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Judgment Sheet

IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

. . . .

W.P. No.50314/2022

Zaka Ud Din Malik

Versus

Federation of Pakistan, etc.

JUDGMENT

Date of hearing: **22.12.2022.**

Petitioners by: Ch. Anwaar Ul Haq, Advocate.

M/s Shahbaz Butt, Muhammad Ahsan Mahmood, Asad Abbas Raza, Muhammad Ibraheem Hassan and Muhammad Usman Zia, Advocates in connected W.P.Nos.67450, 67451, 67587, 67608, 71372, 71369, 71371, 71378, 71380 and 72393 of 2022.

M/s Syed Muhammad Ijaz, M. Hamza Rauf, M. Imran Khan and Mian Faheem Khadim, Advocates in connected W.P. No.55307/2022.

M/s Salman Akram Raja, Tariq Bashir, Arsalan Riaz, Usman Ali Bhoon, Atira Ikram and Syed Muhammad Islam, Advocates in connected W.P. Nos.59443, 59438 and 59463 of 2022.

Mr. Ibrahim Haroon, Advocate in connected W.P. No.67493/2022.

M/s Muhammad Mansha Sukhera, Muqadam Sukhera and Muhammad Ali Awan, Advocates in W.P. Nos.58940, 59033 and 62659 of 2022.

Mr. Shazib Masood, Advocate in connected W.P No.75732/2022.

Mr. Waseem Ahmad Malik, Advocate in connected W.P No.75755/2022.

Malik Ahsan Mehmood, Advocate in connected W.P. No.59488 of 2022.

Mr. Muhammad Ajmal Khan, Advocate in connected W.P. No.60097 of 2022.

M/s Faisal Rasheed Ghouri, Azeem Suleman, Saqib Qadeer, Muhammad Abrar, Muhammad Nouman Shams Qazi and Yasir Hamid Advocates in connected W.P. Nos.62154, 62161, 62162, 67966, 68014, 62156, 62158 and 62151of 2022.

Rai Amir Ijaz Kharal, Advocate in connected W.P. No.64121 of 2022.

M/s Muhammad Abubakar, Malik Nadir Ali Sherazi and Muhammad Usman Advocates in connected W.P. Nos.65115, 65189, 65217, 77760, 77826, 77823, 77827, 77824, 77825 and 67479 of 2022.

Mr. Mustafa Kamal, Advocate in connected W.P. No.65901 of 2022.

Mr. Hammad-ul-Hassan Hanjra, Advocate in connected W.P. Nos.67030 and 60109 of 2022.

Mr. Khalil-ur-Rehman, Advocate in connected W.P. Nos.67402, 67982 and 74674 of 2022.

M/s Muhammad Shahid Baig and Muhammad Bilal Pervaiz, Advocates in connected W.P. Nos.67846, 67928, 67943, 68027 and 80631 of 2022.

Mr. Usman Khalil, Advocate in connected W.P. No.67852 of 2022.

Mr. Mudassar Shuja-uddin, Advocate in connected W.P. Nos.62021 and 69356 of 2022.

Mr. Zahid Imran Gondal, Advocate in connected W.P. No.68885 of 2022.

Mr. Ahsan Ahmed Munir, Advocate in connected W.P. No.68995 of 2022.

Mr. Khurram Tawassal, Advocate in connected W.P. No.69625 of 2022.

Mr. Shahid Jami, Advocate in connected W.P. Nos.72887 and 72885 of 2022.

Mr. Arshed Javed, Advocate for petitioner in connected W.P. Nos.76940, 76945, 76949, 76951, 76957, 76963 and 76966 of 2022.

Mr. Muhammad Javed Arshad, Advocate for petitioner in connected W.P. No.77291 of 2022.

Respondents by: Mr. Sheraz Zaka, Assistant Attorney General for Pakistan.

Mr. Muhammad Awais Ahsan Joiya, Assistant Advocate General, Punjab.

M/s Ahmed Pervaiz, Saffi-ul Hassan, Ali Umrao and Ahtasham Mukhtar, Advocates for CIR.

Mr. Liaqat Ali Chaudhary, Advocate for respondent/CIR in connected W.P. No.77823/2022.

M/s Sheikh Muhammad Ali, Maryam Asad, Muhammad Sharfeen, Baran Khan Sherwani and Muhamamd Rizwan, Advocates for FBR.

Syed Zain-ul-Abidein Bukhari, Advocate for respondents/CIR.

Mr. Shahid Sarwar Chahil, Advocate for respondent/CIR in W.P. Nos.52371/2022 and 67402/2022.

Mr. Nadeem Khan, Advocate for FBR.

Mr. Adeel Shahid Karim, Advocate.

Mr. Bilal Munir, Advocate/Legal Advisor for FBR in connected petitions.

Mr. Anwar Ali Sanga, Advocate for FBR.

Mr. Abdul Muqtadir Khan, Advocate for FBR.

M/s Khalid Ishaq, Nidaya Aftab and Nayab Tarar, Advocates for FBR.

M/s Ch. Sultan Mehmood, Samran Mushtaq Ch. and Ahmed Ali Gondal, Advocates.

Ms. Sana Awan, Law Officer, Finance Department.

Mr. Naeem Khan, Advocate for FBR.

Nasir Mehmood Bhatti, Law Officer, Finance Department, Government of the Punjab.

Ms. Laila Ghafoor, Director, Law, FBR.

Muhammad Majid, CIR (Legal).

ASIM HAFEEZ, J. Hereunder follows the reasoning of order of dismissal of subject matter petitions, announced in open court on 22.12.2022, after hearing the submissions [hearings spread over various dates].

This and connected constitutional petitions (listed in the attached schedule A) throw challenge to the constitutionality of Section 8(2)(b) of the Finance Act, 2022 ("**Act of 2022**") on the premise of being non-conforming to the constitutional requirements; substantially on two-counts, firstly, that the law legislated, whereby it had allegedly taxed the foreign assets of the petitioners, is not within the territorial grasp of the Parliament;

and secondly, the absence of legislative competence, because matter of taxing immovable property exclusively falls within the legislative domain of the provincial legislature(s).

Basis of constitutional limitations:

Want of territorial competence of the Parliament is *inter alia* questioned in the context of clause (2) of Article 1 of the Constitution of the Islamic Republic of Pakistan, 1973 ("**the Constitution**"); and its ability to legislate to tax the immovable property is quizzed in wake of restrictions imposed *inter alia* in terms of Articles 142 (c) of the Constitution, pleading that authority to tax immovable property is beyond the reach of entry 50 of the Federal Legislative List of the Fourth Schedule of the Constitution (entry 50).

Submissions in support of the petitions.

2. Learned counsel argues that Parliament lacks authority to tax assets located outside the territorial limits of Pakistan, which limits are defined under Articles 1(2) and 141 of the Constitution. Adds that even otherwise Parliament is divested of any authority to tax immovable property, which was excluded in terms of entry 50. Referred to the case of *Muhammad Khalid Qureshi V. Province of Punjab through Secretary, Excise and Taxation Department, Lahore and another* (**2017 CLC 523**).

3. Learned counsel for the petitioner of W.P. No.55307/2022 submits that authority to tax foreign assets is neither covered under entry 50 nor any

support could be drawn from residual entry 58. And provincial legislature(s) enjoys exclusive powers to tax immovable property under Article 142(c) of the Constitution. Submits that expression 'tax' and 'taxation' must be construed in the light of Article 260 of the Constitution. Further submits that taxing of foreign assets otherwise violates arrangements / treaties regulating double taxation regime, concept internationally recognized and acknowledged locally under section 103 of the Income Tax Ordinance, 2001. Refers to the cases of *Pakistan Mobile Communication Ltd and 2 others V. Pakistan/Federation of Pakistan & others* **[(2022) 125 tax 401 (H.C. Kar.)]** and *Pakistan International Freight Forwarders ASSN and others V. Province of Sindh and ors.* **[(2016) 114 tax 413 (H.C, Kar.)]**.

4. Learned counsel representing petitioners in petitions bearing W.P. Nos. 58940, 59033 and 62659 of 2022, banked on the expression *'not including'* in entry 50 to emphasize that Parliament had no powers to tax the immovable property and exclusion provided required protection to give effect to the autonomy envisaged through Eighteenth Constitutional Amendment ('Eighteenth Amendment'). Adds that expression "assets" referred in first half of the entry be read subject to the exclusion provided to guard the exclusivity extended to provincial legislature(s) qua immovable property. Refers to judgments from ours and neighbouring jurisdiction, reported as "*Haji MUHAMMAD SHAFI and 3 others v. WEALTH TAX OFFICER, CIRCLE IV, KARACHI and 3 others"* (**PLD 1989 Karachi 15**). *"Messrs I.C.C. TEXTILE LTD., and others v. FEDERATION OF PAKISTAN and others"* (**2001 SCMR 1208**), *"B.P.*

BISCUIT FACTORY LTD., KARACHI v. WEALTH TAX OFFICER and another" (**1996 SCMR 1470**), *"IBRAHIM BROTHERS LTD. v. WEALTH TAX OFFICER, CIRCILE III, KARACHI and another*" (**PLD 1985 Karachi 407**), *"Sanaullah Woollen Mills limited and another v. Monopoly Control Authority limited and others"* (**PTCL 1987 CL. 175**), *"Haji ISMAIL DOSSA v. MONOPOLY CONTROL AUTHORITY"* (**PLD 1984 Karachi 315**), *"MEHMOOD-UL-HASSAN BABAR KAHN v. LIAQAT ALI KARIM and 9 others*" (**2002 YLR 2227**), *"Hafiz ZIAUDDIN v. MUHAMMAD ISMAIL and another*" (**PLD 1959 (W.P.) Karachi 52**), *"MUHAMMAD SOHAIL SIDDIQUI and 2 others v. Mst. PARVEEN alias MUNNI*" (**2010 MLD 1433**), *"P.I.C.I.C. v. FAZAL CORPORATION (PVT.) LTD., and another"* (**PLD 1993 Karachi 671**), *"Ahmad G.H. Arif, etc. v. The Commissioner of Wealth Tax Calcutta"* (**AIR 1971 SC 1691**), *"Maharashtra State Co-operative Bank Ltd. V. The Employees Provident Fund Organization and others*" (**AIR 2010 SC 868**), *Messrs Julian Hoshang Dinshaw Trust and others V. Income-Tax Officer, Circle XVIII South Zone, Karachi and others* (**1992 PTD 1**). Learned counsel also highlighted the principles to be considered and appreciated while interpreting Constitutional provisions and declaration qua voidability of colourable legislation. Referred to the cases of *Messrs Sui Southern Gas Company Ltd. and others V. Federation of Pakistan and others* (**2018 SCMR 802**), *PAKISTAN INTERNATIONAL FREIGHT OF FORWARDERS ASSOCIATION through General Secretary v. PROVINCE OF SINDH through Secretary and another"* (**2017 PTD 1**), *Baz*

Muhammad Kakar and others V. Federation of Pakistan through Ministry of Law and Justice and others (**PLD 2012 Supreme Court 923**) and *"FEDERATION OF PAKISTAN and others v. SHAUKAT ALI MIAN and others"* (**PLD 1999 SC 1026**).

5. Learned counsel for the petitioners of petitions bearing W.P. Nos.59443, 59438 and 59463 and 59488 of 2022 opens account with an assertion that no taxes could be imposed on foreign assets in respect whereof declarations were made under the amnesty schemes offered by the Federal Government. Emphasized that entry 50 consists of two integrated parts, connected by the phrase 'not including', and authority to legislate qua taxes on capital value of assets is extended to the Federation but power to tax immovable property stood specifically excluded. Adds that exclusionary clause in fact qualifies and restricts the generality of capital value taxes on assets. Submits that through Eighteenth Amendment only the incidence of *'capital gains'* was omitted from the latter half of entry 50, though the basic structure of entry 50 remained unchanged. Submissions are articulated while exercising right of rebuttal.

6. Learned counsel representing petitioners in W.P.Nos.67450, 67451, 67587, 67608, 71372, 71369, 71371, 71378, 71380 and 72393 of 2022, highlighted the scope and scheme of the impugned section, i.e., Section 8(2)(b) of Act of 2022. Adds that taxing the foreign assets of resident individuals – those who are not domiciled here but only residing here for 183 days only – is unlawful, irrational and contrary to the double taxation

regime. In brief, learned counsel questioned the vires of Section 8(2)(b) of Act of 2022 on following grounds, (i) lack of legislative competence, (ii) imposition of tax on the gross value of assets without allowing adjustment of debts / liabilities against immovable properties, (iii), nature of the tax is alike a wealth tax on the gross value of the assets / immovable properties, which is impermissible in the context of entry 50. Adds that Federal Government cannot tax assets outside the territorial limits defined through Article 1(2) of the Constitution. Adds that in terms of Article 97 the Executive authority of the Federation extends to the matters with respect to which Parliament has power to make laws and not otherwise. Also referred to Articles 141, 142 (c), 143, 144, 260, 264 of the Constitution to support contentions. Adds that the expression "extra territorial operations" in Article 141 of the Constitution must be read 'subject to the Constitution' and especially in the context of entries 3 and 32 of the Federal Legislative list, which specifically empowers Parliament to legislate vis-à-vis said matters covered thereunder. Submits that by virtue of Article 270AA(7) of the Constitution, appropriate legislature(s) legislated with respect to the matter of Sales Tax on Services, which become provincial subject by virtue of amendment is entry 49. Submits that question of extraterritoriality of any legislation need to be contextualized in the context of international treaties, conventions and agreements, hence, imposition of tax on foreign assets otherwise violates the mandate thereof. Reference is made to the cases of *"GOVERNMENT OF PUNJAB and others v. AAMIR ZAHOOR-UL-HAQ and others"* (**PLD 2016 SC 421**) and *"SOCIETE GENERALE DE*

SURVEILANACE S.A. v. PAKISTAN through Secretary Ministry of Finance, Revenue Division, Islamabad" (**2002 SCMR 1694**). Learned counsel distinguished Article 141 of the Constitution from Article the 245 (2) of the Constitution of India and submits that sub-article (2) of Article 245 extends protection to extra territorial legislation, which manifests no commonness with Article 141, *ibid.*

Submissions by respondents to support tax in question.

7. Learned counsels representing FBR submit that entry 50 in fact envisaged separate and mutual exclusive class of taxes, first half thereof provides for tax on capital value of assets and second half provided for tax on immovable property, latter coming within the legislative competence of the Provincial legislature(s). Emphasized that two kinds of taxes belong to separate and distinct species in the light of ratio of the decision in the case of *Muhammad Khalid Qureshi V. Province of Punjab through Secretary, Excise and Taxation Department, Lahore and another* (**2017 PTD 805**) ("**luxury-house tax case**") and read paragraphs 19 and 20 thereof [at pages 827, 828 and 829]. Learned counsels submit that Parliament is otherwise competent to legislate with respect to any matter falling beyond the territories of the provinces, and Parliament is empowered to legislate. Learned counsels referred to decision in the case of *Messrs Sui Northern Gas Company Ltd and others V. Federation of Pakistan and others* (**2018 SCMR 802**) - particularly paragraphs 15 and 17 of the judgment. Adds that levy under reference is otherwise covered in terms of Article 141 of the

Constitution, if at all construed of having extra territorial operations. Referred to the case of *GVK INDS. LTD. & ANR V. The Income Tax Officer & ANR* [**2011 4 (SCC) 36]**, to highlight the scope of Article 245 of the Constitution of India in the context of laws having extra territorial operations and legitimacy thereof. Argues that presumption of constitutionality is attracted and unless rebutted, laws are deemed to be *intra vires.* Referred to the case of *"LAHORE DEVELOPMENT AUTHORITY through D.G. and others v. Ms. IMRANA TIWANA and others"* (**2015 SCMR 1739**) at page 1769 to highlight the principles of interpretation of statutes. Learned counsel drew dissimilarities in the tax of capital value of assets and tax on immovable property by referring to and reading entries 86 of the Union List and 49 of the State List of Seventh Schedule of the Constitution of India, and referred decision in the case of *Sudhir Chandra Nawn V. Wealth-Tax Officer, Calcutta & Ors.* (**1969 AIR Supreme Court 59**). Submits that 8(2)(b) of the Act of 2022 had not imposed any tax on the immovable property, therefore question of encroaching upon occupied legislative field does not arise. To support submissions referred decisions in cases of *"FEDERATION OF PAKISTAN through Chairman FBR and others v. SALEEM RAZA"* (**PLD 2020 SC 320**) and *"Electronics Corporation of India v. Commissioner of Income Tax & ANR*" (**1989 SCR (2) 994**).

8. Learned Assistant Attorney General questioned the maintainability of the petition in the light of ratio of *"Messrs ELAHI COTTON MILLS LTD. and others v. FEDERATION OF PAKISTAN through Secretary M/o*

Finance, Islamabad and 6 others" (**PLD 1997 SC 582**), averring that levy of tax is the part of the economic policy / matters, which is not amenable to judicial review jurisdiction. Adds that distinctiveness of the tax on capital values of assets was acknowledged in the case of *"Haji MUHAMMAD SHAFI and others v. WEALTH TAX OFFICER and others"* (**1992 PTD 726**). Submits that instances of laws having extra-territorial operation(s) are found in various jurisdictions across the world and such laws cannot be declared invalid on the ground of being *ultra vires*, but the courts of the legislating country are bound to enforce such laws. Adds that Federal Government has legislated various laws having extra-territorial operations, referred to the National Accountability Ordinance, 1999, Anti-Money Laundering Act 2010, etc. Referred to the cases of *"Controller of Excise Duty v. John De'Sooza"* ***(Indian Law Review) 1974 Karnataka page 299)*** and *"A.H. Wadia v. Commissioner of Income-Tax*" ***(Indian Law Review) 1974 Karnataka page 299*** and ***Bombay Law Review (1949) 51 page 287***. Emphasized that tax on capital value of assets and taxes on immovable properties are separate levies and no occasion of alleged legislative collision arises between the Parliament and Provincial legislature(s) – referred to entry 86 of the Union List and entry 49 of the State List of the Constitution of India to highlight distinct characteristics of the levies.

Submissions in rebuttal:

9. In rebuttal, learned counsel for the petitioners in W.P. Nos.59443, 59438 and 59463 and 59488 of 2022 submits that essence of the

submissions in support of the tax is that exclusionary phrase [‘not including’] excludes, what cannot otherwise be included within the scope of taxes on capital value of assets, and in case such submissions are appreciated, it would render the exclusionary clause redundant, which is an inconceivable phenomenon while construing provisions of the Constitution. Adds that Government of India Act 1935 recognized distinct character of the taxes on land and building and taxes on capital value of the assets - Referred to entry 55 of the Federal Legislative List and entry 42 of Provincial Legislative list of Act of 1935 to highlight distinctiveness between the levies [tax on capital value of assets and tax on the lands and buildings] – but adds that exclusion provided in entry 50 manifest a purpose. Explained that three kinds of taxes are recognized with respect to immovable property,

a) Taxes on capital value of immovable property.

b) Taxes on the rental value of immovable property

c) Taxes on the size or other physical attributes of immovable property

Submits that essence of the submissions of the respondents are that category (b) and (c) of taxes were excluded from legislative domain of the Parliament, which could competently tax on the capital value of assets. And category (b) and (c) were already excluded from the scope of taxes on capital value of assets, and it cannot be implied or inferred that exclusionary clause was simply drafted to reaffirm exclusion of categories

(b) or (c), already excluded. Submits that instead of attributing redundancy to the exclusionary clause, its real objective need to be explored, which, evidently, is the exclusion of immovable property from the scope of tax on capital value of assets. Adds that when words occur in relationship to each other, necessarily, the tools of statutory interpretation need to be invoked. Refers to the rule of *Ejusdem Generis* and *Noscitur a socii*. States that words take colour from their context and general words that follow, otherwise relatable to the focused expressions, must be read in the context of the focused expressions, with qualifications that make them relatable to the focused words. Submits that post-eighteenth amendment the scope of the exclusionary clause stood widened. Adds that while applying rule of *Ejusdem generis* the expression "*taxes"* in the exclusionary clause would imply placing of restriction to tax the immovable property. Refers to decisions in the cases of *AAM LOG Ittehad and another V. The Election Commission of Pakistan and others* (**PLD 2022 Supreme Court 39**), *Justice Shaukat Aziz Siddiqui and others V. Federation of Pakistan through Secretary Law and Justice, Islamabad and others* (**PLD 2018 Supreme Court 538**), *Sami Ullah Baloch and others V. Abdul Karim Nousherwani and others* (**PLD 2018 Supreme Court 405**), *Syed Jalal Mehmood Shah and another V. Federation of Pakistan and another* (**PLD 1999 Supreme Court 395**) and *Shahid Nabi Malik and another V. Chief Election Commissioner, Islamabad and 7 others* (**PLD 1997 Supreme Court 32**).

10. Further submits that purpose and effect of an exclusionary clause is to exclude, what would otherwise be included. Adds that exclusionary clause implied exclusion of authority to tax immovable property, uninfluenced by the expression assets in entry 50. Refers to cases from neighbouring jurisdiction, reported as *Sunrise Associates V. Govt. of NCT of Delhi and Ors* [**(2006) 5 SCC 603]**, *Daman Singh and Ors. V. State of Punjab and Ors.* (**AIR 1985 SC 973**) and *Union of India (UOI) V. Harbhajan Singh Dhillon* (**AIR 1972 SC 1061**)**.** Adds that historical evolution of constitutional process must be appreciated while interpreting the provisions thereof. Adds that Constitution is not a document which is written on 'tabula rasa' but required to be interpreted in the context of historical perspective and evolution, referred the case of *"M.P.V. Sundararamier & Co. v. The State of Andhra Pradesh & Ors."* (**AIR 1958 SC 468**). Learned counsel referred to following cases, to elaborate the rule of *Ejusdem Generis & Noscitur a socii*, *Shakeel Shah V. The State and others* (**2022 SCMR 1)**, *Silk Bank Limited through Team Leader Legal V. Sui Northern Gas Pipelines Limited through Authorized Attorney and 9 others* (**PLD 2021 Lahore 5**), *Commissioner Inland Revenue (Zone-I) LTU, Karachi V. Messrs Linde Pak Ltd., Karachi* (**2020 SCMR 333**), *Messrs Asfaq Trading Company through Proprietor V. Collector of Customs, Model Customs Collectorate, Lahore through Deputy Collector of Customs (Group-1), Lahore* (**2016 PTD 2111**), *Barkhurdar V. Appellate Tribunal/Additional District and Sessions Judge and 3 others* (**PLD 2016 Lahore 101**), *Punjab Cooperative Board of Liquidation through Chairman*

V. Muhammad Ilyas (**PLD 2014 Supreme Court 471**) and *Ghulam Rasool V. Muhammad Hayat* (**PLD 1984 Supreme Court 385**).

Determination of the questions.

11. Uniqueness of styles, approaches and perspectives of each of the learned counsels may vary but vulnerability of Section 8(2)(b) of the Finance Act, 2002 is repetitively hammered on the premise of want of authority / legislative competence of the Parliament to make law to tax capital value of foreign assets, inclusive of immovable properties, in the wake of lack of territorial proximity qua foreign based assets and absence of legislative competence to tax immovable property, otherwise coming within the exclusive legislative competence of the provincial legislature(s). Essentially, following issues surfaced and need to be addressed.

Firstly. Is the tax in question – tax on the capital value of assets – covered under entry 50 of the Fourth schedule of the Federal Legislative list, unaffected by the exclusion provided therein?

Secondly, what is the scope and effect of the phrase *"not including tax on immovable property"* (Exclusionary clause) in entry 50 and extent thereof, in the context of first part of said entry?

And thirdly, whether the Parliament could legislate instant law - to tax foreign based assets of the petitioners [domiciled in the foreign territories / jurisdiction(s)] in violation of rule of *'presumption against*

extraterritoriality'. Other ancillary submissions are also addressed correspondingly.

12. Unquestionably, scope and effect of entry 50 is the epicenter of subject matter controversy. Before addressing contesting issues or disagreements, it is expedient to highlight least contested question, which is regarding the distinct character of the taxes referred in entry 50, one being the tax on capital value of assets and other tax on immovable property. This legislative intent is found in entry 50 and rationalized through reasoning hereunder follows. There is no cavil that objections qua the measure / machinery of tax, mechanism of computation or some semblance of similarity in the process of evaluation / calculation of liability will not affect the essential character of the levy. Evidently, the individuality or distinctiveness of the imposts - tax on capital value of assets and tax on land and building was acknowledged throughout the constitutional journey, so far undertaken, conventionally reckoned from the promulgation of Government of India Act, 1935, including customized amendments. For convenience, the journey is divided in two segments.

Pre-partition: Government of India Act 1935 - Entry 55 of List-1 of the Federal Legislative List of the Seventh Schedule of Act, 1935, which reads *'Taxes on capital value of the assets, exclusive of agricultural land, of individual and companies; taxes on the capital of the companies'*] and entry 42 of the List-II Provincial Legislative List of Seventh schedule, which states *'Taxes on land and buildings, hearths and windows*.'

Post-partition; Constitution of Pakistan 1956 - Entry 26 of the Federal List of Fifth Schedule thereof reads *'Duties of customs (including export duties);duties of excise (including duties on salt, but excluding alcoholic liquor, opium and other narcotics), corporation taxes and taxes on income other than agricultural income; estate and succession duties in respect of property other than agricultural land; taxes on capital value of assets exclusive of agricultural lands; taxes on sales and purchases; terminal taxes on goods or passengers carried by sea or air; taxes on their fares and freights; taxes on mineral oil and natural gas'*; and entry 75 of the Provincial list of Fifth Schedule reads as *'Taxes on land and buildings'*.

The year 1962 witnessed arrival of new constitutional document, i.e., Constitution of 1962 - Sub-entry (e) of entry 43 of the Third Schedule reads *'taxes on the capital value of assets, not including taxes on capital gains on immovable property':* [There was a single legislative list and Central Legislature was empowered to legislate to tax capital value of assets to the exclusion of taxes on the capital gains on immovable property]. It is pertinent to mention that in terms of Article 132 of the Constitution of 1962, Provincial Legislature was competent to legislate with respect to the matters, other than the matters enumerated in Third Schedule.

A new constitutional document was framed in the year 1973, and entry 50 thereof deals with tax on the capital value of assets, other than the capital gains on the immovable property. It is notable that before introducing the Eighteenth Amendment, entry 43(e) of 1962 Constitution

was replica of the entry 50 of the Constitution of 1973. And after Eighteenth Amendment the expression *'on capital gains'* was omitted from entry 50. It is expedient to reproduce entry 50, before and after Eighteenth Amendment, which read as,

> "*Taxes on the capital value of the assets, not including taxes* ***<u>on capital gains</u>*** *on immovable property".*
>
> "*Taxes on the capital value of the assets, not including taxes *** on immovable property".*
>
> [*** words emphasized were omitted through eighteenth amendment]

13. Mutually exclusiveness / distinct character of taxes is well acknowledged in our neighbouring jurisdiction as well. Under Constitution of India, entry 86 of the List-1(Union List) provided for tax on capital value of assets and entry 49 of List-II (State List) provided for taxes on land and building. Questions regarding exclusivity or otherwise of aforesaid entries variously came up for adjudication before the constitutional courts, wherein distinction between two levies, individually envisaged in terms of entries 86 and 49 was maintained, while harmonizing the province of legislative competence between the Union and the States. Reference is made to the case of <u>*D. C. Gouse and Co. etc. V. State of Kerala & ANR. Etc.*</u> **[1980 SCC (2) 410]**, relevant portion is reproduced hereunder,

> *The word "tax" in its widest sense includes all money raised by taxation. It therefore includes taxes levied by the Central and the State Legislatures, and also these known as "rates', or other charges levied by local authorities under statutory powers. "Taxation" has therefore been defined in clause (28) of article 366 of the Constitution to include "the imposition of any tax or impost, whether general or local or special," and it has been directed that "tax.' shall be 'construed accordingly."*

Chapter 1 of Part XI of the Constitution deals with the distribution of legislative powers. Article 246 of that chapter states, inter alia, the exclusive powers of the Parliament and the State Legislatures according as the matter is enumerated in List I or List II of the Seventh Schedule. Entry 86 of List I in which reliance has been placed by Mr. Francis, reads as follows:-

> *"86. Taxes on the capital value of assets, exclusive of agricultural land, of individuals and companies; taxes on the capital of companies."*

Now the word "assets" has been defined in the Century Dictionary (which is an encyclopedic lexicon of the English language) as follows-

> *"Property in general; all that one owns, considered as applicable to the payment of his debts..... As a singular. Any portion of one's property or effects so considered."*

So if a tax is levied on all that one owns, or his total assets, it would fall within the purview of the Entry 86 of List I, and would be outside the legislative competence of a State Legislature, e.g. a tax on one's entire wealth. That entry would not authorise a tax imposed on any of the components of the assets of the assessee. A tax directly on one's lands and buildings will not therefore be a tax under entry 86.

On the other hand, entry 49 of List Ir is as follows,- "49. Taxes on lands and buildings."

If therefore a tax is directly imposed on "buildings", it will bear a direct relation to the buildings owned by their assessee. It may be that the building owned by an assessee may be a component of his total assets, but a tax under entry 86 will not bear any direct or definable relation to his buildings. A tax on "buildings" is therefore a direct tax on the assessee's buildings as such, and is not a personal tax without reference to any particular property.

It has to be appreciated that in almost all cases, a tax has two elements which have been precisely stated by ***Seervai in his "Constitutional Law of India," second edition, volume 2,*** *as follows, at page 1258,-*

> *"Another principle for reconciling apparently conflicting tax entries follows from the fact that a tax has two elements: the person, thing or activity on which the tax is imposed, and the amount of the tax. The amount may be measured in many ways; but decided cases establish a clear distinction between the subject matter of a tax and the standard by which the amount of tax is measured. These two elements are described as the subject of a tax and the measure of a tax."*

It may well be that one's building may imperceptibly be the subject matter of tax, say the wealth-tax, as a component of his assets. under entry 86 (List I); and it may also be subjected to tax, say a direct tax under entry 46 (List II), but as the two taxes are separate and distinct imposts, they cannot be said to overlap other and would be within the competence of the Legislatures concerned.

Reference in this connection may be made to ***Sudhir Chandra Nawn v. Wealth-Tax officer, Calcutta and others.*** *(1) The petitioner there challenged the demand for the recovery of wealth tax on the ground, inter alia, that since the expression "net wealth" included the buildings of assessee and the power to levy tax on them was referred to the State Legislature under entry 49, List II Parliament was not competent.4 to levy the tax under entry 86 of List 1. This Court rejected the challenge and laid down the law as follows,-*

> *"The tax which is imposed by entry 86 List I of the Seventh Schedule is not directly a tax on lands and buildings. It is a tax imposed on the Capital value of the assets of the individuals and companies, on the valuation date. The tax is not imposed on the components of the assets of the assessee: it is imposed on the total assets which the assessee owns, and in determining the net wealth not only the encumbrances specifically charged against any item of asset, but the general liability of the assesse to pay his debts and to discharge his lawful obligations have to be taken into account.*
>
> *Tax on lands and buildings is directly imposed on lands and buildings, and bears a definite relation to it. Tax on the capital value of assets bears no definable relation to lands and buildings which may form a component of the total D. assets of the assessee. By legislation in exercise of power under entry 86 List I tax is contemplated be levied on the value of the assets. For the purpose of levying tax under entry 49 List II the State Legislature may adopt for determining the incidence of tax the animal or the capital value of the lands and buildings. But the adoption of the annual or capital value of lands and buildings for determining tax liability will not, in our judgment, make the fields of legislation under the two entries overlapping."*

The decision in Sudhir Chandra Nawn's case was followed by this Court in Assistant Commissioner Land Tax and others v. F. The Buckingham and Carnatic Co. Ltd., Etc.(1) where the vires of the Madras Urban Land Tax Act, 1966, was challenged with reference to entry 86 of List I of the Seventh Schedule. The legal position on that aspect of the controversy was reiterated as follows,-

> *"But in a normal case a tax on capital value of assets bears no definable relation to lands and buildings which may or*

> *may not form a component of the total assets of the assessee. But entry 49 of List II, contemplates a levy of tax on lands and buildings or both as units. It is not concerned with the division of interest or ownership in the units of lands or buildings which are brought to tax. Tax on lands and buildings, is directly imposed on lands and buildings, and bears a definite relation to it. Tax on the capital value of assets bears no definable relation to lands and buildings which may form a component of the total assets of the assessee."*
>
> *There is therefore no force in the argument that the State Legislature was not competent to impose the tax on buildings under entry 49 of list II of the Seventh Schedule of the Constitution."*
>
> [Emphasis supplied]

14. One of the arguments that the expression 'assets' in first half of entry 50 must be interpreted as excluding the immovable property was also raised in the case of *Oudh Sugar Mills V. U.P.* **[AIR 1960 Allahabad 136]** - which decision manifested divergent view from the decisions by other High Courts of different states – and was overruled in the case of *Sudhir Chandra Nawn v. Wealth-Tax officer, Calcutta and others.* (**[1969] 1 S.C.R 108**).

15. One of the learned counsels has relied upon the decision in the case of *Union of India V. Harbhajan Singh Dhillon* (**AIR 1972 SC 1061**), wherein it was observed that act of legislating Indian Wealth Tax Act 1957 comes within the ambit of entry 97 of the Constitution of India [a residuary entry and provides power of the Central legislature in respect of all such items not provided in list No.s II & III of Indian Constitution including any tax not mentioned in either of the lists, read with section 248 of the Constitution of India] and not within entry 86 thereof, which findings were reviewed in the case of the case of *COMMISSIONER OF WEALTH TAX v.*

DR KARAN SINGH AND OTHERS (**1993 SCR (1) 560**), wherein Indian Supreme Court declared that Wealth Tax Act 1957 was legislated in exercise of powers under entry 86 of the Indian Constitution and not under entry 97 thereof. The case of *Harbhajan Singh Dhillon* (supra) was discussed in the case of *Haji MUHAMMAD SHAFI and 3 others* (supra) and ratio was not approved in the context of challenge thrown to the vires of Wealth Tax Act 1963.

16. There is another aspect of the matter. Whether machinery / measure of tax affects its real essential character. There is no cavil that the measure of tax is not itself the test in determining the nature of the tax, or a determining factor. Discussion is found in volume 3 of *CONSTITUTIONAL LAW OF INDIA A Critical Commentary by H M SERRVAI – FOURTH EDITION* – on this question and distinction was drawn between the subject of taxation and the measure of taxation, by referring to the observations recorded in the case of *'Sir Byramjee Jeejeebhoy v. The Province of Bombay'* [**(1940) 42 BOMLR 10**] in following terms:-

> *"We have to discover what is the "essential character" of the tax, what it is "in pith and substance, "apart from the mere machinery by which it is assessed, and we are to look mainly at the charging Section s of the Act for this purpose. But neither in the charging Section s nor in any other part can I find any clear evidence that it is intended to be, or is in effect, a tax upon income".*

Question was further discussed in referred *treatise* by referring to the observations in the case of *'Municipal Corp. Ahmedabad v. Patel Gordhandas'* **[(1954) Bom 41]** at page 71.

> *"Again, a tax on lands and buildings, based on their capital value as a measure of the tax, would not make it a tax on the capital value of assets, because such tax was an "asset", for, if lands or buildings were mortgaged, the tax would be on the equity of redemption, whereas the existence of a mortgage would be irrelevant for taxing lands or buildings".*

It is evident from discussion in preceding paragraphs, in the context of the judicial pronouncements, that tax on capital value of assets is a different category of tax when compared with the tax on immovable property.

17. The impugned provision is section 8(2)(b) of Act, 2022, which is in fact the charging section and clearly manifests the essential character of the tax and subject thereof. It is expedient to reproduce relevant part of the impugned provision of law, which reads as:-

> *"**8. Capital value tax 2022.** –(1) A tax shall be levied, charged, collected and paid **on the value of assets** at the rates specified in the First Schedule to this section for tax year 2022 and onwards:*
>
> *Provided that the tax shall be charged from the 1st day of July, 2002 in case of motor vehicles held in Pakistan.*
>
> *(2) Capital value tax shall be charged on the following assets:-*
>
> *…….*
>
> *(b) **foreign assets of a resident individual** where the value of such assets on the last day of the tax year in aggregate exceeds Rupees one hundred million; and*
>
> *……*
>
> [Emphasis supplied]

Evidently, tax is levied on the value of the assets, which assets were identified as foreign assets of a resident person. Applying the rule of *pith and substance'* manifestly tax levied is 'in relation to the capital value of the assets', which cannot be equated with levy on *corpus* of immovable

property. Determination of capital value of assets might include the immovable property, which alleged factor would not alter the essential nature and character of the tax in question. There is distinction between the 'subject of taxation' and 'measure of taxation. In the case of *Attorney-General for Asakat-Chewan V. Attorney-General for Canada and others* [**1949] AC 110 (Privy Council)** distinction qua the concepts of 'in relation to' and 'affecting' was elucidated in the context of disputes qua legislative competence, wherein it was observed that *"That there is a definite distinction between the concepts of "affecting" and "in relation to" is a matter of general application in constitutional cases in Canada; legislation may affect things, whether "interest" or "property and civil rights" without being in relation to'.*

The scope of tax on capital value of assets was also discussed in the case of the *V. Pattabhiraman V. The Assistant Commissioner of ....* (**AIR 1971 Mad 61**), relevant portion is reproduced hereunder:-

> *"37. This is a tax on the individual as an owner of assets and is imposed on the capital value of his assets. It is a tax on his total worth. The tax is not on the assets as such but on the capital value thereof. The subject-matter of the tax is capital value which is not merely a measure of tax. This words "assets" as well as "capital value" point to aggregation and signify the totality of the value of all the assets. The words "assets" is noticed in the Entry in the sense of property, though of course "assets;" may include property like lands and buildings. The expression may include movables, cash and securities. That the assets include land is obvious from the exclusion, form the purview of the entry of agricultural land. The word "assets" may be inappropriate to refer to any particular item of property by itself.*

> *39. As a matter of fact, the tax Entries in the Lists refer to the subject-matter of taxation and sometimes point to the individual on whom the tax is to be imposed or the taxable even but not the measure or manner of taxation. See Mathuraj Pillai v. State of Madras. As we said, we are not persuaded to read capital value or principal value as but a measure and not the subject-matter of taxation. It is try that assets for purposes of Entry 86 may include urban lands and buildings. But on that grounds, it cannot be said that lands, and buildings are taxed twice on their capital value, but under Entry 86 of the Union List and under Entry 49 of the State List. The two taxes are entirely different in their basic concept and fall on different subject-matters. A tax on the aggregate value of the whole is not equivalent to tax on some of the units of such a whole".*

18. Now turning to judicial pronouncements from our jurisdiction. Controversy in the context of scope of entry 50 and extent thereof variously came up for adjudication, largely in the context of challenge to the vires of the Wealth Tax Act 1963 [framed in the exercise of law-making powers under entry 43(e) of Constitution of 1962 and continued under the Constitutional document of 1973, till the Act was repealed in the year 2003] and objection on the premise of double taxation on immovable property – imposition of levy by the Federal Government through Wealth Tax Act 1963 and Provincial legislature(s) through imposing taxes on the immovable property in the Urban areas – in terms of West Pakistan Urban Immovable Property Tax Act 1958. Distinction qua tax on capital value of assets and tax on immovable property, in the context of entry 50 was consistently maintained. Reference is made to the cases of *"Haji MUHAMMAD SHAFI and 3 others v. WEALTH TAX OFFICER, CIRCLE IV, KARACHI and 3 others"* (**PLD 1989 Karachi 15**), *"Haji MUHAMMAD SHAFI and 3 others v. WEALTH TAX OFFICER, CIRCLE*

IV, KARACHI and others" (**1992 PTD 726**) and the case of *Messrs I.C.C. TEXTILE LTD., and others v. FEDERATION OF PAKISTAN and others"* (**2001 SCMR 1208**). In view of the above, no further discussion qua the distinct existence, scope and extent of tax on capital value of assets and tax on immovable property is warranted. It is pertinent to mention that one of the learned counsels had referred to decisions to highlight definitional aspect of the expression 'asset' and 'wealth', which decisions have hardly any bearing on the issue at hand. Merely because expression 'wealth' is not defined in the Act, 2022 or adjustments of liabilities and debts are not allowed, while determining the value of assets and computing quantum of liability, the levy would not be deprived of its essential character.

19. Despite objections, legislation in question passes the test of legislative competence. Parliament, under entry 50, is competent to make laws to tax on the capital value of foreign assets – it is not the foreign assets, *inter alia* comprising of immovable property(ies), [real properties], which are essentially taxed through section 8(2)(b) of Act, 2022 but capital value of assets of a resident individual, as defined in Section 13(f) of the Act, 2022. And power to legislate qua the resident person is cleanly drawable under Article 142(a) of the Constitution of 1973, when matter is covered under entry 50 of the Federal Legislative List. First question / issue stands addressed.

EFFECT AND EXTENT OF THE EXCLUSION OF IMMOVABLE PROPERTY IN ENTRY 50

20. It is apt to provide snapshot of submissions to contextualize second issue – to some extent overlapping with first issue. Learned counsels hammered the significance of exclusion of immovable property, provided in entry 50, to fortify the attack on the legislative competence of the Parliament, alleging that in fact the immovable property was taxed in the guise of capital value tax on the assets. Essence of the submission is that exclusion be read as a constraint / limitation on the authority of the Parliament to tax the immovable property, and immovable property, wholesomely, be construed as part of the asset(s) and treated as specifically excluded in terms of latter part of the entry 50 - exclusion be enforced as a constitutional mandate. It is consistently argued that immovable property could exclusively be taxed by the Provincial legislature(s) – in terms of Article 142(c) of the Constitution. One of the learned counsels sought interpretation of entry 50 in the context of rule of *Noscitur a socii* and *Ejusdem Generis*.

21. There is no cavil that aforesaid rules of interpretation, being subsidiary rules, aid in the interpretation of enactments but provided any ambiguity, obscurity or conflict qua enactment under reference is found in the first place. Applicability of noted cannons of interpretation is dependent upon fulfillment of certain caveats / conditions. Elaborate profiling of above stated rules is not required except to the extent that rule of *Noscitur a socii* (*recognition by associated words*) simply envisaged the principle that meaning of doubtful word(s) need to be construed / adjudged in the company of, with reference to connected words (often termed as

'associated words'), or in the light of its surroundings / context, which rule of interpretation is wider is scope than the rule of *Ejusdem Generis*. Rule of *Ejusdem Generis* (*of the same genus*), latter simply provides that succeeding general words, in an enactment, are to be construed in the context of the preceding specific words – provided the specific words constitute a class / category. In brief, rule of *Ejusdem Generis* facilitates reconciliation between the specific and general words. It is expedient to enumerate requisite conditions for invoking the rule of *Ejusdem Generis*, which conditions are encapsulated in the case of *AMAR CHANDRA CHAKRABORTY v. COLLECTOR OF EXCISE, GOVERNMENT OF TRIPURA & ORS* (**1973 SCR (1) 533**), relevant part thereof is reproduced hereunder, for ease of reference,

> *"The ejusdem generis rule strives to reconcile the incompatibility between specific and general words.* ***This doctrine applies when (i) the statute contains an enumeration of specific words; (ii) the subjects of the enumeration constitute a class or category; (iii) that class or category is not exhausted by the enumeration; (iv) the general term follows the enumeration and (v) there is no indication of a different legislative intent"****.*
>
> [Emphasis Supplied]

22. In the facts of the case at hand, rule of *Ejusdem Generis* is not attracted when pre-requisite conditions are conspicuously missing. No ambiguity is found in the words / phrases employed in entry 50. Entry 50, read disjunctively, comprised of two separate parts, each of which part describes / caters for a distinct and separate class / category of taxes; first half of the entry 50 provisioned for the authority to tax on capital value of the assets, and latter half provided for taxes on the immovable property,

which category of taxes is excluded from the legislative domain of the Parliament. Distinctiveness and individuality of the taxes was expounded in the preceding paragraphs. Entry 50 is examined in the context of applicability of cannons of statutory interpretation. It is argued that expression ‘assets’ be dissected and immovable property, appearing in second half of entry 50, be excluded there from. Submission is fallacious. Expression ‘assets’ is required to be read and construed in the context of / company of tax on the capital value of the assets, which cannot be bracketed with the expression ‘immovable property’, latter being employed in the context of separate class / category of levy. No association / commonness is found in expressions ‘assets’ and ‘immovable property’ nor could possibly be inferred in the context of a separate kind / categories / classes of taxation envisaged in entry 50. Capital value is based on the principle of aggregation. Capital value of assets is the base / object of the first part of entry 50, and later part thereof provides for taxation on immovable property, which class / category of impost is excluded from the domain of the Parliament, and power to tax immovable property is extended to the Provincial legislature(s). Legislative intent is clear and raises no ambiguity. Another requisite condition for attracting rule of *Ejusdem Generis* is presence of an enumerated category - genus / class / category - which enumeration controls the meaning of the following general words, otherwise considered wider in scope, as compared to the enumerated class. Essentially the rule of *Ejusdem Generis* implies that general words, preceding particular / specific words, must confirm to the

string of genus / class / category of the preceding words. And in the absence of any nexus between the enumeration and general words or inferable distinction between the enumerated genus and following words, the rule has had no application. Tax on capital value of assets and tax on immovable property manifest separate and different class / category / genus. In the case at hand, enumerated class / category is tax on capital value of the assets – which precedes the residual class / category – tax on immovable property – which reflects different classes / categories, different objects, contours and characteristics. No nexus / connection between first and second part of entry 50 is found. Learned counsels for the petitioners have misconstrued the definition of taxation in Article 260 of the Constitution, which needs to be given effect in the context of category of taxes, to be levied by the Parliament of Provincial legislature(s) in accordance with the scope of legislative competence conferred.

23. Expressions ‘tax(es)’ in the first and second part of entry 50 cannot be construed as specific class / genus to otherwise artificially widen the scope or effect of immovable property by limiting the scope of class of tax in the first part of entry 50, which provided description of a complete genus – tax on capital value of assets and the exclusion followed thereto indicated another separate category / genus. How would the rule of ejusdem generis or *Noscitur a socii* be attracted? For illustration purposes, reference is made to the ratio settled in the case of ‘*United Town Electric Co Ltd. v. A-G for Newfoundland.* [**1939**] **1 ALL ER 423**, wherein in the context of the proximate dispute, application of rule of *ejusdem generis* was explained

and it was held that '*there is no room for the application of that principle in the absence of any mention of generis, since mention of single species does not constitute a genus'*. If at all genus / class or a kind need to be identified in the antecedent part of entry 50, it was the *'tax on capital value'* on assets, which enumerated genus / class is complete in itself and bears no nexus with the genus / class in the latter part of entry 50 – identified as exclusionary clause. No case of reconciling the incompatibility between specific and general words arises in wake of distinct genus / class of imposts in disjunctively read entry 50 - each defining specific enumeration. Judgments referred by the counsels for petitioners to support application of rule of *Ejusdem generis* are distinguishable, wherein facts involved application of said rule, but not to this case where genus / class claimed, for the purposes of application of interpretative cannons, is distinct. Reference is made to following cases; ***Maharashtra University of Health Sciences & others V. Satchikitsa Prasarak Mandal & others*** (**AIR 2010 SC 1325),** relevant paragraphs are reproduced hereunder,

> *26. The Latin expression "ejusdem generic" which means "of the same kind or nature" is a principle of construction, meaning thereby when general words in a statutory text are flanked by restricted words, the meaning of the general words are taken to be restricted by implication with the meaning of restricted words. This is a principle which arises "from the linguistic implication by which words having literally a wide meaning (when taken in isolation) are treated as reduced in scope by the verbal context." It may be regarded as an instance of ellipsis, or reliance on implication. This principle is presumed to apply unless there is some contrary indication (See Glanville Williams, 'The Origins and Logical Implications of the Ejusdem Generis Rule'7 Conv (NS) 119).*
>
> *27. This ejusdem generis principle is a facet of the principle of Noscitur a sociis. The Latin maxim Noscitur a sociis contemplates that a statutory*

term is recognised by its associated words. The Latin word 'sociis' means 'society'. Therefore, when general words are juxtaposed with specific words, general words cannot be read in isolation. Their colour and their contents are to be derived from their context [See similar observations of Viscount Simonds in Attorney General v. Prince Ernest Augustus of Hanover, (1957) AC 436 at 461 of the report]

28. But like all other linguistic canons of construction, the ejusdem generis principle applies only when a contrary intention does not appear. In instant case a contrary intention is clearly indicated inasmuch as the definition of 'teachers' under Section 2(35) of the said Act, as pointed out above, is in two parts. The first part deals with enumerated categories but the second part which begins by the expression "and other" envisages a different category of persons. Here 'and' is disjunctive. So ,while construing such a definition the principle of ejusdem generis cannot be applied.

29. In this context, we should do well to remember the caution sounded by Lord Scarman Quazi v. Quazi -[(1979) 3 All-England Reports 897]. At page 916 of the report, the learned Law Lord made this pertinent observation:- "If the legislative purpose of a statute is such that a statutory series should be read ejusdem generis, so be it; the rule is helpful But, if it is not, the rule is more likely to defeat than to fulfil the purpose of the statute. The rule, like many other rules of statutory interpretation, is a useful servant but a bad master."

30. This Court while construing the principle of ejusdem generis laid down similar principles in the case of K.K. Kochuni v. State of Madras and Kerala, [AIR 1960 SC 1080]. A Constitution Bench this Court in Kochuni (supra) speaking through Justice Subba Rao (as His Lordship then was) at paragraph 50 at page 1103 of the report opined:-

> *"...The rule is that when general words follow particular and specific words of the same nature, the general words must be confined to the things of the same kind as those specified. But it is clearly laid down by decided cases that the specific words must form a distinct genus or category. It is not an invoidable rule of law, but is only permissible inference in the absence of an indication to the contrary."*

31. Again this Court in another Constitution Bench decision in the case of Amar Chandra Chakraborty v. The Collector of Excise, Govt. of Tripura, Agartala and others, AIR 1972 SC 1863, speaking through Justice Dua, reiterated the same principles in paragraph 9, at page 1868 of the report. On the principle of ejusdem generis, the learned Judge observed as follows:-"...The ejusdem generis rule strives to reconcile the incompatibility between specific and general words. This doctrine applies when (i) the statute contains an enumeration of specific words; (ii) the subjects of the enumeration constitute a class or category; (iii) that class or category is not exhausted by the enumeration; (iv) the general term follows the enumeration; and (v) there is no indication of a different legislative intent."

32. As noted above, in the instant case, there is a statutory indication to the contrary. Therefore, where there is statutory indication to the contrary the definition of teacher under Section 2(35) cannot be read on the basis of ejusdem generis nor can the definition be confined to only approved teachers. If that is done, then a substantial part of the definition under Section 2(35) would become redundant. That is against the very essence of the doctrine of ejusdem generis. The purpose of this doctrine is to reconcile any incompatibility between specific and general words to that all words in a Statute can be given effect and no word becomes superfluous (See Sutherland: Statutory Construction, 5th Edition, page 189, Volume 2A).

33. It is also one of the cardinal canons of construction that no statute can, be interpreted in such a way as to render a part of its otiose.

34. It is, therefore, clear where there is a different legislative intent, as in this case, the principal of ejusdem generis cannot be applied to make a part the definition completely redundant.

35. By giving such a narrow and truncated interpretation of teachers under Section 2(35, High court has not only ignored a part of Section 2(35) but it has also unfortunately given an Interpretation which is incompatible with the avowed purpose of Section 53 of the Act.

36 The purpose of setting up the Grievance Committee under Section 53 of the Act is to provide an effective grievance redressal forum to teachers and other employees. Any interpretation of 'teachers' under Section 2(35) of the Act which denies the persons covered under Section 2(35) an access to the said forum completely nullifies the dominant purpose of creating such a forum. It goes without saying that unapproved teachers need the protection of this forum more than the approved teachers. By creating such a forum the University virtually exercised its authority and jurisdiction as a loco-parentis over teachers-both approved and unapproved and who are working in various colleges affiliated with it. The idea is to give such teachers and employees a protection against any kind of harassment which they might receive in their work place. The creation of such a forum is in tune with protecting the dignity of the individual which is one of the core constitutional concepts.

37. Therefore the doctrine of ejusdem generis cannot be pressed into service to defeat this dominant statutory purpose. In this context we may usefully recall the observations of the Supreme Court of United States in Guy T. Helvering Stockholms Enskilda Bank, 293 US 84,88-89,79 L Ed 211, 55 S Ct50, 52 (1934), as under:-

> *"while the rule is a well-established and useful one, it is, like other canons of statutory construction, only an aid to the ascertainment of the true meaning of the statute. It is neither final nor exclusive. To ascertain the meaning of the words of a statute, they may be submitted to the test of all appropriate canons of statutory construction, of which the rule of ejusdem generis is only one. If upon a consideration of the context and the objects sought to be*

> *attained and of the act as a whole, it adequately appears that the general words were not used in the restricted sense suggested by the rule, we must give effect to the conclusion afforded by the wider view in order that the will of the Legislature shall not fail."*
>
> [Emphasis supplied]

24. Rule of *Ejusdem Generis* cannot be applied inversely in the context of present controversy. Learned counsels argue that category of immovable property be excluded from the assets. This submission is misconceived. Expression 'assets' in the context of capital value, manifests enumerated / specific genus, which has wider connotation in the context of the word 'immovable property', and latter otherwise restricts the meaning of the 'assets'. Learned counsels seek inverse application of the rule - invariably suggesting that immovable property be excluded from the ambit of the 'assets' -, which submission must fail being converse to the requirements of rule of *Ejusdem Generis.* Reference is made to the case of *Thakur Amar Singhji and others V. State of Rajasthan and others* (**1955 AIR SC 504**), wherein scope of rule of ejusdem generis was discussed and it was observed – (quote)

> "….. *true scope of rule of ejusdem generis is that words of general following specific and particular words should be construed as limited to the things which are of the same nature as those specified and not its reverse, that specific words which precede are controlled by general words which follow*" – (unquote).
>
> [Emphasis supplied]

25. Provisioning of another class / kind of tax in entry 50 otherwise indicate intention to exclude applicability of rule of ejusdem generis. Use of phrase 'not including' [no gainsaying if the expression 'not including' be construed as other than] *per se* reaffirms the intention that residuary /

following words are not to be construed or treated to convey limited / restricted meaning in the context of class / genus described in first half of entry 50. In the case at hand the purpose, intent, effect and consequence of the expression '*not including*' cannot be diluted or nullified by resorting to rule of *Ejusdem Generis*, otherwise not attracted. Full effect has had to be extended to the exclusion intended qua tax on immovable property – which forms distinct class of tax, in respect whereof provincial legislature(s) are competent to legislate, without prejudicing or encumbering the occupied legislative field of the Parliament, to tax on the capital value of assets. Reference is made to the observations in the case of *M/s Siddeshwari Cotton Mills (P) Ltd. V. Union of India and another* [**1989 AIR (SC)1019]**, relevant portion therefrom is reproduced hereunder,

> *"7. The expression ejusdem generis -'of the same kind or nature' - signifies a principle of construction whereby words in a statute which are otherwise wide but are associated in the text with more limited words are, by implication, given a restricted operation and are limited to matters of the same class or genus as preceding them. If a list or string or family of genus-describing terms are followed by wider or residuary or sweeping – up words, then the verbal context and the linguistic implications of the preceding words limit the scope of such words.*
>
> *In 'Statutory Interpretation' Rupert Cross says:*
>
> > *"...The draftsman must be taken to have inserted the general words in case something which ought to have been included among the specifically enumerated items had been omitted…"*
>
> *The principle underlying this approach to statutory construction is that the subsequent general words were only intended to guard against some accidental omission in the objects of the kind mentioned earlier and were not intended to extend to objects of a wholly different kind. This is a presumption and operates unless there is some contrary indication. But the preceding words or expressions of restricted meaning must be susceptible of the import that they represent a class. If no class can be found, ejusdem generis rule is no attracted and such broad construction as the subsequent words may admit will be favoured. As a learned author puts it:*

> *"……If a class can be found, but the specific words exhaust the class, then rejection of the rule may be favoured because its adoption would make the general words unnecessary; if, however, the specific words do not exhaust the class, then adoption of the rule may be favoured because its rejection would make the specific words unnecessary."*

(See: Construction of Statutes by E.A. Driedger p. 95 quoted by Francis Bennion in his Statutory Construction pages 829 and 830). Francis Bennion in his Statutory Construction observed:

> *"For the ejusdem generis principles to apply there must be a sufficient indication of a category that can properly be described as a class or genus, even though not specified as such in the enactment. Furthermore the genus must be narrower than the words it is said to regulate. The nature of the genus is gathered by implication from the express words which suggest it……..*

It is necessary to be able to formulate the genus; for if it cannot be formulated. It does not exist. 'Unless you can find a category', said Farwell LJ, 'there is no room for the application of the ejusdem generis doctrine'."

In SS. Magnhild (Owners) v. McIntyre Bros. and Co. (1920) 3 KB 321 Me Cardie J said:

> *"So far as I can see the only test seems to be whether the specified things which precede the general words can be placed under some common category. By this I understand that the specified things must possess some common and dominant feature."*

In Tribhuban Parkash Nayyar v. Union of India ***(1970) 2 SCR 732*** *the Court said:*

> *"This rule reflects an attempt to reconcile incompatibility between the specific and general words, in view of the other rules of interpretation, that all words in a statute are given effect if possible, that a statute is to be construed as a whole and that no words in a statute are presumed to be superfluous....."*.

In U.P.S.E. Board v. Hari Shanker, AIR 1979 Supreme Court 65, it was observed:

> *"…..The true scope of the rule of "edjusdem generis" is that words of a general nature following specific and particular words should be construed as limited to things which are of the same nature as those specified. But the rule is one which has to be "applied with caution and not pushed too far" ….."*

8. The preceding words in the statutory provision which, under this particular rule of construction, control and limit the meaning of the subsequent words must represent a genus or a family which admits of a

> *number of species or members. If there is only one species it cannot supply the idea of a genus".*
>
> [Emphasis supplied]

26. Rule of *Noscitur a socii* entails recognition of statutory terms in the context of the associated words or in the light of its surroundings / company. No connection / proximity / link is found *inter se* tax on the capital value of foreign assets and tax on immovable property – both being distinct and separate imposts. For the applicability of rule of *Noscitur a socii* no associated words in entry 50 are found for the purposes of assimilation / merger of otherwise distinct category of taxes.

27. In view of the above, entry 50 manifests two separate and individual category of taxes and rules of statutory interpretation are not attracted, in the absence of requisite conditions for attracting rule of *Noscitur a socii* or/and *Ejusdem Generis*. Second issue / question is addressed with reiteration of the observations in the case of ***Russel V. Scott [1948 2 All England Reporter 1(HL)]*** (quote) "*indeed if a collection of items is heterogeneous, it almost seemed a conflict in words to say that they belong to the same genus."* (un-quote).

28. Objection against extra-territoriality of the enactment is taken up now. It is argued that the properties – foreign assets - subjected to capital value tax are located / domiciled in foreign countries and same are subject to the municipal laws - 'law of *Situs'* - and the Parliament lacked jurisdiction to legislate, i.e., in absence of territorial proximity qua foreign assets. Reference is made to Article 1(2) of the Constitution, read with

Article 141 of the Constitution. It is argued that Article 142(d) of the Constitution is not attracted. Only because the assets are located beyond the territorial limits of Provinces, no authority could be claimed, though by default, by the Federation to tax those assets.

29. Submissions are misplaced. In pith and substance, tax on capital value tax of foreign assets is not a tax on immovable property, but for all intent and purposes subject(s) of tax in question are the resident individual(s), as defined under section 13(f) of Act, 2022. In the case at hand, the Parliament has taxed on the capital value of assets of resident individuals, which is the object / base of the levy, and same is explicit and obvious upon reading of Section 8(2)(b) of Act, 2022. Distinction between two kinds of taxes is recognized in entry 50. Tax on capital value of assets – albeit foreign assets – is converse of tax on the immovable property. Domicile / location of the immovable property may assume significance when taxes are imposed on the *corpus* of the immovable property, and not in the case where tax on capital value of assets of the resident individual is charged. Undisputedly, Provincial legislature(s) are competent to tax the immovable properties – situated within their respective territories, irrespective of the residence / domicile of the owner, who might not be residing within the territorial limits of the Province where property is situated – for instance immovable property located in the city of Lahore is taxed under the provisions of Punjab Urban Immovable Property Tax Act 1958, which tax is imposed on the property and bears no nexus with the residence of the owner, who might be residing in Islamabad or Karachi. In

the light of present constitutional dispensation, provinces cannot impose tax on capital value of assets, assessed on the aggregated capital value of the assets held by a resident individual, which might include assets outside the territorial limits of the province(s) – for instance various properties simultaneously located in different cities of Lahore, Karachi, Peshawar, Quetta. In the wake of the character of the tax, only the Parliament could make laws for the imposition of tax on aggregated capital value of assets – foreign assets are subject matter of challenge through these petitions. A classic instance of tax on immovable property is found in the legislation where luxury houses, being coming within the legislative domain of Province of Punjab, were taxed. In the case of *Muhammad Khalid Qureshi* (supra), scope of entry 50 was discussed by a learned Division Bench of this Court in the context of the exclusion provided qua immovable property, paragraph 20 thereof is relevant and findings recorded therein read as,

> *"Article 142 gives Provincial Legislature exclusive powers of legislation on the subjects which are not included in the Federal Legislative List. The language of Entry No.50 of the List gives the Parliament power to levy taxes on the capital value of the assets, and specifically excludes the Parliament to levy taxes on immovable property. It means Provincial Assembly is vested with exclusive power to levy taxes on immovable property. A combined study of Entry No.50 with clause (c) of Article 142 shows that Federal Legislature can tax only capital value of assets. However, a Provincial Legislature is made competent to tax remaining all aspects of immovable property as discussed supra. The tax in question is on residential houses comprising land and superstructure thereon as specified in the First Schedule. Language of Section 8 read with First Schedule of PFA, 2014 does not suggest that capital value of residential houses is being taxed. The argument of learned counsel in this regard is self-contradictory when compared with their argument that properties of different value are being taxed similarly. Later part of Entry No.50 excludes taxation from immovable property from the ambit of Federal Legislature".*

[Emphasis supplied]

30. In wake of the above, the nature, object and base of the tax on capital value of assets is the resident individual, hence, no question of conflict of law(s) otherwise arises. Tax on the capital value of assets cannot be construed as a municipal tax, which is otherwise applicable on the foreign immovable properties in terms of 'law of *Situs'*. Attributes of tax on capital value of assets and tax on immovable property were discussed, in the light of the cases, both before our and neighbouring jurisdiction, and referred in preceding paragraphs.

31. Argument that Parliament cannot legislate or make laws having extra territorial operations is though not relevant for the purposes of present controversy, when the object / base of the levy is tax on capital value of foreign assets of resident individual, but argument is otherwise wholly misconceived. Article 141 of the Constitution envisages extent of domain of Federal and Provincial laws and authorizes the Parliament to make laws, including laws having extra territorial operations. Parliament has variously drafted laws having extra-territorial operations and enforcement thereof are hardly questioned by the domestic courts. Scope and extent of the powers of the Union in India to draft laws, albeit having extra territorial operations, is elaborated in the case of *"GVK Industries Limited v. Income Tax Officer"* [**2011 (4) SCC 36**]. In the context of present levy, Article 142(d) of the Constitution has no application to this case when no question of framing of laws for the territories in the Federation, outside the provinces arises. Likewise, Article 143 of the Constitution has no application in

absence of any inconsistency at all. No instance of overlapping / occupied legislative field(s) arises in the context of distinctiveness of the subject matter tax and tax on immovable properties, each possessing different characteristics. Classification of the class / category subjected to tax is neither arbitrary, ex-proprietary nor discriminatory, which identified and differentiated persons based on the classification of those having foreign assets. Another misconceived argument is that since foreign assets are domiciled in the foreign territory, which are subject to municipal taxes under said jurisdiction, there is no connection / proximity to tax those and unless such connection / proximity is established, Parliament cannot subject the foreign assets liable to tax. Tax in question has no extra-territorial operations, which in pith and substance is a tax on capital value of assets of resident individuals – which provided the pivotal connection / proximity. Hon'ble Federal Court, in the case of *Governor-General in Council V. Raleigh Investment Co. Ltd.* (**AIR 1944 FC 51**) repelled argument of extraterritoriality of liability imposed under Income Tax law of India [Income Tax Act 1922] – in the context of assessment of income of non-resident, which accrues or arises or is deemed to accrue or arise to him in British India – and held that *'In the circumstances of the present case, we are of the opinion that the 'source of the dividend paid to the plaintiff-company by the sterling companies was British Indian and that in making them liable to Income Tax on that basis the Indian Legislature is not giving its law any extraterritorial operations'.* It was further elaborated that *'practical difficulties that may arise in enforcing the extra-territorial*

provisions of a taxing statute are not by themselves a ground for invalidating them'. For illustration purposes reference is made to the decision in the case of *British Columbia Electric Railway Co. Ltd. V. The King on the Information of Alt. Genl.* (**1946 AIR (PC) 180)**, relevant portion is reproduced hereunder:-

> ***"****Finally, the Appellant contends that if the sections of the Income Tax Act on which this case turns bear the construction set out above, Section 9B (2) (a) is ultra vires of the Parliament of Canada, notwithstanding the enlarged scope conferred by the Statute of Westminster of 1931, The Judges of the Supreme Court of Canada have dealt in a most effective fashion with this contention, and their Lordships entirely concur with the views they have expressed. Kerwin J. in a Judgment with which the Chief Justice of Canada Teschereau J., concurred, observed that Section 8 of the Statute of Westminster left no basis for the argument, and he went on:*
>
> *"……by Head 3 of Section 91 British North America Act, the Canadian Parliament was authorised to make Laws with reference to 'the raising of money by any mode or system of taxation'. As long as Parliament legislates with reference to such matters, the permitted scope of the legislation is not restricted by any consideration not applicable to the legislation of a fully Sovereign State. Such a state may tax persons outside its territory. Here it is clear that it has done so and the Canadian Courts must obey the enactment.*
>
> *10. Rand, J. with whom Kellock J agreed, put the matter thus:*
>
> > *"The legislative competence of Parliament to tax non-residents was challenged. It is argued that the power 'to make laws having extra- territorial operation' as enacted by the Statute of Westminster (1931), Section 3, is subject to two conditions: that the legislation deal with matter assigned by the British North America Act to the federal legislature; and that it be of such a nature as under International public or private-law would be accorded extra-territorial effect. It is then contended that the power of the Dominion under Section 91(3), 'the raising of money by any Mode or System of Taxation' does not extend to taxation of non-citizens outside the boundaries of Canada; and that international comity, apart from any rule against giving effect in one state to fiscal measures of another state would not for any purpose recognise the validity of, much less enforce, what Parliament is said to purport by this legislation to do.*

> *"The power of the Dominion to tax is to be interpreted as being as plenary and as ample within the limits prescribed… as the Imperial Parliament in the plenitude of its power possessed or could bestow:* ***(1884) 9 AC 117: 53 LJ PC 1: 50 LT 301, Hodge V The Queen****. But there is obviously distinction between the standing of legislative enactments by a sovereign state within its boundaries and beyond them. In an effective sense, a declaration by such a legislature that it imposes a tax upon a citizen of foreign country toward whom there is no internationally recognised bond or relation, is beyond the territories of that state a futile act, and it is futile for the reason that beyond them it is incapable of enforcement. Within the state, however, it becomes an obligatory rule to be enforced whenever enforcement is feasible. The specific investment of extra-territorial power by Section 8 of the Statute of 1981 was designed no doubt to remove the generally accepted limitation of colonial legislative jurisdiction, a limitation which the Courts of the colony itself were bound to recognize: (****1891) 1891 AC 455: 60 LJ PC 55: 65 LT 321. Me Leod v. Att-Gen. New South Wales;*** *and any such jurisdictional inadequacy no longer hampers the legislative freedom of the Dominion. Within its field, there is now a legislative sovereignty. That the enactment of Section 9(6) is an exercise of taxing power within that jurisdiction does not, I think, admit of doubt. It is an assessment uniformly imposed in respect of special items of a general class of defined subject-matter in an elaborated tax system; there is admitted jurisdiction over an act essential to the subject-matter, i.e., the act of performance of an obligation; and these, taken with the language used, satisfy the taxation criteria. Legislation so enacted will be effective in, and must be enforced by the Courts of this country. To what extent, if at all, it will receive recognition in the tribunals of foreign countries depends upon different considerations: but that circumstance, apart from its function in interpretation, is not one in which the local tribunal is interested."*
>
> [Emphasis supplied]

32. The tax in question is not on the non-citizens but defined resident individuals. Learned counsels, for some of the petitioners, argued that when legislature was aware that taxes on immovable property form different class / species, why the need arises for providing specific exclusion, which otherwise had to be presumed, while hedging on the maxim *'**Expressio unius est exclusion alterius*** [the expression of one thing is the exclusion of the other]. It is argued that provisioning of the exclusion, though such exclusion must be presumed with respect to exclusive power of the provinces to tax immovable property, had a purpose and rational,

whereby legislative intent was to cut down the authority of the Parliament to make laws involving immovable property, irrespective of the use of expression assets in the context of capital value tax. This is absurd. Merely because exclusion was provided would not imply that rule of *Ejusdem generis* is attracted. In fact, drafting the entry 50 is true manifestation of the rule of ***reddendo singula singulis*** – '**render each to each'**. Principle is elaborated in the treatise *STATUTORY INTERPRETATION by Francis Bennion – Second Edition – Page 871* – in following terms, *'where a complex sentence has more than one subject, and more than one object, it may be the right construction to render each to each, by reading the provision distributively and applying each object to its appropriate subject'.*

The rule of *reddendo singula singulis* is applied in the case of *Koteswar Vittal Kamath, Appellant V. K. Rangappa Baliga and Co.,* (**AIR 1969 SC 504**), wherein Indian Supreme Court quoted the rule from BLACKS Interpretation of laws in following terms, *'When a sentence in a statute contains several antecedents and several consequences, they are to be read distributively, that is to say each phrase or expression to be referred to its appropriate subjects'*.

33. Constitutional history, if considered an important factor in aiding the construction of any constitutional provision, support the validity of the law. Consistently, exclusion was provided while providing for the taxing on capital value of assets - before and after the partition. Relevant entries, simultaneously, provided for the imposition of capital value tax and specify

exclusions – be it the entry 55 of List-1 – Federal Legislative List of Seventh Schedule of Government of India Act, 1935, OR entry 26 of Federal List of Fifth Schedule of Constitution of 1956 [whereby taxes of capital value of assets was provided for but exclusive of agricultural land] OR sub-entry (e) of entry 43 of Third Schedule of the constitution of 1962, which provided for the exclusion of taxes on the capital gains of immovable property, pattern followed while incorporating entry 50 in the Constitution of 1973. Before eighteenth amendment taxes on capital gains on immovable properties were excluded form entry 50, and after amendment the expression "on capital gains" was omitted, however, exclusion to the extent of immovable property was retained. In the case of *IRC v Parker* ***[1966] AC 109*** *at p 117*, it was observed that *"It is a familiar device of a draftsman to state expressly that certain matters are to be treated as coming within the definition to avoid argument on whether they did or not"*. The exclusion provided through the expression '*not including'* qualifies the authority / legislative powers of the Parliament. It is a misconception to treat the exclusion as qualifying or restricting the scope of the levy, being tax on the capital value of assets. No redundancy or superfluousness could be attributed to second part of entry 50, which protected the legislative authority of the provinces to tax the immovable property, leaving no room for conjectural debate, speculation qua applicability of linguistic canons of construction, which otherwise defined the scope and extent of tax on capital value of assets and tax on immovable property, latter possessing distinguishing characteristics / features and

otherwise coming within the legislative domain of the provincial legislature(s). It is reiterated that expression '*not including*' is suggestively construable as 'other than' and 'except' to preserve the harmonious totality of entry 50 – which excludes the application of rule of *Noscitur a socii* or/and *Ejusdem Generis*. The construction proposed by the counsels for the petitioners to the expression 'not including', if appreciated, would upset the legislative intent, expressed with reference to various other entries in the surviving legislative list, wherein exclusions were specifically provided in contradistinction to the interpretative rule based on the maxim *'Expressio unius est exclusion alterius* [the expression of one thing is the exclusion of the other]. Entry 49 is the case in point, which reads '*Taxes on the sales and purchases of goods imported, exported, produced, manufactured or consumed, except the sales tax on services*', and wherein distinct class / category of tax – tax on services – was excluded. Where presumption of exclusion could be assumed but exclusion was specifically provided. Construction proposed by one of the learned counsels to construe expression 'taxes' in the latter half of entry 50 as exclusion of taxes on the immovable property in entirety misconceived, which argument undermined distinct nature / scope and characteristics of mutually exclusive taxes. Insistence to read expression 'taxes' in latter half of entry 50 for the purpose of restricting / qualifying the category / class of tax in the first half of entry 50 is without any substance, which plainly is converse to the rule of *Ejusdem Generis*. It would be a gross error to attribute generality to

otherwise a specific class / category of tax – an enumeration complete in all respects.

34. It is argued that some of the petitioners have declared the factum of foreign assets by availing Amnesty Schemes – introduced by the Federal Government – and assets are immune from any taxation. Besides being absurd, arguments is self-defeating. At the time of availing Amnesty Scheme, law legislated by the Parliament was acknowledged and availed, which sought declaration of foreign assets. No objection was raised that Amnesty Schemes have extra territorial operations. Constitutionality of Wealth Tax Act, 1963 was consistently upheld by our Constitutional courts, which law has taxed the assets, either inside or outside Pakistan. No case for arbitrariness and unintelligible classification arises within the class of persons subjected to tax, which constitute a reasonably and intelligibly defined classification. Reference is made to the case of *Messrs Elahi Cotton Mills Ltd. and others V. Federation of Pakistan through Secretary M/o Finance, Islamabad and 6 others"* (**PLD 1997 SC 582**).

35. Submissions that tax under reference would disturb protections afforded under avoidance of double taxation arrangements are not required to be adjudicated or determined through present proceedings - judicial review jurisdiction -, which issues relate to the enforcement of the tax and domestic tribunals are competent and authorized to deal with and address such objections / issues, in the context of individual cases.

36. Without any endeavour to suggest a nomenclature for the levy under reference, it can appropriately be classified as tax on the capital value of foreign assets of resident individual. Apparent and obvious purpose / objective of the levy is to discourage concentration of wealth.

37. In view of the above, challenge is repelled, Section 8(2)(b) of the Finance Act, 2022 is valid, constitutional and *intra vires*. No fault is found in exercise of legislative powers by the Parliament under entry 50 of the Federal Legislative list, which matter is within the competence of Parliament in terms of Article 142(a) of the Constitution of Pakistan. For the reasons provided in preceding paragraphs, all listed petitions are dismissed being devoid of any substance. No order as to the costs.

(ASIM HAFEEZ)
JUDGE

*Imran/**

Signed on 23.01.2023.

Approved for reporting.

Judge.