment Right: Section 4C(3) incorporates procedural tools only; tax credits are substantive and require explicit provision, absent here. Allowing adjustments would undermine the levy's intent.

3. Maintainability: *Petition dismissed as re-litigating settled FCC precedent; prior claims by petitioner (W.P. 4359/2022) rejected. No costs imposed, but caution against repetitive filings. Outcome*
Petitions dismissed. ***Super Tax recovery notice upheld; no adjustment of withholding taxes permitted****. Judgment by Muhammad Azam Khan, J., dated 25.03.2026.*

III. KASBATI & CO VIEWS & RECOMMENDATIONS

With due respect to IHC order, it is unusual order restricting interpretation only to 4C(3) and ignoring other sections OR even otherwise Constitutinal Right to adjust one type of receivable / adjustable amount of income tax, etc with another income tax payable amount OR even otherwise Other taxes.

We expect that the matter will land into Supreme Court OR Federal Constitutional Court of Pakistan.

We recommend to discuss the matter with your Legal Counsel to prepare to file a Petition, as per paragraph 2, for all IHC taxpayers. Other taxpayers may discuss the matter with their Legal Counsel to challenge the Notice (read with the IHC order) if at all received or expected to tbe received.

IV. DETAILS

A. Reference

Further to KQU 3857 of 10.4.26, ***being an important matter,*** *we would inform you about <u>CM Pak Limited VS FOP, Secretary Revenue Division & others, etc - WP 1125 & 1126/2026 – IHC order of 25.3.26</u>* ***(Attachment 3482.1 recently uploaded on IHC website)*** *The most relevant paragraphs are 23 till end which are covered below with heading (sub-para marked ours) in ensuing paragraph, with emphasis our in* ***bold*** *&* ***<u>Underline</u>*** *for quick reading.*

B. Contention regarding Unbridled Powers and Adjustment of Withholding Taxes u/s 4C(3) – para 23

1. At this stage, this Court considers it appropriate to address, in some depth, the contention advanced by the petitioner that the respondents are exercising "unbridled powers" in seeking to recover Super Tax without allowing adjustment of withholding taxes.

2. It has further been asserted in paragraph 9 of the petition that respondent No. 4 intends to deny such adjustment by disregarding the provisions of u/s 4C(3) of the ITO, 2001, which, according to the petitioner, mandate the application of all provisions of Chapter X, thereby entitling the petitioner to claim adjustment of withholding taxes against its Super Tax liability.

C. Reproduction of Section 4C(3) for Ready Reference - para 24

Before embarking upon an analysis of the said contention, it would be advantageous to reproduce Section 4C(3) for ready reference:

> *"4C(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."*

D. Judicial Restraint Following Validation of Section 4C - para 25

At the very outset, it must be borne in mind that the constitutional validity of Section 4C, being a charging provision, already stands upheld by the competent constitutional forum. In such circumstances, the scope of judicial scrutiny is necessarily confined and circumscribed. This Court is not called upon to re-examine the wisdom, fairness, or desirability of the levy, nor to reconstruct its computational framework; rather, the inquiry is limited to determining whether the impugned actions of the respondents fall within the four corners of the statute. Any attempt to expand, curtail, or modify the statutory scheme under the guise of interpretation would amount to trenching upon the legislative domain, which is impermissible.

E. Section 4C(3) Confined to Machinery Provisions, Not Liability Determination - para 26

1. A plain, contextual, and purposive reading of Section 4C(3) leaves little room for doubt that the legislature has consciously adopted only the machinery and procedural apparatus necessary for the implementation and enforcement of Super Tax. The opening part of the provision unequivocally provides that the tax shall be "paid, collected and deposited" in the manner specified in Section 137(1).

2. Section 137(1), in turn, deals exclusively with the mode, timing, and manner of payment of tax, and does not relate to the determination of liability or the grant of any credit or adjustment. The express incorporation of Section 137(1), therefore, is not incidental but deliberate, and it underscores the legislative intent to situate Section 4C within the existing procedural framework governing the collection of taxes, without altering the substantive contours of the levy.

F. Contextual and Limited Incorporation of Chapter X into Section 4C - para 27

1. The subsequent stipulation that "all provisions of Chapter X shall apply" must be construed in light of the same legislative intent. It is a well-established principle of statutory interpretation that where a provision incorporates another chapter or set of provisions, such incorporation is neither *absolute nor indiscriminate; rather, it is contextual, qualified, and limited to the extent necessary to make the principal provision workable and effective.*

2. The Court must, therefore, read the words of incorporation harmoniously with the scheme, purpose, and subject matter of the charging provision, and not in a manner that produces inconsistency or enlarges the scope of the statute beyond what has been expressly provided. Chapter X of the Ordinance, when examined as a whole, is predominantly concerned with the machinery of tax administration, including provisions relating to assessment, recovery, collection, enforcement, default, and ancillary matters.

3. Its incorporation into Section 4C is thus intended to ensure that Super Tax is administered within the established procedural framework of the Ordinance, thereby avoiding the necessity of creating an entirely separate enforcement regime. However, nothing in the language of Section 4C(3) suggests that the legislature intended to import, in a wholesale manner, every substantive consequence that may arise under Chapter X, particularly those which have the effect of reducing or extinguishing the tax liability created by the charging provision.

G. Distinction Between Procedural Provisions and Substantive Rights in Taxation - para 28

1. It is, in this context, of critical importance to distinguish between procedural provisions and substantive rights. Procedural provisions regulate the manner in which a liability is assessed, enforced, and recovered; substantive rights, on the other hand, directly affect the existence or quantum of that liability.

2. The right to claim adjustment or credit of taxes, especially withholding tax, is unequivocally a substantive right, as it operates to diminish the tax burden of the taxpayer. Such a right cannot be presumed, inferred, or implied from general words of incorporation; it must be grounded in clear, explicit, and unambiguous statutory language. This principle is deeply embedded in fiscal jurisprudence.

3. It is trite that in taxation matters, nothing is to be read in, nothing is to be implied, and both the charge as well as any exemption, deduction or credit must be found strictly within the four corners of the statute. Any ambiguity or silence in this regard operates against the taxpayer claiming the benefit.

4. Thus, in the absence of an express provision within Section 4C permitting adjustment of withholding taxes against Super Tax liability, no such entitlement can be judicially engrafted merely on the basis of a general reference to Chapter X. To hold otherwise would be to convert a procedural incorporation into a substantive grant, which the legislature has consciously refrained from making.

H. Preserving the Distinct and Independent Character of the Super Tax Regime - para 29

1. The petitioner's argument, if accepted, would lead to consequences that are both legally untenable and structurally disruptive. It would effectively blur the distinction between the normal *income tax regime and the Super Tax regime, thereby allowing mechanisms designed for one to be transplanted into the other without legislative sanction.*

2. Such an approach would undermine the independent character of Section 4C, dilute the incidence of the levy, and frustrate the very object for which it was enacted. Courts have consistently cautioned against interpretations which render a statutory provision otiose, redundant, or incapable of achieving its intended purpose.

I. Statutory Regulation of Tax Authorities' Powers and Absence of Arbitrariness - para 30

1. Furthermore, the submission that the respondents are exercising "unbridled powers" is wholly misconceived. The powers exercised by the tax authorities are neither unguided nor arbitrary; they are strictly regulated by the statutory framework of the Ordinance, which provides detailed provisions for assessment, adjudication, rectification, and appellate review.

2. The mere fact that the statute does not provide for a particular adjustment cannot be equated with arbitrariness or excess of jurisdiction. On the contrary, it reflects a conscious legislative choice, which this Court is bound to respect and give effect to.

J. Judicial Restraint and Prohibition on Supplying Casus Omissus - para 31

1. It is also pertinent to observe that the petitioner's contention, though ostensibly framed as a challenge to the manner of exercise of power, in substance seeks to achieve what it does not directly assert namely, the modification of the statutory scheme governing Super Tax.

2. This Court cannot, under the guise of interpretation, supply a casus omissus, nor can it read into the statute a provision which the legislature has deliberately omitted. To do so would amount to judicial legislation, this lies beyond the permissible limits of constitutional adjudication.

K. No Entitlement to Withholding Tax Adjustment u/s 4C(3) - para 32

1. In view of the foregoing analysis, this Court finds that Section 4C(3) does not, either expressly or by necessary implication, confer any right upon the petitioner to claim adjustment of withholding taxes against its liability u/s 4C.

2. The provision merely incorporates the procedural machinery of Chapter X for purposes of collection and enforcement, and does not alter the substantive nature or incidence of the levy. The reliance placed by the petitioner on the said provision is, therefore, entirely misplaced.

L. Bar of Finality: Issue Already Settled by the Federal Constitutional Court - para 33

1. It is of critical significance to note that the controversy raised in the present petition is not res integra. The petitioner had previously advanced an identical claim in WP No. 4359 of 2022, titled CM Pak LDI Limited VS Federation of Pakistan ***KQU 3857 for 10.4.26 refer****, wherein the Hon'ble Federal Constitutional Court, vide judgment dated 28.1.26, set aside the earlier judgment of this Court dated 20.7.23 and expressly declined the relief sought.*

2. This prior adjudication, rendered by the apex constitutional forum, constitutes a binding and conclusive determination of the issue presently sought to be re-agitated. In view of the aforesaid authoritative pronouncement, the present petition is, in substance, an attempt to re-open and re-litigate a matter that already stands finally decided.

3. It is a settled principle of law that issues which have attained finality at the hands of a competent constitutional court cannot be permitted to be revived through fresh proceedings framed under a different legal garb.

4. The doctrine of finality of litigation, read together with the principle that there must be an end to judicial disputes, squarely operates as a bar against the maintainability of the instant petition.

M. Prohibition on Circumventing Binding Judicial Determinations – para 34

It is a fundamental tenet of law that what cannot be achieved directly cannot be permitted to be accomplished indirectly. Where a specific relief has been sought under a statutory provision and has been declined by the Apex court of final jurisdiction, it is not open to the litigant to circumvent that determination by resorting to collateral or alternative proceedings. Any such attempt would amount to an abuse of the process of the Court and would undermine the authority of the binding judicial pronouncement.

N. Impermissibility of Indirect Relief and Preservation of Legislative Intent u/s 4C – para 35

In this backdrop, the petitioner's present attempt to seek adjustment or credit of taxes by invoking general procedural provisions, including those contained in Chapter X of the Ordinance amounts, in effect, to securing indirectly the very relief which has already been refused on merits. Such an approach is legally impermissible. Once a statute has been upheld as valid and enforceable, courts are not at liberty to interpret its provisions in a manner that would dilute, defeat, or render nugatory the legislative intent. Section 4C, being a self-contained and standalone levy, must be given full effect in accordance with its plain terms. Any interpretation permitting adjustment in the absence of explicit statutory authorization would amount to judicial legislation.

O. Conclusion: Dismissal of Petitions for Want of Merit and Finality of Determination – para 36

1. In view of the foregoing discussion, this Court is of the considered opinion that the levy of Super Tax u/s 4C of the Income Tax Ordinance, 2001 constitutes a distinct and independent charge on income, separate from the tax imposed u/s 4 of the Ordinance.

2. It has further been held that no right of adjustment of withholding taxes against the liability arising u/s 4C can be claimed in the absence of an express statutory provision to that effect, and that the incorporation of Chapter X through Section 4C(3) is confined to procedural and machinery aspects only.

*3. Moreover, the controversy raised by the petitioner already stands conclusively determined by the Hon'ble Federal Constitutional Court, and the present petition amounts to an impermissible attempt to re-agitate an issue that has attained finality. Consequently, finding no merit in the petitions, the same are hereby **DISMISSED**, with no order as to cost.*

P. Observations on Judicial Propriety, Access to Justice, and Restraint on Costs – para 37

1. Before parting with this judgment, and as a matter of judicial propriety, it may be observed that, in the peculiar facts and circumstances of the present case, this Court, while taking a lenient view, restrains itself from imposing costs upon the petitioner company for having invoked the constitutional jurisdiction of this Court on a matter which already stands conclusively settled by the Hon'ble FCCP.

2. It is an established principle that access to justice and the right to approach a court of law constitute fundamental rights guaranteed to every citizen. However, such right is not unqualified or unfettered; rather, it carries with it a corresponding obligation to invoke judicial remedies in a responsible, bona fide, and diligent manner.

3. The filing of petitions on issues which have already been authoritatively adjudicated by the apex constitutional forum not only amounts to an unnecessary invocation of judicial process but also undermines the principle of finality attached to binding judicial pronouncements.

4. This Court cannot lose sight of the fact that judicial time is a scarce and valuable public resource. Entertaining and adjudicating repetitively or settled controversies inevitably diverts attention from other deserving litigants whose grievances await resolution. Such practices, if left unchecked, contribute to avoidable delays in the administration of justice and impede the efficient functioning of the judicial system. Nevertheless, considering that the petitioner has sought to assert its perceived legal rights, this Court, in the interest of justice, opts to exercise restraint and refrains from imposing any pecuniary burden. However, it is expected that, in future, litigants shall exercise due diligence and circumspection before re-agitating issues that have already attained finality through binding judicial determinations.

V. LIST OF FURTHER TLQCs ABOUT SECTION 4B/4C

(a) 3476 of 20.4.26 about Super Tax: PBC Representation to FBR against Notice for Default Surcharge levy
(b) 2822 of 3.7.24 about Section 7E Violation and Huge Revenue loss
(c) 3471 of 15.4.26 about Super Tax: Default Surcharge recovery stayed by SHC as KC predicted - KC further Recommendations
(d) 3456 of 26.3.26 about Super Tax: FBR targets Rs 100bn Delay Surcharge and KC Views & Recommendations
(e) 3470 of 15.4.26 about Super Tax: Calculation u/s 4C on Gross liability, without income tax paid
(f) 3456 of 26.3.26 about Super Tax: FBR targets Rs 100bn Delay Surcharge and KC Views & Recommendations
(g) 3452 of 17.3.26 about Section 4C: FTO directs FBR to adjust Refunds before Recovery u/s

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(j) 3439 of 19.2.26 about Super Tax u/s 4B/4C: FCCP Super Shock and Urgent Practical Solutions required
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Best regards for Here & Hereafter
Asif S Kasbati (FCA, FCMA & LLB