

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE UMAR ATA BANDIAL, CJ
MRS. JUSTICE AYESHA A. MALIK
MR. JUSTICE ATHAR MINALLAH

**C.P.3825 AND 3909 OF 2022, 126-K TO 131-K, 167-K TO
193-K OF 2023**

Federation of Pakistan through Chairman ...Petitioner(s)
Federal Board of Revenue, Islamabad

Versus

Shell Pakistan Limited Karachi and others ...Respondent(s)

For the Petitioner(s) : Mr. Faisal Siddiqi, ASC
Dr. Shah Nawaz, ASC
Mr. Ashtar Ausaf Ali, Sr. ASC
Mr. Asim Majeed, Member Legal
Mr. Mohyuddin, Chief Legal
Mr. Abdul Wahid, Addl. Commissioner

For the Respondent(s) : Dr. Muhammad Farough Naseem, ASC
Mr. Khalid Javed Khan, ASC video link
from Karachi
Mr. Muhammad Sharif Janjua, AOR
Mr. Abid H. Shoban, ASC video link
from Karachi

Date of Hearing : 16.02.2023

ORDER

Learned counsels for the petitioner have pointed out that the Tax Year 2022 for which the impugned Super Tax under Section 4C of the Income Tax Ordinance, 2001 ("**Ordinance**") has been imposed starts from 01.07.2021 until 30.06.2022. In the present case, the respondents being high earning taxpayers with incomes greater or equal to Rs.300 million claim that they do not fall within the purview of Super Tax for two reasons. Firstly, because their accounting year ended on 31.12.2021 prior to the close of Tax Year 2022 on

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30.06.2022. Therefore, the impugned Super Tax was being demanded by the petitioner with retrospective effect. We are not persuaded by the arguments at this stage because according to the learned counsel for the petitioner, the accounting year of the respondents ends during the course of Tax Year 2022 to which the provisions of Section 4C are lawfully applicable.

2. Pursuant to the second reason, it is held by the impugned judgment that the Super Tax is discriminatory. The rates of Super Tax under Section 4C *ibid* are specified in Division II B, Part I of the First Schedule to the Ordinance. However, the First Proviso to the Division II B charges income earners of more than Rs.300 million falling within the category of certain specified industries to a higher rate of tax at 10%. Otherwise the rate of tax is 4% for such earners in other industries or businesses. The learned High Court has found in favour of the respondents on that score on the ground of discrimination. The learned counsel for the petitioner submits that the said argument cannot form the basis of altogether striking down the impugned Super Tax because implicitly the respondents' argument accepts liability to taxation at the rate of 4%. However, he is not able to explain to us the justification for charging super tax at a higher rate for industries specified in the first proviso. We grant him time to prepare his case on that point.

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3. Issue notice to the respondents in all petitions. The learned counsels for the respondents who are represented before the Court accept notice.

4. Insofar as the interim relief is concerned, the respondents which are liable to pay Super Tax at the rate of 10% under the proviso shall deposit the same within one week at the rate of 4% which is applicable to assessee industries earning income exceeding Rs.300 million as provided in Division II B *ibid* but falling outside the proviso thereto. In the event that the respondents have furnished bank guarantees on the direction of the High Court then the same shall be en-cashed by the petitioner to the extent of 4% tax. Relist in the week commencing 13th March, 2023.

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Islamabad
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Rashid/*

Not approved for reporting

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CR No: _____ Civil/Criminal
Date of Presentation: 16-2-2023
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Supreme Court of Pakistan