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Judgment Sheet

IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT

Case No: W. P. No. 52559 of 2022.

Muhammad Osman Gull. **Versus** Federation of Pakistan etc.

JUDGMENT

Date of Hearing:	06.04.2023.
Petitioner(s) by:	<p>M/s Syed Muhammad Baqir Ali and Syed Zeeshan Ali, Advocates.</p> <p>M/s Salman Akram Raja, Shahbaz Butt, Khurram Shahbaz Butt, Anwaar-ul-Haq, Tahir Mehmood Butt, Ahmad Abdullah Dogar, Muhammad Ajmal Khan, Syed Muhammad Ijaz, Muhammad Mansha Sukhera, Rana Muhammad Afzal, Mohammad Ahmad Qayyum, Mian Ashiq Hussain, Muhammad Arshad, Ch. Mumtaz ul Hassan, Shumail Arif, Muqadam Sukhera, Shahid Pervez Jami, Mudassar Shujauddin, Ashiq Ali Rana, Abbas Ali Awan, Naved Amjad Andrabi Barrister M. Abubakar, Malik Nadir Ali Sherazi, Muhammad Usman, Malik Ahsan Mehmood, Atira Ikram, Sh. Muhammad Akram, Muhammad Imran, Nadeem Iqbal Ch., Sardar Azeem Afrasiyab, Muhammad Ali Talib, Hammad ul Hassan Hanjra, M. Hassan Asif, Syed Muhammad Islam, Ibrahim Haroon, Saqib Jillani, Ahsan Bashir, Faisal Rasheed Ghouri, Azeem Suleman, Faisal Rasheed, Ghulam Murtaza, Hassan Yousaf Shah, Muhammad Akbar, Shahid Ikram Siddiqui, Mudassar Ijaz, Hafiz Hamid Aziz Ahsan, Mehr Abdul Shakoor, Khalil-ur-Rehman, Aizaz Malik, Zohaib Ali Sidhu, Muhammad Nasir Khan, Muhammad Awais, Yasir Hamid, Saqib Qadeer, Muhammad Abrar, Rasheed Ahmed Sheikh, Umar Rasheed, Shoaib Ahmed Sheikh, M. Hamzan Rauf, M. Imran Khan, Mian Fahim Khadim, Ali Shahzad, Nabila Tariq, Imran Anjum Alvi, Rai Asad Ahmad Dhudhi, Mian Zulfiqar Ali, Usman Khalil, Farhan Shahzad, Asad Javaid Jutt, Omer Iqbal Khawaja, Ahmad Khalid, Arslan Saleem Ch., Muhammad Siddique Butt, Waqar Fayyaz</p>

Dogar, Mian Nafees Bashir, Zahid Imran Gondal, Malik Bashir Ahmad Khalid, Saad Nusrullah, Mustafa Kamal, Muhammad Anwar Bhatti, Shakeel Ahmad Basra, Abuzar Hussain, Tahir Shabbir, Safdar Shaheen Pirzada, Shahzaib ul Hassan Chattha, Tauqeer Ahmad Ranjha, Raja Hamza Anwar, Muhammad Rashid Chaudhry, Hamood ur Rehman Awan, Malik Khalid Rafiq, Hafiz Muhammad Imran Rashid, Belal Jabbar Memon, Muhammad Shahid Baig, Muhammad Bilal Pervaiz, Barrister Saffi ul Hassan, Arif Latif, Malik Aaqib Ali, Hamid Bashir, Muhammad Sajjad, Azeem Ullah Virk, Barrister Ahtesham Mukhtar, Muhammad Mohsin Virk, Ch. Qamar-uz-Zaman, Ali Raza Kamboh, Sheikh Aqeel Ahmad, Zahoor Ahmad Zahid, Muhammad Aslam Sheikh, Abdul Waheed Habib, Muhammad Amin Goraya, Mirza Mubashir Baig, Basit Waheed Wattoo, Asad Rahim Khan, Muhammad Nadeem, Asmar Tariq Mayo, Ch. Imran Arshad Naro, Ch. Shahid Iqbal, Muhammad Naeem Munawar, Syed Najaf Hussain Shah, Mian Asghar Ali, Zaheer-ud-Din Babar, Sarfraz Ahmad, Malik Muhammad Akram Shahab, Muhammad Ijaz Ali Bhatti, Khurram Saleem, Sardar Qasim Hassan Khan, Abid Hafeez, Rehan Sarwar, Amir Fahim Chaudhry, H. M. Majid Siddiqi, Abad-ur-Rehman, Zarg Khan, Muhammad Asif, Rai Amer Ijaz Kharal, Samia Aslam, Syed Nasir Ali Gilani, Azhar Abbas, Basharat Ali, Hasham Maqsood, Hafiz Ijaz Ahmad, Muhammad Zafar Iqbal Mian, Muhammad Tayyab, Aamer Hanif, Muhammad Farooq Sheikh, Muhammad Abu Bakar Shahzad, Muhammad Umer Riaz, Muhammad Shakeel Malik, Amir Jalil Siddiqui, Mamoon Nisar, Asad Aslam, Ali Ijaz Shah, Asad Abbas Raza, Muhammad Ali Malik, Adam Hassan Malik, Muhammad Mahtab Chughtai, Sardar Akbar Ali Khan Dogar, Muhammad Zulqarnain, Syed Moazzam Raheel, Syed Arsalan Bukhari, Sharafat Ali, Haseeb Tahir, Shahbaz Siddique, Fahad Azhar Butt, Shahid Hussain Ch., Muhammad Naeem Aziz, Ikram ul Haq Sheikh, Khawaja Muhammad Ihsan, Muhammad Waqar Akram, Umair Maqsood, Khawaja Muhammad Ayaz, Muhammad Asfandyar Khan Tareen, Muhammad Younas Khalid, Muhammad Kashif Tahir, Malik Allah

	Nawaz Nasir, Faiz-e-Azhar Ajmal, Nimra Arshad, Shezad Raza, Akmal Anayat Butt, Ch. Fahad Iftikhar Gujjar, Muhammad Adnan Afzal, Advocates in connected petitions.
Respondents by:	<p>Mirza Nasar Ahmad, Additional Attorney General for Pakistan and Syed Sajjad Haider Rizvi, Assistant Attorney General for Pakistan.</p> <p>Ch. Muhammad Jawad Yaqoob, Additional Advocate General Punjab, Barrister Zargham Lukhesar and Muhammad Irfan Arif Sheikh, Assistant Advocate Generals, Punjab.</p> <p>M/s Khalid Ishaq, Asma Hamid, Abdul Muqtadir Khan, Syed Zain-ul-Abidein Bukhari, Shahid Sarwar Chahal, Riaz Begum, Nida Aftab, Nayab Ahmad Tarar, Adeel Shahid Karim, Sh. Muhammad Ali, Maryam Asad, Saeed ur Rehman Dogar, Barrister Scheherzade Shahryar, Sana Azhar, Amna Parveen, Muhammad Sharfeen Sandhu, Muhammad Rizwan, Abdul Hafeez Dhillon, Bilal Munir, Naeem Khan, Shahzad Ahmad Cheema, Anwar Ali Singha, Baran Khan Sherwani and Anas Sheikh, Advocate/Legal Advisor for respondent FBR.</p> <p>Ms. Laila Ghafoor, Director, Law, FBR and Muhammad Majid, CIR Legal, LTO, Lahore.</p>

Shahid Jamil Khan, J:- Through this judgment instant writ petition as well as writ petitions mentioned in Schedule ‘A’ shall be decided.

This judgment examines Federal Legislature’s competence to levy income tax on immovable property, invoking fiction of law by using phrase “*A person shall be treated to have derived, as income chargeable to tax*”, on capital assets owned by resident person. This presumption is enforced by inserting Section 7E in Chapter II, captioned ‘*Charge of Tax*’, of Income Tax Ordinance, 2001 (“**Ordinance of 2001**”) through Finance Act, 2022.

Petitioners, being taxpayers, have claimed the taxation under Section 7E as *ultra vires* of Federal Legislature’s field of competence, listed in Entries 50 (post eighteenth amendment) and 47 of Fourth

Schedule to the Constitution of Islamic Republic of Pakistan, 1973 (“**the Constitution**”).

2. Mr. Salman Akram Raja Advocate, arguing for petitioners’ side, read the Entry 50, as it stands after 18th Amendment in the Constitution and submitted that immoveable property has completely been ousted from Federal Legislature’s competence to tax, therefore, taxation of income envisaged in Entry 47, cannot be deemed for immovable property. Explained that all aspects of taxing immoveable property have been entrusted to Provincial Legislatures after 18th Amendment in the Constitution. His emphasis was that excluding phrase in Entry 50 is not of the taxes on immovable property, which are already in provincial legislature’s competence, but is of immovable property as component of capital assets. Contended that the legal fiction is employed, by inserting Section 7E, to overcome the impediment in the Constitution, which is not permissible. Argued that the power to invoke legal fiction is not unfettered and read following paragraph from the judgment in Messrs Elahi Cotton Mills Ltd. and others v. Federation of Pakistan, through Secretary M/o Finance, Islamabad and 6 others (PLD 1997 Supreme Court 582 = 1997 PTD 1555):-

“31. From the above case-law and the treatises, inter alia the following principles of law are deducible: -

.....

(xxxii) That the rule of interpretation that while interpreting an entry in a Legislative List it should be given widest possible meaning does not mean that Parliament can choose to tax as income as item which in no **rational sense** can be regarded as a citizen’s income. The item taxed should **rationally be capable of being considered as the income** of a citizen.”

(emphasis supplied)

He argued that the change in scheme of the Constitution, after 18th Amendment, cannot be frustrated by employing the principle of giving widest possible meaning. Emphasized that *pith and substance* doctrine, needs to be invoked to foil the attempt of charging

immovable property to tax by Federal Legislature. Also placed reliance on *Pak Leather Crafts Limited and others v. Al-Barka Bank Pakistan Limited* (2022 SCMR 1868) and *Muhammad Mubeen-us-Salam and others v. Federation of Pakistan through Secretary, Ministry of Defence and others* (PLD 2006 Supreme Court 602).

3. Referring to prayer clause in Writ Petition No.59457 of 2022 and its grounds, he has challenged exclusion of persons, in Section 7E(2)(d), by claiming it to be discriminatory, offending Article 25 of the Constitution. He placed reliance on *Pakistan through Chairman FBR and others v. Hazrat Hussain and others* (2018 SCMR 939) and *Messrs Lucky Cement Limited through General Manager, Peshawar v. Khyber Pakhtunkhwa through Secretary Local Government and Rural Development, Peshawar and others* (2022 SCMR 1994).

4. Mr. Shahbaz Butt, Advocate argued that Federal Legislator cannot target immovable property alone, while taxing capital value of assets under the Constitution, which allows taxation on the value of assets of every description. He referred to judgment reported as *Haji Muhammad Shafi and others v. Wealth Tax Officer and others* (1992 PTD 726) to submit that repealed Wealth Tax Act, 1963 (“**Wealth Tax Act**”) (promulgated before the Constitution of 1973), was held within competence of the Federal Legislature under Entry 50 despite been validated by Article 268 of the Constitution. Referring to the definition of ‘assets’ in Section 2(1)(5) of the Wealth Tax Act, which used the phrase “*property of every description moveable or immovable*”, he read charging provisions of its Section 3, to emphasize that levy was on the value (annual letting value) of “*net wealth*” or “*assets*”.

Tracing the history of taxing *Capital Value of Assets*, he submitted that the tax under the Wealth Tax Act was suspended by inserting proviso in Section 3 through Finance Act 2000, however, the Act was repealed through Finance Act, 2003. One time tax on capital value of assets was also levied through Section 7 of the Finance Act,

1989 and Corporate Assets Tax was introduced through Section 12 of the Finance Act, 1991. By introducing Section 8 through Finance Act, 2022 value of foreign assets are also brought to taxation, which is held *intra vires* by another learned Single Bench of this Court.

5. Mr. Tahir Mehmood Butt, Advocate developed his arguments eloquently by referring to various provisions of the Ordinance of 2001 and enactments dealing with taxation on capital value of assets. It is argued that a receipt or a benefit received can only be deemed as income for the purpose of taxation under the Entry 47. He read definition of income under Section 2(29) to submit that it can be divided into three types; first is the conventional form of income chargeable to tax under different heads of income; second is the withholding or deduction of tax on the transactions under the Sections mentioned therein and third type is “*any amount treated as income*”. The definition is reproduced:-

“2. Definitions. —....

(29) “income” includes any amount chargeable to tax under this Ordinance, any amount subject to collection or deduction of tax under sections 148, 150, 152(1), 153, 154, 156, 156A, 233, sub-section (5) of section 234 and any amount treated as income under any provision of this Ordinance and any loss of income.”

(emphasis supplied)

He also read Section 4 of the Ordinance of 2001, with the caption ‘*Tax on Taxable Income*’ and submitted that Section 7E is placed under Section 4(4)(a) as separate taxation, whereby immovable property is taxed, invoking fiction of treating 5% of the market value as income of the property for every tax year. The fiction, he submitted, is against the settled principles of taxing income. He explained that value of acquiring an immovable property is accepted as declared and on its sale the difference between cost of acquisition and sale is taxed as capital gain, which is tax on person not property. He continued that fair market value is determined under Section 68 based on DC rates, meant for one time levy at the time of a transaction of immovable property. Fair market value is the expected saleable

price at a relevant point of time, which being uncertain is speculative gain (not actually received), therefore, cannot be a yardstick to deem it as income and tax. The saleable price could be relevant for determining value of an immovable property as capital asset, like under the Wealth Tax Act annual rented value of an immovable property was the yardstick for taxation.

He read the judgment dated 28.10.2022 by learned Sindh High Court (in C.P. No.D-4614 of 2022), whereby the impugned Section 7E is held *intra vires*. Submitted that the judgment is based on Elahi Cotton Mills' Case (supra), but relevant part of the judgment (in paragraph No. 34) was neither reproduced nor discussed. It is argued that tax under Sections 80C & 80CC was held *intra vires*, by invoking Entry 52 to tax capacity in lieu of income. Contended that in this case the speculative value cannot be termed as capacity of an immovable property.

6. Mr. Muhammad Mansha Sukhera, Advocate submitted that “*Capital Assets*” is recognized by the statutes taxing income in the Subcontinent, starting from Income Tax Act 1922 till the Ordinance of 2001 and Indian Income Tax Act 1961. In the Ordinance of 2001, it is defined under Section 37(5), while charging tax on ‘*capital gain*’. Placing reliance on Messrs Julian Hoshang Dinshaw Trust and others v. Income-Tax Officer, Circle XVIII South Zone, Karachi and others (1992 PTD 1), he argued that capital gain on immovable property cannot be taxed by the Federal Legislature under Entry 50, after the 18th Amendment. Submitted that word ‘*assets*’ is synonymous to word ‘*property*’ which is defined under Article 260 as under: -

“Property” includes any right, title or interest in property, moveable or immoveable, and any means and instruments of production;”

Further submitted that under Section 75(7) *business assets* and *personal assets* are treated differently for the purpose of value. Valuation of personal assets is provided under Section 76 to determine cost for the purpose of statement under Section 116, which can be re-determined by the Commissioner Inland Revenue under Section 111

read with Section 122. He concluded that an immoveable property cannot be taxed by Federal Legislature in any form.

Mian Ashiq Hussain, Advocate presented a comparative chart of Entries, allowing taxation on Capital Value of Assets, to show the changes from Government of India Act 1935 till 18th Amendment in the Constitution of 1973. His emphasis is that 18th Amendment has taken away power of imposing all taxes on immovable property including capital gain tax.

7. Mr. Khalid Ishaq, Advocate, representing Federal Board of Revenue (“FBR”), opened arguments from respondents’ side and submitted that provisions of Section 7E derives legislative competence from the Entry 47; the word ‘*income*’ used in the Entry is to be given widest possible meaning; a legislature having competence to tax can impose it in any legislative instrument, be it Finance Act or the Ordinance of 2001 and that income includes deeming income as is defined under Section 2(29) of the Ordinance of 2001.

The arguments were elaborated by referring different provisions of laws and various judgments from Pakistani and Indian jurisdiction. The emphasis, mainly, was on *Elahi Cotton Mills*’ judgment to argue that anything can be deemed as income by invoking the fiction of law. He read from page 624 of the cited judgment to argue that an interpretation intending to narrow down the meaning of word ‘*income*’ in the Entry 47 should be avoided. Reading the judgment from page No. 638, he submitted that reasonableness cannot be a ground to declare a legislation as *ultra vires* and that taxing the immovable property, being policy matter, is legislative prerogative. He cited *The Madurai District Central Co-operative Bank Ltd. v. The Third Income Tax Officer, Madurai* (AIR 1975 Supreme Court 2016) and referred page No. 656 to support the argument that a tax, within competence, can be charged through legislation in parent statute or separately through a Finance Act. Relied upon judgments in *Muhammad Khalid Qureshi v. Province of Punjab* (2017 PTD 805),

M.P. v. Rakesh Kohli and another (2013 SCMR 34) and *Lahore Development Authority through D.G. and others v. Ms. Imrana Tiwana and others* (2015 SCMR 1739) to highlight the guidelines for Courts, while dealing with constitutional validity of a taxing statute. He placed reliance on *Hari Krishna Bhargav v. Union of India and another* (1966 AIR 619) to submit that competence can be gathered from various Legislative Entries, different nature of taxes can be imposed in one statute. He read paragraphs No. 23 and 24 from *DG Khan Cement Company Limited through Chief Financial Officer and another v. The Federation of Pakistan through Secretary Revenue, Islamabad and 3 others* (2020 PTD 1186) and paragraph No.5 from judgment in *Federation of Pakistan through Chairman FBR and others v. Saleem Raza* (PLD 2020 Supreme Court 320). Relied upon judgment in *Bhagwan Dass Jain v. Union of India and others* (AIR 1981 Supreme Court 907), *M/s Chelmsford Club v. Commissioner of Income Tax* (AIR 2000 Supreme Court 1092) and *Sakarlal Balabhai v. Income Tax Officer, Special [(1975) 100 ITR 97 Guj]*. He opposed the arguments on discrimination by Mr. Salman Akram Raja, Advocate and submitted that exclusion of persons from chargeability of tax is based on intelligible differentia and placed reliance on *Elahi Cotton Mills's Case, ibid.*

8. Ms. Asma Hamid, Advocate after adopting arguments by Mr. Khalid Ishaq Advocate, added that the object of taxing immovable property is to discourage accumulation of wealth, for encouraging investment in industry and other productive economic activities. She relied upon judgments in *Commissioner of Income Tax Peshawar v. Director General, NWFP Employees Social Security Institution, Peshawar and another* (2019 SCMR 439) and *Messrs Aisha Spinning Mills Ltd. v. Federation of Pakistan through Secretary, Ministry of Finance, Islamabad and 3 others* (1995 PTD 493).

9. Mirza Nasar Ahmad, Additional Attorney General representing Federation and responding to the notice under Order XXVII CPC,

advanced different arguments, without prejudice to the arguments already made from respondents' side. Submitted that incidence of tax, under the impugned Section 7E, is the value of immovable property, even if we ignore the deeming phrase used in Section 7E of the Ordinance of 2001. The tax is at 5% of fair market value of the Capital Asset, he emphasized. Reiterated that competence to legislate can be gathered from two different Entries and different taxes can be imposed in one statute. Relying on the principle that courts should strive hard to save a legislation, he submitted that the impugned provisions can be read down to harmonize it with the competence available under Entry 50, which allows taxation on Capital Value of Assets and the term assets includes immovable property. He read Entry 50 in comparison with Entry 47 and submitted that exclusion of agriculture income is from the income, being its component, whereas in Entry 50 the exclusion is of taxes on immovable property and not of immovable property as component of capital assets.

10. Heard. Record perused.

11. The arguments can be summed up in following legal propositions, which need to be resolved for determining the lis in this case.

First is, the extent of legal fiction for treating anything as 'income tax', under Entry 47, and if impugned tax fails the test of legal fiction, *Second is*, whether the provisions of Section 7E can be saved to tax capital value of immovable property, under Entry 50, and *Third is*, sustainability of the provisions of impugned Section 7E, on being examined in light of the referred judgments and constitutional mandate alongwith discriminatory aspects.

12. The legal questions raised and argued are complex to answer without understanding the spirit and nature of different types and kinds of taxes. The task is well explained in the words of great physicists of all time **Albert Einstein**, who influenced the philosophy of science,

“The hardest thing in the world to understand is the income tax”.

Taxation is the basic attribute of sovereign authority, a state cannot be run without imposition and collection of taxes as is concisely expressed by founding father and framer of the United States constitution, **Benjamin Franklin**, who said,

“Our new Constitution is now established, everything seems to promise it will be durable; but, in this world, nothing is certain except death and taxes.”

Montesquieu (the French Political Philosopher) in *“Spirit of Law”* explained the purpose of taxation in following words,

“what are taxes but the revenue collected from people for objects in which they are interested; the contribution of the people for things useful and conclusive to their welfare”.

Taxation is compulsory exaction or enforced contribution, collected by state, under its sovereign authority, to carry into effect its mandates and for performance of manifold functions by the governments at Federal, Provincial or Local Government level. Mukherjee J., opined in *Hindu Religious Endowments v. Sri Lakshmindra* (AIR 1954 SC 282);

“A neat definition of what ‘tax’ means has been given by Latham C.L. of the High Court of Australia in – Matthews v. Chicory Marketing Board. A ‘tax’ according to learned Chief Justice, is a compulsory exaction of money by public authority for public purposes enforceable by law and is not payment for services rendered.... It is said that the essence of taxation is compulsion, that is to say, it is imposed under statutory power without the taxpayer’s consent and the payment is enforced by law. The second characteristic of tax is that it is an imposition made for the public purpose without reference to any special benefit to be conferred on the payer of the tax.... Another feature of taxation is that as it is a part of the common burden, the quantum of imposition upon the taxpayer depends generally upon his capacity to pay.”

13. Taxes are mainly classified as direct and indirect. Direct tax is one, burden of which cannot be shifted to someone else, but for indirect tax, it can be to end consumer. Direct taxes are primarily taxes on a natural person’s net income or net worth. Taxes on net income are based on the taxpayer’s ability to pay and taxes on net worth are levied on the total value of his assets owned, minus

liabilities. Indirect taxes are levied on the production or consumption of goods and services or on transactions, including imports and exports. The chief reason for resorting to indirect taxes is that this method enables the government, in words of the French economist *Anne Robert Jacques Turgot*, “to pluck the goose without making it cry out” because those who are paying it would not perceive that what they are paying as price is really a tax. Montesquieu (the French Political Philosopher) exemplified the indirect taxation in following words;

“There are two states in Europe imposts are very heavy on liquors; in one the brewer alone pays the duty, in the other it is levied indiscriminately upon all the consumers; in the first, nobody feels the rigor of the impost, in the second, it is looked upon as a grievance. In the former, the subject is sensible only of the liberty he has of not paying, in the latter, he feels only the necessity that compels him to pay.”

In American Taxation system taxes are divided in three basic categories; (i) tax on what you earn, (ii) tax on what you buy and (iii) tax on what you own. Taxes on earnings include income tax on individual and corporation, payroll tax (paid on the wages and salaries of employees to finance social securities) and capital gain tax. Taxes on buying include sales tax, value added tax and excise tax, which are also called tax on transaction. Taxes on what you own include property tax, estate, inheritance and gift tax, wealth tax or tax on value of assets.

The event or incidence of all kinds of taxation, direct or indirect, is to be decided by the legislature through enactment, influenced by political, economic, and social factors, as well as international agreements and treaties. The incidence of taxation also determines whether the tax is on a person, property or a transaction. Taxes on a person or property are generally direct taxes, and tax on transaction is indirect for it goes with the transaction and falls where the transaction terminates.

The state’s power to tax is the incident of sovereignty, exercised through legislative discretion, which cannot be curtailed on ground of being harsh or unreasonable. Nothing but express

constitutional limitation upon legislative authority can exclude anything from the grasp of taxing power. The judiciary cannot redress oppressive taxation, being policy decision, unless the taxation exceeds legislative power or competence under the Constitution and if it offends the fundamental rights guaranteed by the Constitution.

14. The Constitution of Pakistan recognizes the power of taxation, as basic characteristic of sovereignty, under its Article 7, with only condition that the state should be '*empowered by law*' to impose any tax or cess;

“7. In this Part, unless the context otherwise requires, “the State” means the Federal Government, Majlis-e-Shoora (Parliament), a Provincial Government, a Provincial Assembly, and such local or other authorities in Pakistan as are by law empowered to impose any tax or cess.”

(emphasis supplied)

The condition is reiterated in Article 77 as is reflected in its caption “*Tax to be levied by law only*”. Article 142 bestows legislative competence upon the Federation and the Provinces. The Federation has exclusive power to impose tax, through legislation, with respect to the kinds and nature of taxes mentioned in the Federal Legislative List [means Federal Legislative List in Fourth Schedule as defined in Article 70(4)] (“**FLL**”) and the taxes not listed therein can only be imposed by the Provinces. Following Entries in Part I, Fourth Schedule are determining the fields or areas (the kinds and types of taxation), within Federation’s power of taxation.

“43. Duties of customs, including export duties.

44. Duties of excise, including duties on salt, but not including duties on alcoholic liquors, opium and other narcotics.

47. **Taxes on income other than** agricultural income.

48. Taxes on corporations,

49. Taxes on the sales and purchases of goods imported, exported, produced, manufactured or consumed, except sales tax on services.

50. **Taxes on the capital value of the assets, not including** taxes on immoveable property.

⁴The words “on capital gains” omitted *ibid*.

51. Taxes on mineral oil, natural gas and minerals for use in generation of nuclear energy.

52. Taxes and duties on the production capacity of any plant, machinery, undertaking, establishment or installation in lieu of the taxes and duties specified in entries 44, 47, 48 and 49 or in lieu of any one or more of them.

53. Terminal taxes on goods, or passengers carried by railway, sea or air; taxes on their fares and freights.”

(emphasis supplied)

Entries 47 and 50 are the subject of the queries to be answered, for which phrases *Capital Value of Assets*, *taxes on immovable property*, and *income other than agriculture income* need to be understood by exploring legislative history of the Entries, spreading in different Constitutions of Pakistan, since Government of India Act 1935;

“Government of India Act, 1935.

54. Taxes on income other than agricultural income.

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

Constitution of 1956

26. 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 the capital value of assets exclusive of agricultural land**; 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.”

In both, the Government of India Act 1935 and Constitution of 1956, exclusion of *agriculture land* implies itself that immoveable property was part of the Capital Assets. As a State policy, agriculture income and agriculture land were excluded or left out of the Centre’s legislative competence to tax. Same is the position in the Constitution of India till date;

“The Constitution of India.

82. Taxes on income other than agricultural income.

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

The proposition, or existing confusion, stems from the Constitution of 1962 whereby ‘*capital gains on immovable property*’ was excluded in the Entry 42(e), determining taxation on ‘*Capital Value of Assets*’ as a field of legislation, which is reproduced: -

“Constitution of 1962

42. Duties and taxes, as follows:-

(c) corporation taxes and taxes on income other than agricultural income;

(e) taxes on the capital value of assets, not including taxes on capital gains on immovable property.”

The intention was to save the gain from sale or transfer of immovable property from taxation as a limb of income tax. The Exclusion of ‘*capital gain on immovable property*’ in the Entry 42(e) had adverse effects as investments in immovable property became more profitable and secure than in industry and trade, particularly in politically turbulent times. On socio-economic side, gap between rich and the poor classes widened due to accumulation of wealth. One of the chief purposes of direct taxes is redistribution of wealth; taxing those who can afford more and compensate those who earn less or not. Philosophy behind direct taxes is the same as is imbedded in Zakat, a religious obligation, which ensures redistribution of wealth to support the deserving groups of society and on religious side it cleanse and purify the soul and wealth of the rich. Materially, it restricts accumulation of wealth and eliminates social inequalities. Some religious scholars believe and preach that direct taxes paid to the State is discharge of the religious obligation. In Indonesia, to avoid double burden of Zakat and tax, Zakat paid to the designated institutions is deducted from profits and taxable residual income.

The Constitution of 1973, as existing today, confers fundamental right of acquiring, holding and disposing of property in Pakistan under Article 23, however, an exception, *inter alia*, is under Article 24(3)(f), which empowers Federation to enact laws under Article 253 to “*prescribe the maximum limits as to property or any class thereof*”. Though primary purpose of taxation is collection of revenue, but taxation is also used as a tool to implement State policies, like imposition of extra taxes on the assets or wealth beyond prescribed maximum limit. Taxation on ‘*Capital Value of Assets*’ as a field of legislation is consistently within competence of Federation or Centre and if read with Article 253 of existing Constitution of 1973, would confer an exhaustive competence to fix a maximum limit of possessing or controlling property or to levy tax for achieving this purpose. The word Property, synonymous to word Assets, as used in the Constitution is defined under Article 260 as, “*Property*” *includes any right, title or interest in property, moveable or immoveable, and any means and instruments of production;*”. It is universally accepted that Assets include property of every kind moveable or immoveable, tangible or intangible.

Since Federal Legislature is competent to fix a maximum limit of possessing or controlling property and can levy tax, driving competence from Entry 50, to achieve this goal, therefore, it has implicit power to control and curb ill-gotten assets as well. Accumulation of wealth through unfair means can be checked and criminalized through taxing provisions alongwith amendments in corresponding provisions of other relevant laws. Obligation to declare assets, under the Section 116, should be mandatory for all public office holders including in judiciary and armed forces, indiscriminately. The declaration from the date of assuming office should be compared with declaration on retiring date. If increase does not commensurate with the capacity to earn during service, the public office holder should be obliged to discharge the burden of proving that the increase was from legitimate source and that the source was

not achieved through or under the influence of office he kept. The consequence should be confiscation and criminal prosecution.

15. Further inquiry is required to understand the concepts of ‘*Capital Gain Tax*’, ‘*Capital Assets*’ and ‘*Property*’ as components of capital assets.

The exclusion, by Entry 42(e) of 1962 Constitution, of taxation ‘*on capital gain from immoveable property*’ reflected in Income Tax Act 1922 (“**ITA 1922**”), which was the taxing statute under Government India Act 1935. It imposed direct tax on income, including tax on capital gain and continued under the successive Constitutions of Pakistan until Income Tax Ordinance 1979 (“**ITO 1979**”) was promulgated. ‘*Capital Gain*’ was always a component of income tax in subcontinent since ITA 1922. It was taxed under its Section 12B, as a head of income [Section 6(vi)], ‘*on profits and gains arising from the sale, exchange or transfer of a capital assets*’. Definition of ‘*Capital Asset*’ was given in Section 2(4A), which read;

“(4A) “*capital asset*” means **property of any kind** other than agriculture land held by an assessee, whether or not connected with his business, profession or vocation, but does not include ___”

The exclusion from capital assets were stock in trade, consumable store, raw material etc. along with *personal effects*, described as moveable property in personal use like jewellery and furniture etc. The phrase “*other than agriculture land*” was omitted in 1948 and *clause (iii)* was inserted, “*any land from which the income derived by the assessee is agriculture income*”, which confirmed the intention of the framers of Constitutions that agricultural income and the land from which agriculture income is derived, was out of Federation’s competence in Pakistan and of the Union in India. However, after the change in Entry 42(e) of 1962 Constitution, *subclause (iv)* was inserted in ITA 1922 by the Act XI of 1966; “..., *but does not include, (iv) for the purpose of capital gains, any immoveable property*”, which means for other purposes the immovable property was part of capital assets. Such exclusion was not

part of ITA 1922 adopted by India, for obvious reason that the corresponding Entry 86 in First List, Seventh Schedule of Indian Constitution was unchanged.

In ITO 1979, capital gain was again a head of income under Section 15(e) and was taxed under Section 27. The term '*Capital Assets*' was defined in Section 2(11) as '*property of any kind held by assessee*' having similar exclusions including the land, *income derived from which by the assessee was agriculture income*. The subsection (2)(a)(ii) of the Section 27, excluded *immovable property, for the purpose of charging capital gain tax*, from the definition of capital assets.

16. Both the taxing statute confirm that capital gain was always a head of income tax because the tax is imposed on an amount received on sale or transfer, in excess of the cost of acquisition and not the property itself. However, such receipt on sale or transfer of an immovable property was excluded from the Entry 50, not otherwise as the excluding phrase, used in the Section 27, is itself showing i.e., '*for the purpose of capital gain tax*'. The same was the interpretation of Entry 50 before 18th Amendment, therefore, the legislature under 1962 Constitution, itself promulgated Wealth Tax Act 1963, which taxed Capital Value of all Assets, by redefining it as Net Wealth. Supreme Court of Pakistan confirmed this interpretation in *Haji Muhammad Shafi and others v. Wealth Tax Officer and others* (1992 PTD 726), when competence to levy Wealth Tax under the Entry 50 was challenged. The Wealth Tax Act 1963 continued in force under Article 268 and as tax under Article 279 of 1973 Constitution. Wealth Tax Act 1963 was pleaded to be *ultra vires* of the Constitution of 1973, besides challenging double taxation, one by Federation and the other by Province through West Pakistan Urban Immovable Property Tax Act, 1958. Division Bench of learned Sindh High Court dismissed the petition on both grounds and so was the fate of appeal before the August Supreme Court. Relevant portion of the judgment is reproduced.

“4. We are in full agreement with the observation made by the learned Judges of the High Court. **Item 50 of the Fourth Schedule provides for tax on capital value of the assets not including taxes on capital gain on immovable property. Therefore, tax on capital value of assets can be levied which is not disputed at all.** Wealth Tax is one of those taxes which intends to subject the assets to taxation. It is nobody's case that the Wealth Tax Act does not charge the assets. The Act has provided a mechanism for imposing and calculating the tax on capital assets. The provision for calculating such tax is provided by the Act. Section 3 denotes which part of the capital value shall be taken into consideration for the purposes of charging wealth tax. **It is nobody's case that the net value of assets is not a part of the capital value. The capital value of the assets includes the net value of the assets.** The definition of the net wealth under section 2(m) clearly provides that first the aggregate value of all the assets belonging to the assessee has to be taken into consideration. This is the basis for charging the tax. Now, in order to calculate the tax the aggregate value of liabilities and debts are to be deducted from the aggregate value of assets and the excess so calculated has been termed as `net wealth' on which tax is calculated at the speed rate. This process of calculating the tax does not exclude the capital value of assets from wealth tax charged under section 3.”

(emphasis supplied)

Net wealth, in its definition, was aggregate value of all assets including immovable property, however it was pleaded that Entry 50 allowed taxation of Value of Assets whereas Section 3 of Wealth Tax Act 1963 was charging net value of the assets. While answering this plea, value of assets as defined in *Sanaullah Woollen Mills Limited and another v. Monopoly Control Authority* (PLD 1987 SC 202) was referred, in which it was held, “*It is in this sense that the word `assets' has been used to denote a `complete whole' of the property.*”. The challenged was inspired by a judgment from Indian jurisdiction in *Union of India v. Harbhajan Singh Dhillon* [(1972) 83 I.T.R. 582].

The Entry 50, before 18th Amendment, was again examined by the Hon'ble Supreme Court of Pakistan in *Messrs I.C.C. Textile Ltd. v. Federation of Pakistan* (2001 PTD 1557). "*Corporate Assets Tax*" inclusive of liabilities, imposed under Section 12 of the Finance Act 1991 by the Federal Legislature, was assailed. Judgment in *Haji Muhammad Shafi* case, *supra*, was endorsed and objection of relying upon the definition in *Sanaullah Woollen Mills* case was explained,

while holding that Federal legislature is competent to tax corporations under Entry 48, relevant excerpt is reproduced:-

“11. In above concluding para **most important principle laid down is that under Item 50 of the Legislative List Part I appended with the Fourth Schedule and the Wealth Tax Act both provide levying of tax on the assets** notwithstanding the fact whether it is net value of the tax or not and only the difference is that under section 3 of the Wealth Tax Act a mechanism has been provided for calculating and imposing the tax on the assets, therefore, for such reasons it cannot be considered that the net value of assets is not part of the capital value.

12. It is thus held that legislature had power to promulgate section 12 of the Act under Article 142 of the Constitution to levy Corporate Assets Tax on the value of the assets held by a company on a specified date, therefore, **the gross assets of the Company as per section 12(12)(d) of the Act are liable to tax inclusive of the liabilities of the company as per Entry No.50 of the Federal Legislative List Part 1 Fourth Schedule of Constitution** and there is absolutely no ambiguity of whatsoever nature in imposing the Corporate Assets Tax.”

(emphasis supplied)

The judgments, *ibid*, confirm that the ouster of immoveable property from the Entry 50, before 18th Amendment, was only for the purpose of capital gain tax, otherwise immovable property was an essential part of the Assets, giving competence to tax Capital Value of Assets.

Therefore, it is concluded and held that, before 1962 Constitution, tax on agriculture income and agriculture land was out of Federation or Centre's competence. After 1962 Constitution till 18th Amendment, immoveable property was always an essential component of Assets, bestowing competence to tax Capital Value of Assets to Federation. The exclusion of immoveable property was only for the purpose of charging Capital Gain Tax. The Capital Gain Tax always was and is a part of income tax, competence of which is under Entry 47, and reason for placing it in Entry 50 was to exclude the immovable property from the definition of Capital Assets, only for the purpose of capital gain.

After change in Entry 50 through 18th Amendment, the effect of omitting the phrase, “*on capital gains*” is that now capital gain is taxable on immovable property, under Section 37(1) of the Ordinance of 2001, because capital gain is not a tax on property but a limb of income tax, on the receipt or gain by a person on transfer or sale of property and not on the property.

17. Now exclusion of “*taxes on immovable property*”, in the Entry 50, and its extent is to be examined.

There is a difference between taxes on immovable property and tax on income arising from immovable property. Burden of income tax, including capital gain tax is on person who receives the income. Whereas burden of taxes on immovable property is on the property and goes with the property if not taxed before the sale or transfer. Like Estate Tax paid by the estate itself, before assets are distributed to heirs and inheritance taxes are paid by those who inherit property. Gift tax is levied so that the inheritance and estate tax cannot be avoided by transferring property prior to death. In Pakistan, estate tax was charged under Estate Duty Act 1950, which was repealed in 1979, without any debate or deliberation. It was within competence of Federation under Entry 46 ‘*Estate Duty on property*’ along with Entry 45 ‘*Duties in respect of succession to property*’. Both the entries, imposing tax on immovable property, are repealed by 18th Amendment alongwith the amendment in Entry 50, where after the phrase “*taxes on immovable property*” is excluding “taxes” on immovable property and not the immovable property itself from capital assets, value of which is to be taxed under Entry 50. Omission of Entries 46 & 45 alongwith amendment in Entry 50, collectively shows that all taxes, burden of which is on the immovable property are excluded from competence of the Federation.

Punjab Urban Immovable Property Tax Act 1958 is also a tax on immovable property. Luxury House Tax was imposed through Section 8 of the Punjab Finance Act, 2014 on residential houses

measuring two Kanals and above. Province's competence to tax was assailed on touchstone of the Entry 50. Division Bench of this Court in Muhammad Khalid Qureshi v. Province of Punjab through Secretary, Excise and Taxation Department, Lahore and other (2017 PTD 805), interpreted the Entry 50 and held that Luxury House Tax is tax on property and not on value of property, therefore, within competence of the Provincial Legislature. Relevant part of the judgment is reproduced:-

“20. 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.** The use of phrase in clause (c) of Article 142 i.e. "and Majlis-e-Shura/Parliament shall not" puts a clog on Federal legislative power to tax the matters, not enumerated in Federal Legislative List, including immovable property. The clause (c) of Article 142, read with latter portion of Entry No. 50 would show an emphasis regarding exclusion of Parliament's power to tax immovable property i.e., "not including taxes on immovable property". **Since the tax in question is not being charged on value of residential houses, therefore, we have no doubt in our mind that only Provincial Legislature is competent, particularly after the 18th Amendment, to tax the residential houses consisting of more than specified land and superstructure thereon.** It is emphasised that subsection (1) of the impugned Section 8 is levying tax on land and superstructure thereon and not the value thereof.”

(emphasis supplied)

The judgment neither held nor observed that value of immovable property cannot be taxed by the Federation.

18. To understand the nature of impugned tax, levied under impugned Section 7E, post 18th Amendment changes in the Ordinance of 2001 are examined.

Capital Gain is again a head of income under Section 11(1)(d) of the Ordinance of 2001, which defines 'capital asset' in Section 37(5), read with Section 2(11). Immoveable property was completely excluded from the definition, unlike 1979 Ordinance where immoveable property was excluded *for the purpose of capital gain tax, or a land used for agriculture income*. It is important to note that the complete exclusion of immovable property was by the legislature and not by Entry 50 of the Constitution of 1973. This exclusion remained till Finance Act 2022, whereby Clause (c), "*any immoveable property; or*", was omitted to give effect of 18th Amendment in the Entry 50. After omitting the Clause (c), immoveable property is included in the definition of capital assets and is taxable under Section 37(1) on capital gain. However, out of abundant caution, it appears, subsection (1A) is substituted through Finance Act 2022, which reads,

"(1A) Notwithstanding anything contained in sub-section (1), *gain arising on disposal of immovable property situated in Pakistan, to a person in a tax year shall be chargeable to tax under the head capital gains* at the rates specified in Division VIII of Part I of the First Schedule."

(emphasis supplied)

The subsection (1A) and impugned Section 7E are inserted through Finance Act 2022, simultaneously. Agriculture land is now part of assets, for the purpose of capital gain tax. Self-owned agriculture land where agriculture activity is carried out is, however, excluded under Section 7E(2)(c), from chargeability of impugned tax. In impugned Section 7E, capital asset is separately defined under subsection (4)(a), which "*means property of any kind held by a person, whether or not connect with a business*". However, by subclause (iv) to the subsection (4)(a), all moveable assets are excluded from the definition of asset. Interestingly, the levy under Section 7E has targeted only immoveable property by excluding all

moveable assets from the definition of capital assets. An amount equal to fair market value of the immovable property, situated in Pakistan, is treated to have been derived as income by the resident person. The levy is excluded on one capital asset, self-owned business premises and self-owned agriculture land where agriculture activity is carried on. Amongst others, twenty-five millions of fair market value, in aggregate, is excluded.

19. Though Capital Value of Assets, including immovable property can be taxed by Federation, however, it needs to be examined whether fair market value can be treated as income. If answer is in negative, whether taxation under the impugned Section 7E can be saved by reading down the phrase, "treated to have derived, as income".

The respondent side relied, mainly upon the judgment in *Elahi Cotton Mills' Case*. Federation's competence, to impose *Presumptive Tax* under Sections 80C, 80CC and *Minimum Tax* under Section 80D of the repealed ITO 1979, was challenged. In the Section 80C, tax of contractors and importers deductible under various clauses of Section 50 were deemed to be income and tax was charged accordingly. In Section 80CC, the amount received by the exporter under Section 50(5A) & (5AA) were treated as income and tax was charged. August Supreme Court, in the elaborated judgment, read Entries 52 and 47 together to hold that in lieu of tax on income, capacity to earn income could be charged to tax, relevant part is reproduced: -

"34. ... In our view, sections 80-C and 80-CC of the Ordinance fall within the category of presumptive tax as under the same the persons covered by them pay a pre-determined amount of presumptive tax in full and final discharge of their liability in respect of the transactions on which the above tax is levied. Whereas section 80-D of the Ordinance is founded on the theory of minimum tax which has been elaborately dealt with in the treatises, the relevant portions of which have been quoted in extenso hereinabove. **If we were to read Entry 47 in isolation without referring to Entry 52, one can urge that Entry 47 does not admit the imposition of presumptive tax as the expression "taxes on income" employed therein should be understood as to mean the working out of the same on the basis of computation as provided in the various provisions of the Ordinance.** We are inclined to hold that **presumptive tax is in fact akin to capacity**

tax i.e., capacity to earn. In this view of the matter, we will have to read Entry 47 in conjunction with Entry 52 which provides taxes and duties on production capacity of any plant, machinery, undertaking, establishment or installation in lieu of the taxes or duties specified in Entries 44, 47, 48 and 49 or in lieu of any one or more of them. Since under Entry 52, tax on capacity in lieu of taxes mentioned in Entry 47 can be imposed, the presumptive tax levied under sections 80-C and 80-CC of the Ordinance is in consonance with the above two entries if read in conjunction. However, we may point out that in Entry 52, the key words used are "in lieu of taxes and duties specified in entries 44, 47, 48 and 49 or in lieu of any one or more, of them". In order to understand the real import of the above portion of Entry 52, we **will** have to refer to the meaning of the words "in lieu of". In this regard, reference may be made to Black's Law Dictionary, Sixth Edition, Ballentine's Law Dictionary, Third Edition; and the Legal Thesaurus by Steven C. De Costa, which read as follows----

Black's Black's Law Dictionary. nape 787

"In lieu of": Instead of; in place of; in substitution of. It does not mean "in addition to".

Ballentine's Law Dictionary. page 628

"in lieu of" In substitution for or in place of Ordinarily implying the existence of something to be replaced.

Legal Thesaurus, nape 266

"In lieu of": Proposition as a substitute for, as an alternative, by proxy, or, in place of, instead of, on behalf of, rather than, representing.

35. A perusal of the above quoted meanings of the above expression "in lieu of" indicates that the same connote, instead of, in place of, in substitution of, but it does not mean, in addition to.

If we were to construe Entry 52 of the Legislative List keeping in view the above meanings of the expression "in lieu of", it becomes evident that the Legislature has the option instead of invoking Entry 47 for imposing taxes on income, it can impose the same under Entry 52 on the basis of capacity to earn in lieu of Entry 47, **but it cannot adopt both the methods in respect of one particular tax.** Since under sections 80-C and 80-CC the imposition of presumptive tax is in substitution of the normal method of levy and recovery of the income-tax, the same is in consonance with Entry 52."

(emphasis supplied)

It is important to note that presumptive tax was purely based on or akin to Entry 52 and it is observed, in particular, that Entry 47 does not admit the imposition of presumptive tax because the expression 'taxes on income' means working out of income based on computation under various provisions of the taxing statute.

However, with complete reverence and understanding the binding command under Article 189 of the judgment by August Court, it is observed that the capacity tax changed the nature of the taxation from direct to indirect tax, because burden of the tax, being on transactions, in practice, is shifted on the end consumer by calculating it into cost along with other indirect taxes. The purpose and spirit of direct tax under Entry 47 is to lay burden on the person whose income is taxed, which is not achieved for absence of consequential legislation or regulation to ensure that this tax is not calculated into cost of the transaction, i.e., import, supply or service. This aspect, however, was never argued or considered in the judgment, therefore, it is noted with hope that it might be taken up and considered in an appropriate case by Hon'ble Supreme Court.

Minimum tax under Section 80D was imposed where no tax was payable or paid or it was less than one-half percent of the total turnover from all sources of income, the declared turnover was deemed to be income and tax was charged. Unlike *Presumptive Tax*, minimum tax was charged after the statutory computation of arriving at net income, when no tax was chargeable or was below the threshold of one-half percent. The rationale was of contributing some tax (minimum) towards the cost of Government, without disturbing the right of carrying forward the losses, which is negative income. Relevant excerpt from the judgment is reproduced: -

“40. Adverting to the impugned newly-added section 80-D, it may be stated that we have already pointed out hereinabove that sections 80-C and 80-CC cannot be equated with section 80-D as the same is founded on different basis. It may again be observed that section 80-D is based on the theory of minimum tax. It envisages that every individual should pay a minimum tax towards the cost of the Government. The object of the minimum tax is to ensure that the tax-payers, who receive substantial amounts from exempt sources, pay at least some tax on their economic incomes of the year. This is achieved by reducing or disallowing certain itemised deductions. We may again observe that a large number of assessee though generally earn profits but on account of various tax concessions including tax holidays, depreciation allowance etc., under Schedule II and deductions allowed under the various provisions of the Ordinance, show loss instead of any net profit, with

the result that they do not contribute any income tax towards the public exchequer. The levy of minimum tax has been adopted in some other countries of the world including U.S.A., Israel, France, Columbia and Thailand besides India. In United States, under section 56(a) a tax equal to 15% of the amount, by which sum of the items of tax preference exceeds the greater of (i) \$ 100,000 (b)..... (c)... etc., is levied.

In India above-quoted section 115-JA has been incorporated in 'the Indian Income Tax Act containing a detailed mechanism for computing, the total income of a company for the purpose of levy of minimum tax. In Thailand, above-quoted section 48 has been enacted in the relevant statute to levy minimum tax."

(emphasis supplied)

20. The purpose of presuming the tax, deducted, withheld or received on the transactions under the Sections 80C & 80CC, was to avoid conventional statutory method of calculating net income, by construing it as taxpayer's capacity to earn income under Entry 52. The August Court, noted the aspect of avoiding conventional method of calculating income in the following paragraph: -

"32. We have summarised hereinabove in para. 31 the ratio decidendi of the above discussed cases and certain pertinent observations made therein. A perusal of above sub-paras. (i) to (xxx) of para. 31 indicates that the 'same do not advance the case of the appellants. On the contrary, they reinforce the principle of law that the Legislature, particularly in economic activities, enjoys a wide latitude in the matter of selection of persons, subject-matters, events etc., for taxation. the presumption is in favour of the validity of the legislation. The burden to prove that the same is invalid is on the person who alleges it.

However, one can urge that the general observations contained in subparas. (xxxi) to (xxxiv) of para. 31 lend support to some extent to the appellants' case. However, it should not be overlooked that in none of the cases from the judgments of which the above observations have been lifted the question, as to whether there can be presumptive tax or the minimum tax, in view of entries 47 and 52 of the Legislative List, was in issue. **In this view of the matter, it would be inappropriate to apply the tests traditionally prescribed by the Income Tax Act and/or any other statute.**"

(emphasis supplied)

The paragraph 32, *ibid*, clarifies that paragraph 31 only summarised the *ratio decidendi* of the discussed cases and did not apply the observations, completely, on merits of the case in particular sub-paras (xxxi) to (xxxvi). However, lawyers generally rely on paragraph 31, indiscriminately, in cases where tax issues are involved,

without understanding its spirit explained in paragraph 32. The case in had is not an exception, counsel from both sides have relied on different parts of paragraph No. 31 of the judgment, where it favours them.

The strict test of construing or presuming anything as income was not applied to merits of the case, as noted in the paragraph 32, because the levy of tax was declared under Entry 52. Whereas, in this case fair market value, being notional and speculative cannot be a tax on capacity of an immovable property and is treated as income under Entry 47, therefore, sub-paras (xxxii) to (xxxiv) of paragraph 31 shall apply, hence are reproduced: -

“31.

(xxxii) *That though the Legislature has the prerogative to decide the questions of quantum of tax, the conditions subject to which it is levied, the manner in which it is sought to be recovered, but **if a taxing statute is plainly discriminatory or provides no procedural machinery for assessment and levy of the tax or that is confiscatory, the Court may strike down the impugned statute as unconstitutional.***

(xxxiii) *That the rule of interpretation that while interpreting an entry in a Legislative List it should be given widest possible meaning does not mean that Parliament can choose to tax as income as item which in no rational sense can be regarded as a citizen's income. The item taxed should rationally be capable of being considered as the income of a citizen.*

(xxxiv) *That before charging tax, an assessee must be shown to have received income or the same has arisen and accrued or deemed to be so under the statute. Any amount which cannot be treated as above is not an income and; therefore, cannot be subject to tax.*

(xxxv) *That there is a marked distinction between a tax on gross revenue and a tax on income, which for taxation purposes, means gains and profits: There may be considerable gross revenues, but no income taxable by an income-tax in the accepted sense.*

(emphasis supplied)

The principles, *ibid*, of presuming anything as income, are deduced, with approval, from the judgments discussed, therefore, have binding force without further probe into the relied upon judgments. If fair market value in Section 7E, being notional and not actually received, is tested on the touchstone of these principles, the

inescapable conclusion is that (i) it lacks any procedural machinery and levy of the tax, (ii) it is not capable of rationally considered as income of a citizen, (iii) neither it can be deemed as received, being hypothetical, nor it can be deemed to have accrued, and (iv) being speculative it cannot be deemed as gain or profit.

21. The Fair Market Value, before introducing it in Section 7E, is defined in Section 29(3) of the ITO 1979 for the purpose of determining the cost of acquisition to tax Capital Gain under Section 27, where profit and gain from transfer of a capital asset is deemed as income of the year in which transfer took place. Under Section 29(1) & (2), the fair market value is related to the date on which it become property of the assessee or the date of transfer and presumption here is for redetermination of the received profit and gain. Under Section 12(12) certain transactions of assets, like lease or purchase are deemed as income accrued or arise in Pakistan. The Commissioner is given power to determine the cost of acquisition, considering the sale or lease as per market value. The deeming under Section 12(12) is of a consideration of sale, purchase or lease, whereas under Section 7E there is no profit or gain or transfer of the asset, in particular of the immovable property. Section 29 of the ITO 1979 is reproduced: -

“29. Cost of acquisition, and consideration for transfer, how determined.- (1) *Where the capital asset became the property of the assessee-*

(a) *under a gift, bequest or will; or*

(b) *by succession, inheritance or devolution; or*

(c) *on any distribution of assets on the dissolution of a firm or other association of persons or the partition of a Hindu undivided family; or*

(d) *on any distribution of assets on the liquidation of a company; or*

(e) *under a transfer to a revocable or an irrevocable trust,*

the fair market value of the asset, as on the date on which it became the property of the assessee, shall, for the purposes of sub-section (1) of section 28, be deemed to be the cost of acquisition.

(2) *Where the person who acquires a capital asset from an assessee is directly or indirectly connected with him and the Deputy*

Commissioner has reason to believe that the transfer was effected with the object of avoiding or reducing the liability of the assessee, the fair market value of the capital asset, as on the date of the transfer, shall be deemed to be the consideration received by the assessee for its transfer.

(3) For the purposes of sub-section (1) and (2) and subsection (12) of section 12, "**fair market value**" means-

(a) the price which the capital asset would ordinarily fetch on sale in the open market on the relevant date; and

(b) where the price referred to in clause (a) is not ascertainable, such price as may be determined by the Deputy Commissioner after obtaining the approval of the Inspecting Additional Commissioner in writing."

(emphasis supplied)

Perusal of Section 29 shows that fair market value is determined, by invoking deeming clause, where a property or asset changes hand with or without consideration. Even on change of had without consideration, a conceivable benefit is received, which is translated into fair market value, whereas no conceivable benefit from an immoveable property is discernible under Section 7E.

Income is defined under Section 2(29) of the Ordinance of 2001, which uses expression "**and any amount treated as income**" to confer power of presuming income, but the word, "**amount**" has significance of receiving something, in other words only an amount or receipt can be presumed as income and not a notional fair market value. The Subsection (29) of Section 2 is reproduced: -

"(29) "**income**" includes any amount chargeable to tax under this Ordinance, any amount subject to collection or deduction of tax under section 148, 150, 152(1), 153, 154, 156 and 156A, 233, sub-section (5) of section 234 **and any amount treated as income** under any provision of this Ordinance and any loss of income."

(emphasis supplied)

22. Since the phrase, "treated to have derived, as income", used in the impugned Section 7E, fails the test of the principles and the provisions, *ibid*, to presume anything as income, therefore, it is held that Federal Legislature was not competent, under Entry 47, to treat fair market value of an immoveable property as income. However, to save the legislation, within competence under Entry 50, the principle

of reading down is applied and held that the phrase, *ibid*, shall not be read in subsection (2) as part of Section 7E. Strength for this interpretation is drawn from following sub-paras of paragraph 31 from Elahi Cotton Mills Case;

*“(xxviii) That denial of reliefs provided by sections 28 to 43-C of the Indian Income Tax Act to the particular business or trades covered by section 44-AC thereof without showing some basis fair and rational and without having nexus to the object sought to be achieved by the Legislature, held unfair, arbitrary, disproportionate to the prevalent evil and constitutes denial of equal treatment. Consequently, the Indian Supreme Court did not press into service non obstante clause of section 44-AC by applying **theory of reading down as a rule of interpretation.**”*

*“(xxx) That the **theory of reading down** is a rule of interpretation which is resorted to by the Courts when they find a provision read literally seems to offend a fundamental right or **falls outside the competence of the particular Legislature.**”*

(emphasis supplied)

The theory of reading down was explained in the judgment by quoting following paragraph of Indian Supreme Court’s judgment:-

“We may mention that the theory of reading down is a rule of interpretation resorted to by Courts where a provision, read literally, seems to offend a fundamental right or falls outside the competence of the particular Legislature. This was resorted to as far back -as 1941 in In re: Hindu Women’s Rights to Property Act, AIR 1941 FC 72. The expression “property” was capable of taking in agricultural lands as well, in which case it would trench upon the field reserved for Provincial Legislatures exclusively (List II). The Court referred to the presumption that a Legislature must be presumed to be aware of its limitations and must also be attributed with an intention not to overstep its limits, and did not in fact apply to agricultural lands. In All Saints’ High School v. Government of A.P., AIR 1980 SC 1042, certain provisions of the AP Recognised Private Educational Institutions Control Act, 1975, were challenged as violating Article 30.”

23. The next, consequential question is whether provisions of Section 7E, are sustainable, for taxing the Capital Value of Assets and in particular the immovable property. Section 7E, after been read down (sic), is reproduced: -

“7E. Tax on deemed income.-- (1) For tax year 2022 and onwards, a tax shall be imposed at the rates specified in Division VIIC of Part-I of the First Schedule on the ~~income~~ (capital asset) specified in this section.

(2) A resident person shall be ~~treated to have derived, as income~~ chargeable to tax under this section, an amount equal to five percent of the fair market value of capital assets situated in Pakistan held on the last day of tax year **excluding the following**, namely:–

- (a) one capital asset owned by the resident person;
- (b) self-owned business premises from where the business is carried out by the persons appearing on the active taxpayers' list at any time during the year;
- (c) self-owned agriculture land where agriculture activity is carried out by person excluding farmhouse and land annexed thereto;
- (d) capital asset allotted to –
 - (i) a Shaheed or dependents of a shaheed belonging to Pakistan Armed Forces;**
 - (ii) a person or dependents of the person who dies while in the service of Pakistan armed forces or Federal or provincial government;**
 - (iii) a war wounded person while in service of Pakistan armed forces or Federal or provincial government; and**
 - (iv) an ex-serviceman and serving personal of armed forces or ex-employees or serving personnel of Federal and provincial governments, being original allottees of the capital asset duly certified by the allotment authority;**
- (e) any property from which income is chargeable to tax under the Ordinance and tax leviable is paid thereon;
- (f) capital asset in the first tax year of acquisition where tax under section 236K has been paid;
- (g) where the fair market value of the capital assets in aggregate excluding the capital assets mentioned in clauses (a), (b), (c), (d), (e) and (f) does not exceed Rupees twenty-five million;
- (h) capital assets owned by a provincial government or a local government; or
- (i) capital assets owned by a local authority, a development authority, builders and developers for land development and construction, subject to the condition that such persons are registered with Directorate General of Designated Non-Financial Businesses and Professions.

(3) The Federal Government may include or exclude any person or property for the purpose of this section.

(4) In this section–

- (a) “**capital asset**” means property of any kind held by a person, whether or not connected with a business, but does not include—
- (i) any stock-in-trade, consumable stores or raw materials held for the purpose of business;
 - (ii) any shares, stocks or securities;
 - (iii) any property with respect to which the person is entitled to a depreciation deduction under section 22 or amortization deduction under section 24; or
 - (iv) any movable asset not mentioned in clauses (i), (ii) or (iii);
- (b) “farmhouse” means a house constructed on a total minimum area of 2000 square yards with a minimum covered area of 5000 square feet used as a single dwelling unit with or without an annex:

Provided that where there are more than one dwelling units in a compound and the average area of the compound is more than 2000 square yards for a dwelling unit, each one of such dwelling units shall be treated as a separate farmhouse.”

(emphasis supplied)

If the phrase, “treated to have derived, as income” is not read in the subsection (2), then to construe it as tax on Capital Value of Assets under Entry 50, word “**income**” in subsection (1) has to be read as “**capital asset**”. As already held tax can be levied on Capital Value of Assets including immovable property, therefore, taxing five percent of fair market value of capital asset or immovable property under Section 7E, after reading it down in the manner above, is held *intra vires* of Federation’s legislative competence under Entry 50.

However, suitable amendments, with or without retrospective effect, can be made by the legislature, to bring the levy in harmony with other provisions of the Ordinance of 2001, like assets declared under Section 116 can be tax based on the declared value and with power to replace the value with fair market value, after notice under Section 122.

24. The spirit of the judgments in Haji Muhammad Shafi’s Case and I.C.C. Textile’s Case, supra, is that Capital Assets for the purpose of tax under Entry 50 is an inseparable whole of all assets. The Indian

Supreme Court while interpreting Entry 86 of Indian Constitution, *pari materia* to the Entry 50, held in *D. C. Gouse and Co. etc. v. State of Kerala & ANR etc.* [1980 SCC (2) 410], “...that entry would not authorise a tax imposed on any of the components of assets of the assessee”. In another judgment in *Sudhir Chandra Nawn v. Wealth-Tax Officer, Calcutta and others* ([1969] 1 S.C.R 108), it is held, “the tax is not imposed on the components of the assets of the assessee; it is imposed on total assets which the assessee owns”.

Section 7E, after reading down, brings within its fold the capital asset, defined therein, which include moveable property, but moveable assets are excluded in clause (4)(a)(iv). Being afraid of entering into legislative domain and observing judicial deference, suitable amendment is left for the legislature to bring the taxation within the mandate of Entry 50. The principle of judicial restraint couched in following sub paras of paragraph No.31 are observed for avoiding to give a legislative judgment:-

“(i) That in view of wide variety of diverse economic criteria, which are to be considered for the formulation of a fiscal policy, Legislature enjoys a wide latitude in the matter of selection of persons, subject-matter, events, etc. for taxation. But with all this latitude certain irreducible desiderata of equality shall govern classification for differential treatment in taxation law as well.

“(ii) That Courts while interpreting laws relating to economic activities view the same with greater latitude than the laws relating to civil rights such as freedom of speech, religion etc., keeping in view the complexity of economic problems which do not admit of solution through any doctrinaire or straitjacket formula as pointed out by Holmes, J. in one of his judgments.

*“(iii) That Frankfurter J., in *Morey v. Doud* (1957) U.S. 457 has remarked that “in the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not judicial deference to the legislative judgment”;*

(emphasis supplied)

25. Now comes the challenge to exclusions of persons from chargeability of tax as argued by Mr. Salman Akram Raja, Advocate. In this Court’s opinion the exclusion of persons, in subsection (2)(d) (i) to (iv), does not create an *intelligible differentia* and the classification being unreasonable is discriminatory. The touchstone

for testing discriminate taxation, unreasonableness is in following principles deduced in paragraph 31 of *Elahi Cotton Mills*' judgment:-

*“(iv) That the Legislature is competent to classify persons or properties into different categories subject to different rates of tax. But if the same class of property similarly situated is subject to an incidence of taxation, which results in **inequality amongst holders of the same kind of property**, it is liable to be struck down on account of infringement of the fundamental right relating to **equality**.*

*“(v) That **“a State does not have to tax everything in order to tax something. It is allowed to pick and choose districts, objects, persons, methods and even rates for taxation if it does so reasonably”**. (Willi's Constitutional Law).*

*“(vi) That the tests of **the vice of discrimination in a taxing law are less rigorous**. If there is equality and uniformity within each group founded on **intelligible differentia** having a rational nexus with the object sought to be achieved by the law, the **Constitutional mandate that a law should not be discriminatory is fulfilled**.”*

(emphasis supplied)

These principles, in detail, are discussed in following paragraph of the judgment:-

“29.

In the fifth case the question in case before this Court was, as to whether the pensioners who had retired prior to certain date/dates could be treated differently than the other pensioners who had retired subsequently to the target date/dates? One of us (Ajmal Mian, J.), after referring to the case-law, deduced the following principles of law:---

*“(i) that equal to protection of law does not envisage that every citizen is to be treated alike in all circumstances, **but it contemplates that persons similarly situated or similarly placed are to be treated alike**;*

*“(ii) that reasonable classification is permissible **but it must be founded on reasonable distinction or reasonable basis**;*

“(iii) that different laws can validly be enacted for different sexes. persons in different age groups. persons having different financial standings, and persons accused of heinous crimes;

“(iv) that no standard of universal application to test reasonableness of a classification can be laid down as what may be reasonable classification in a particular set of circumstances, may be unreasonable in the other set of circumstances;

*“(v) that a law applying to one person or one class of persons may be constitutionally valid if there is sufficient basis or reason for it, **but a classification which is arbitrary and is not founded on any rational basis is no classification as to warrant its exclusion from the mischief of Article 25**;*

(vi) that equal protection of law means that **all persons equally placed be treated alike both in privileges conferred and liabilities imposed;**

(vii) that in order to make a classification reasonable, it should be based---

(a) on an intelligible differentia which distinguishes persons or things that are grouped together from those who have been left out;

(b) that the differentia must have rational nexus to the object sought to be achieved by such classification."

(emphasis supplied)

In a recent judgment in Messrs Lucky Cement Limited through General Manager, Peshawar v. Khyber Pakhtunkhwa through Secretary Local Government and Rural Development, Peshawar and others (2022 SCMR 1994), the Apex Court has reiterated the principles.

The persons excluded in clauses (i) to (iv) of Section 7E (2)(d) are now tested on the principles, laid down *ante*;

(i) a Shaheed or dependents of a shaheed belonging to Pakistan Armed Forces;

Shaheed and dependents of police and other forces are left out in this clause, which are similarly placed, hence this clause is discriminatory.

(ii) a person or dependents of the person who dies while in the service of Pakistan armed forces or Federal or provincial government;

This class encompasses the whole class of person who dies in service, hence is not discriminatory.

(iii) a war wounded person while in service of Pakistan armed forces or Federal or provincial government; and

There is remote possibility of person in Federal or Provincial service to be wounded in a war, therefore is discriminatory unless it is included for them to be wounded during discharge of their duties. Likewise, if a labourer is compensated for a wound or being disabled and purchases an asset is also discriminated if the asset is subjected to tax.

- (iv) *an ex-serviceman and serving personal of armed forces or ex-employees or serving personnel of Federal and provincial governments, being original allottees of the capital asset duly certified by the allotment authority;*

This clause is highly discriminatory for those who purchase property from their savings, but were never allotted any asset including immovable property during their service.

Equality clause in Article 25, envisages, in light of the judgments, that similarly placed persons or a class should bear, equal burden of a particular taxation; otherwise the persons who are left out and taxed shall bear extra burden of the tax, of those who are excluded from taxation.

It is, therefore, held that clauses (i), (iii) and (iv) offend fundamental rights guaranteed under Article 25 of the Constitution, hence being discriminatory is declared *ultra vires*.

26. While excluding persons, discussed above, the legislature has ignored the persons, who have inherited the immovable property but are not capable of paying Capital Value Tax, particularly when the tax is on person and not the property. This omission makes the levy '*expropriatory and confiscatory*', for those who might have to sell the asset to be taxed, for paying the tax. Following extract from the judgment in *Elahi Cotton Mill's Case*, supports the pointed out confiscatory and expropriatory aspect.

"44. Adverting to the above first reason, it may be observed that *it is true that the power to tax cannot be used to embarrass and destroy the business/occupations which are sine qua non for the propriety of the people and the country.* The object of the levy and recovery of taxes as pointed out hereinabove is to run the State and to make efforts for creation of an egalitarian society. *If the rates of taxes are so high and disproportionate to the actual earnings or earning capacities that they destroy the taxpayers, the very object of their levy and recovery is defeated.* It has, therefore, been held by the superior Courts of the foreign jurisdiction as well as of Pakistani jurisdiction including this Court that ***the taxes should not be expropriatory and confiscatory in nature and that the same should not be imposed in such a way so as to result in acquiring properties of those to whom the incidence of taxation fell and if that is so, then such legislation would be violative of fundamental rights to carry on business or to hold properties***

as guaranteed by the Constitution. The learned counsel for the appellants have heavily relied upon the judgment of this Court in the case of **Government of Pakistan v. Muhammad Ashraf** (supra), in which **this Court accepted the above legal proposition that a tax, which is confiscatory in its nature, would be violative of the fundamental rights relating to carrying on business and holding properties**, but remanded the case to the High Court to examine the question, as to whether the rate of regulatory duty on Soyabean Oil imposed was of confiscatory nature.

(emphasis supplied)

For avoiding the discriminatory and confiscatory aspect in the charging provision, the orthodox way is that it should be levied indiscriminately to all subjects falling within the mischief of charging provision. However, the exclusion be placed under the exempting provisions, which presuppose the taxation, but exempt whom they choose, for extending benefit to a class or persons, to alleviate hardship and confiscatory aspect and for achieving any policy or administrative goal. Such exemption, if granted through subordinate legislation is placed before the Parliament for approval. It is salutary rule of interpretation that exemption is not a right and in case of two interpretations, one favouring the chargeability is to be adopted by Courts.

27. For what has been discussed, it is held that;

- (i) To treat the market value of immovable property as income under Entry 47 is beyond the competence of Federal Legislator, hence is declared *ultra vires*.
- (ii) The provisions of Section 7E are read down to save the taxation on Capital Value of Assets, which is within competence of Federal Legislature under Entry 50.
- (iii) The Entry 50 for taxing Capital Value of Assets requires that the assets should be valued as a whole and taxed inseparably. Curative legislation is expected to bring the provisions, of Section 7E, within the spirit of taxing Capital Value of Assets, and to harmonies it with other provisions of the Ordinance of 2001.

- (iv) Exclusion of persons under clauses (i), (iii) and (iv) of Section 7E(2)(d), is discriminatory, offending the Article 25, therefore, are declared *ultra vires*.

However, the legislature is expected to remove the pointed out expropriatory and confiscatory aspects in the provisions of Section 7E.

The petitions are **allowed** to the extent and in the manner, noted in this judgment.

(Shahid Jamil Khan)
Judge

APPROVED FOR REPORTING.

Judge

*Tahir Noor**

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1.	W.P. No.	44604/22
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5.	W.P. No.	48820/22
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10.	W.P. No.	50923/22
11.	W.P. No.	50926/22
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13.	W.P. No.	52409/22
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15.	W.P. No.	53543/22
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29.	W.P. No.	56824/22
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37.	W.P. No.	56951/22
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40.	W.P. No.	57070/22
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307.	W.P. No.	69443/22
308.	W.P. No.	69446/22
309.	W.P. No.	69448/22
310.	W.P. No.	69450/22
311.	W.P. No.	69453/22
312.	W.P. No.	69455/22
313.	W.P. No.	69459/22
314.	W.P. No.	69463/22
315.	W.P. No.	69467/22
316.	W.P. No.	69702/22
317.	W.P. No.	69824/22
318.	W.P. No.	69913/22
319.	W.P. No.	69917/22
320.	W.P. No.	69933/22
321.	W.P. No.	70354/22
322.	W.P. No.	70366/22
323.	W.P. No.	70405/22
324.	W.P. No.	70704/22
325.	W.P. No.	70708/22
326.	W.P. No.	71025/22
327.	W.P. No.	71047/22
328.	W.P. No.	71096/22
329.	W.P. No.	71099/22
330.	W.P. No.	71190/22
331.	W.P. No.	71201/22
332.	W.P. No.	71881/22
333.	W.P. No.	72324/22
334.	W.P. No.	72842/22
335.	W.P. No.	72847/22
336.	W.P. No.	72849/22
337.	W.P. No.	73153/22
338.	W.P. No.	73177/22
339.	W.P. No.	73362/22
340.	W.P. No.	74722/22
341.	W.P. No.	74893/22
342.	W.P. No.	74967/22
343.	W.P. No.	75505/22
344.	W.P. No.	75516/22
345.	W.P. No.	75522/22
346.	W.P. No.	75551/22
347.	W.P. No.	75557/22
348.	W.P. No.	75563/22
349.	W.P. No.	75565/22
350.	W.P. No.	75571/22
351.	W.P. No.	75616/22
352.	W.P. No.	75622/22
353.	W.P. No.	75638/22
354.	W.P. No.	75707/22
355.	W.P. No.	75708/22
356.	W.P. No.	76033/22

357.	W.P. No.	76095/22
358.	W.P. No.	76128/22
359.	W.P. No.	76167/22
360.	W.P. No.	76527/22
361.	W.P. No.	76534/22
362.	W.P. No.	76555/22
363.	W.P. No.	76563/22
364.	W.P. No.	76598/22
365.	W.P. No.	76931/22
366.	W.P. No.	77670/22
367.	W.P. No.	77672/22
368.	W.P. No.	77722/22
369.	W.P. No.	77732/22
370.	W.P. No.	78757/22
371.	W.P. No.	78762/22
372.	W.P. No.	78894/22
373.	W.P. No.	78992/22
374.	W.P. No.	79426/22
375.	W.P. No.	79614/22
376.	W.P. No.	79935/22
377.	W.P. No.	79955/22
378.	W.P. No.	80031/22
379.	W.P. No.	80047/22
380.	W.P. No.	80150/22
381.	W.P. No.	80152/22
382.	W.P. No.	80164/22
383.	W.P. No.	80175/22
384.	W.P. No.	80194/22
385.	W.P. No.	80196/22
386.	W.P. No.	80622/22
387.	W.P. No.	80749/22
388.	W.P. No.	80770/22
389.	W.P. No.	81181/22
390.	W.P. No.	81187/22
391.	W.P. No.	81365/22
392.	W.P. No.	81366/22
393.	W.P. No.	81373/22
394.	W.P. No.	81419/22
395.	W.P. No.	81422/22
396.	W.P. No.	81433/22
397.	W.P. No.	81452/22
398.	W.P. No.	81461/22
399.	W.P. No.	81469/22
400.	W.P. No.	81490/22
401.	W.P. No.	81493/22
402.	W.P. No.	81726/22
403.	W.P. No.	81841/22
404.	W.P. No.	81898/22
405.	W.P. No.	82167/22
406.	W.P. No.	82252/22
407.	W.P. No.	82255/22

408.	W.P. No.	82257/22
409.	W.P. No.	82258/22
410.	W.P. No.	82272/22
411.	W.P. No.	82291/22
412.	W.P. No.	82354/22
413.	W.P. No.	82373/22
414.	W.P. No.	82379/22
415.	W.P. No.	82386/22
416.	W.P. No.	82391/22
417.	W.P. No.	82397/22
418.	W.P. No.	82401/22
419.	W.P. No.	82407/22
420.	W.P. No.	82411/22
421.	W.P. No.	82423/22
422.	W.P. No.	82584/22
423.	W.P. No.	82602/22
424.	W.P. No.	82661/22
425.	W.P. No.	82730/22
426.	W.P. No.	82762/22
427.	W.P. No.	82794/22
428.	W.P. No.	82809/22
429.	W.P. No.	82812/22
430.	W.P. No.	82962/22
431.	W.P. No.	82992/22
432.	W.P. No.	82997/22
433.	W.P. No.	83000/22
434.	W.P. No.	83024/22
435.	W.P. No.	83047/22
436.	W.P. No.	83063/22
437.	W.P. No.	83066/22
438.	W.P. No.	83096/22
439.	W.P. No.	83135/22
440.	W.P. No.	83210/22
441.	W.P. No.	83219/22
442.	W.P. No.	83226/22
443.	W.P. No.	83229/22
444.	W.P. No.	83230/22
445.	W.P. No.	83257/22
446.	W.P. No.	83266/22
447.	W.P. No.	83267/22
448.	W.P. No.	83268/22
449.	W.P. No.	83269/22
450.	W.P. No.	83271/22
451.	W.P. No.	83272/22
452.	W.P. No.	83273/22
453.	W.P. No.	83275/22
454.	W.P. No.	83276/22
455.	W.P. No.	83278/22
456.	W.P. No.	83279/22
457.	W.P. No.	83282/22
458.	W.P. No.	83283/22

459.	W.P. No.	83285/22
460.	W.P. No.	83287/22
461.	W.P. No.	83288/22
462.	W.P. No.	83290/22
463.	W.P. No.	83291/22
464.	W.P. No.	83292/22
465.	W.P. No.	83296/22
466.	W.P. No.	83300/22
467.	W.P. No.	83304/22
468.	W.P. No.	83306/22
469.	W.P. No.	83309/22
470.	W.P. No.	83312/22
471.	W.P. No.	83314/22
472.	W.P. No.	83317/22
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474.	W.P. No.	83325/22
475.	W.P. No.	83326/22
476.	W.P. No.	83327/22
477.	W.P. No.	83328/22
478.	W.P. No.	83329/22
479.	W.P. No.	83330/22
480.	W.P. No.	83333/22
481.	W.P. No.	83335/22
482.	W.P. No.	83340/22
483.	W.P. No.	83342/22
484.	W.P. No.	83344/22
485.	W.P. No.	83347/22
486.	W.P. No.	83350/22
487.	W.P. No.	83362/22
488.	W.P. No.	83369/22
489.	W.P. No.	83405/22
490.	W.P. No.	83415/22
491.	W.P. No.	83432/22
492.	W.P. No.	83440/22
493.	W.P. No.	83441/22
494.	W.P. No.	83443/22
495.	W.P. No.	83447/22
496.	W.P. No.	83449/22
497.	W.P. No.	83450/22
498.	W.P. No.	83452/22
499.	W.P. No.	83464/22
500.	W.P. No.	83467/22
501.	W.P. No.	83493/22
502.	W.P. No.	83498/22
503.	W.P. No.	83501/22
504.	W.P. No.	83512/22
505.	W.P. No.	83516/22
506.	W.P. No.	83519/22
507.	W.P. No.	83520/22
508.	W.P. No.	83522/22
509.	W.P. No.	83523/22

510.	W.P. No.	83524/22
511.	W.P. No.	83526/22
512.	W.P. No.	83528/22
513.	W.P. No.	83535/22
514.	W.P. No.	83536/22
515.	W.P. No.	83543/22
516.	W.P. No.	83544/22
517.	W.P. No.	83553/22
518.	W.P. No.	83556/22
519.	W.P. No.	83557/22
520.	W.P. No.	83560/22
521.	W.P. No.	83561/22
522.	W.P. No.	83562/22
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524.	W.P. No.	83567/22
525.	W.P. No.	83599/22
526.	W.P. No.	83605/22
527.	W.P. No.	83609/22
528.	W.P. No.	83618/22
529.	W.P. No.	83626/22
530.	W.P. No.	83628/22
531.	W.P. No.	83634/22
532.	W.P. No.	83635/22
533.	W.P. No.	83636/22
534.	W.P. No.	83639/22
535.	W.P. No.	83641/22
536.	W.P. No.	83642/22
537.	W.P. No.	83643/22
538.	W.P. No.	83644/22
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540.	W.P. No.	83646/22
541.	W.P. No.	83647/22
542.	W.P. No.	83648/22
543.	W.P. No.	83650/22
544.	W.P. No.	83651/22
545.	W.P. No.	83652/22
546.	W.P. No.	83653/22
547.	W.P. No.	83654/22
548.	W.P. No.	83656/22
549.	W.P. No.	83657/22
550.	W.P. No.	83658/22
551.	W.P. No.	83660/22
552.	W.P. No.	83662/22
553.	W.P. No.	83663/22
554.	W.P. No.	83664/22
555.	W.P. No.	77/23
556.	W.P. No.	82/23
557.	W.P. No.	83/23
558.	W.P. No.	87/23
559.	W.P. No.	88/23
560.	W.P. No.	94/23

561.	W.P. No.	99/23
562.	W.P. No.	105/23
563.	W.P. No.	107/23
564.	W.P. No.	111/23
565.	W.P. No.	115/23
566.	W.P. No.	122/23
567.	W.P. No.	123/23
568.	W.P. No.	126/23
569.	W.P. No.	127/23
570.	W.P. No.	135/23
571.	W.P. No.	137/23
572.	W.P. No.	147/23
573.	W.P. No.	153/23
574.	W.P. No.	156/23
575.	W.P. No.	160/23
576.	W.P. No.	161/23
577.	W.P. No.	165/23
578.	W.P. No.	173/23
579.	W.P. No.	177/23
580.	W.P. No.	187/23
581.	W.P. No.	214/23
582.	W.P. No.	260/23
583.	W.P. No.	264/23
584.	W.P. No.	316/23
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587.	W.P. No.	321/23
588.	W.P. No.	322/23
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591.	W.P. No.	328/23
592.	W.P. No.	343/23
593.	W.P. No.	344/23
594.	W.P. No.	345/23
595.	W.P. No.	351/23
596.	W.P. No.	354/23
597.	W.P. No.	373/23
598.	W.P. No.	375/23
599.	W.P. No.	378/23
600.	W.P. No.	381/23
601.	W.P. No.	385/23
602.	W.P. No.	388/23
603.	W.P. No.	389/23
604.	W.P. No.	390/23
605.	W.P. No.	394/23
606.	W.P. No.	398/23
607.	W.P. No.	399/23
608.	W.P. No.	400/23
609.	W.P. No.	418/23
610.	W.P. No.	522/23
611.	W.P. No.	533/23

612.	W.P. No.	537/23
613.	W.P. No.	551/23
614.	W.P. No.	554/23
615.	W.P. No.	561/23
616.	W.P. No.	564/23
617.	W.P. No.	588/23
618.	W.P. No.	624/23
619.	W.P. No.	629/23
620.	W.P. No.	630/23
621.	W.P. No.	631/23
622.	W.P. No.	644/23
623.	W.P. No.	779/23
624.	W.P. No.	926/23
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626.	W.P. No.	1008/23
627.	W.P. No.	1299/23
628.	W.P. No.	1333/23
629.	W.P. No.	1351/23
630.	W.P. No.	1373/23
631.	W.P. No.	1382/23
632.	W.P. No.	1407/23
633.	W.P. No.	1412/23
634.	W.P. No.	1585/23
635.	W.P. No.	1591/23
636.	W.P. No.	1593/23
637.	W.P. No.	1598/23
638.	W.P. No.	1622/23
639.	W.P. No.	1625/23
640.	W.P. No.	1630/23
641.	W.P. No.	1632/23
642.	W.P. No.	1654/23
643.	W.P. No.	1666/23
644.	W.P. No.	1683/23
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646.	W.P. No.	1691/23
647.	W.P. No.	1697/23
648.	W.P. No.	1699/23
649.	W.P. No.	1701/23
650.	W.P. No.	1706/23
651.	W.P. No.	1710/23
652.	W.P. No.	1720/23
653.	W.P. No.	1725/23
654.	W.P. No.	1735/23
655.	W.P. No.	1754/23
656.	W.P. No.	1762/23
657.	W.P. No.	1777/23
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659.	W.P. No.	1933/23
660.	W.P. No.	1955/23
661.	W.P. No.	1962/23
662.	W.P. No.	1968/23

663.	W.P. No.	1993/23
664.	W.P. No.	1995/23
665.	W.P. No.	2008/23
666.	W.P. No.	2032/23
667.	W.P. No.	2061/23
668.	W.P. No.	2069/23
669.	W.P. No.	2085/23
670.	W.P. No.	2093/23
671.	W.P. No.	2277/23
672.	W.P. No.	2404/23
673.	W.P. No.	2433/23
674.	W.P. No.	2459/23
675.	W.P. No.	2468/23
676.	W.P. No.	2475/23
677.	W.P. No.	2759/23
678.	W.P. No.	2792/23
679.	W.P. No.	3050/23
680.	W.P. No.	3090/23
681.	W.P. No.	3111/23
682.	W.P. No.	3113/23
683.	W.P. No.	3200/23
684.	W.P. No.	3232/23
685.	W.P. No.	3236/23
686.	W.P. No.	3239/23
687.	W.P. No.	3243/23
688.	W.P. No.	3330/23
689.	W.P. No.	3335/23
690.	W.P. No.	3340/23
691.	W.P. No.	3427/23
692.	W.P. No.	3469/23
693.	W.P. No.	3490/23
694.	W.P. No.	3503/23
695.	W.P. No.	3659/23
696.	W.P. No.	3671/23
697.	W.P. No.	3685/23
698.	W.P. No.	3712/23
699.	W.P. No.	3718/23
700.	W.P. No.	3747/23
701.	W.P. No.	3802/23
702.	W.P. No.	3830/23
703.	W.P. No.	3853/23
704.	W.P. No.	3954/23
705.	W.P. No.	4058/23
706.	W.P. No.	4074/23
707.	W.P. No.	4078/23
708.	W.P. No.	4083/23
709.	W.P. No.	4094/23
710.	W.P. No.	4125/23
711.	W.P. No.	4255/23
712.	W.P. No.	4255/23
713.	W.P. No.	4262/23

714.	W.P. No.	4521/23
715.	W.P. No.	4522/23
716.	W.P. No.	4525/23
717.	W.P. No.	4600/23
718.	W.P. No.	4605/23
719.	W.P. No.	4726/23
720.	W.P. No.	4730/23
721.	W.P. No.	4812/23
722.	W.P. No.	4835/23
723.	W.P. No.	5148/23
724.	W.P. No.	5166/23
725.	W.P. No.	5175/23
726.	W.P. No.	5285/23
727.	W.P. No.	5337/23
728.	W.P. No.	5422/23
729.	W.P. No.	5426/23
730.	W.P. No.	5432/23
731.	W.P. No.	5433/23
732.	W.P. No.	5529/23
733.	W.P. No.	5567/23
734.	W.P. No.	5586/23
735.	W.P. No.	5596/23
736.	W.P. No.	5600/23
737.	W.P. No.	5718/23
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740.	W.P. No.	5727/23
741.	W.P. No.	5730/23
742.	W.P. No.	5781/23
743.	W.P. No.	5866/23
744.	W.P. No.	5884/23
745.	W.P. No.	5886/23
746.	W.P. No.	5891/23
747.	W.P. No.	5895/23
748.	W.P. No.	5910/23
749.	W.P. No.	5910/23
750.	W.P. No.	5918/23
751.	W.P. No.	5950/23
752.	W.P. No.	5953/23
753.	W.P. No.	5955/23
754.	W.P. No.	5986/23
755.	W.P. No.	6005/23
756.	W.P. No.	6027/23
757.	W.P. No.	6056/23
758.	W.P. No.	6255/23
759.	W.P. No.	6339/23
760.	W.P. No.	6462/23
761.	W.P. No.	6588/23
762.	W.P. No.	6599/23
763.	W.P. No.	6639/23
764.	W.P. No.	6699/23

765.	W.P. No.	6722/23
766.	W.P. No.	6810/23
767.	W.P. No.	6816/23
768.	W.P. No.	6940/23
769.	W.P. No.	7044/23
770.	W.P. No.	7093/23
771.	W.P. No.	7112/23
772.	W.P. No.	7122/23
773.	W.P. No.	7133/23
774.	W.P. No.	7152/23
775.	W.P. No.	7241/23
776.	W.P. No.	7261/23
777.	W.P. No.	7394/23
778.	W.P. No.	7407/23
779.	W.P. No.	7409/23
780.	W.P. No.	7473/23
781.	W.P. No.	7490/23
782.	W.P. No.	7741/23
783.	W.P. No.	7745/23
784.	W.P. No.	7754/23
785.	W.P. No.	7757/23
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787.	W.P. No.	7768/23
788.	W.P. No.	7770/23
789.	W.P. No.	7778/23
790.	W.P. No.	7832/23
791.	W.P. No.	7840/23
792.	W.P. No.	7843/23
793.	W.P. No.	7875/23
794.	W.P. No.	7876/23
795.	W.P. No.	7878/23
796.	W.P. No.	7882/23
797.	W.P. No.	7883/23
798.	W.P. No.	7884/23
799.	W.P. No.	7889/23
800.	W.P. No.	7902/23
801.	W.P. No.	7910/23
802.	W.P. No.	7915/23
803.	W.P. No.	7920/23
804.	W.P. No.	7937/23
805.	W.P. No.	7950/23
806.	W.P. No.	7955/23
807.	W.P. No.	7956/23
808.	W.P. No.	8065/23
809.	W.P. No.	8078/23
810.	W.P. No.	8090/23
811.	W.P. No.	8105/23
812.	W.P. No.	8208/23
813.	W.P. No.	8213/23
814.	W.P. No.	8228/23
815.	W.P. No.	8238/23

816.	W.P. No.	8240/23
817.	W.P. No.	8242/23
818.	W.P. No.	8254/23
819.	W.P. No.	8255/23
820.	W.P. No.	8271/23
821.	W.P. No.	8320/23
822.	W.P. No.	8466/23
823.	W.P. No.	8533/23
824.	W.P. No.	8564/23
825.	W.P. No.	8637/23
826.	W.P. No.	8881/23
827.	W.P. No.	8955/23
828.	W.P. No.	9128/23
829.	W.P. No.	9213/23
830.	W.P. No.	9304/23
831.	W.P. No.	9321/23
832.	W.P. No.	9355/23
833.	W.P. No.	9368/23
834.	W.P. No.	9369/23
835.	W.P. No.	9423/23
836.	W.P. No.	9424/23
837.	W.P. No.	9462/23
838.	W.P. No.	9473/23
839.	W.P. No.	9495/23
840.	W.P. No.	9525/23
841.	W.P. No.	9631/23
842.	W.P. No.	9654/23
843.	W.P. No.	9678/23
844.	W.P. No.	9684/23
845.	W.P. No.	9709/23
846.	W.P. No.	9716/23
847.	W.P. No.	9737/23
848.	W.P. No.	9764/23
849.	W.P. No.	9770/23
850.	W.P. No.	9772/23
851.	W.P. No.	9808/23
852.	W.P. No.	9820/23
853.	W.P. No.	9870/23
854.	W.P. No.	9994/23
855.	W.P. No.	10020/23
856.	W.P. No.	10029/23
857.	W.P. No.	10032/23
858.	W.P. No.	10055/23
859.	W.P. No.	10097/23
860.	W.P. No.	10127/23
861.	W.P. No.	10131/23
862.	W.P. No.	10133/23
863.	W.P. No.	10138/23
864.	W.P. No.	10160/23
865.	W.P. No.	10189/23
866.	W.P. No.	10202/23

867.	W.P. No.	10267/23
868.	W.P. No.	10358/23
869.	W.P. No.	10551/23
870.	W.P. No.	10580/23
871.	W.P. No.	10596/23
872.	W.P. No.	10622/23
873.	W.P. No.	10706/23
874.	W.P. No.	10709/23
875.	W.P. No.	10751/23
876.	W.P. No.	10763/23
877.	W.P. No.	10776/23
878.	W.P. No.	10811/23
879.	W.P. No.	10827/23
880.	W.P. No.	10829/23
881.	W.P. No.	10944/23
882.	W.P. No.	11065/23
883.	W.P. No.	11070/23
884.	W.P. No.	11090/23
885.	W.P. No.	11093/23
886.	W.P. No.	11098/23
887.	W.P. No.	11099/23
888.	W.P. No.	11100/23
889.	W.P. No.	11138/23
890.	W.P. No.	11141/23
891.	W.P. No.	11348/23
892.	W.P. No.	11390/23
893.	W.P. No.	11423/23
894.	W.P. No.	11446/23
895.	W.P. No.	11465/23
896.	W.P. No.	11478/23
897.	W.P. No.	11479/23
898.	W.P. No.	11527/23
899.	W.P. No.	11541/23
900.	W.P. No.	11542/23
901.	W.P. No.	11543/23
902.	W.P. No.	11565/23
903.	W.P. No.	11568/23
904.	W.P. No.	11670/23
905.	W.P. No.	11770/23
906.	W.P. No.	11815/23
907.	W.P. No.	11947/23
908.	W.P. No.	11981/23
909.	W.P. No.	12164/23
910.	W.P. No.	12222/23
911.	W.P. No.	12311/23
912.	W.P. No.	12458/23
913.	W.P. No.	12581/23
914.	W.P. No.	12584/23
915.	W.P. No.	12588/23
916.	W.P. No.	12614/23
917.	W.P. No.	12709/23

918.	W.P. No.	12815/23
919.	W.P. No.	12855/23
920.	W.P. No.	12984/23
921.	W.P. No.	13252/23
922.	W.P. No.	13262/23
923.	W.P. No.	13376/23
924.	W.P. No.	13382/23
925.	W.P. No.	13386/23
926.	W.P. No.	13392/23
927.	W.P. No.	13399/23
928.	W.P. No.	13410/23
929.	W.P. No.	13463/23
930.	W.P. No.	13486/23
931.	W.P. No.	13501/23
932.	W.P. No.	13612/23
933.	W.P. No.	13618/23
934.	W.P. No.	13683/23
935.	W.P. No.	13709/23
936.	W.P. No.	13711/23
937.	W.P. No.	13721/23
938.	W.P. No.	13724/23
939.	W.P. No.	13803/23
940.	W.P. No.	13810/23
941.	W.P. No.	13815/23
942.	W.P. No.	13915/23
943.	W.P. No.	13943/23
944.	W.P. No.	13953/23
945.	W.P. No.	13968/23
946.	W.P. No.	14120/23
947.	W.P. No.	14139/23
948.	W.P. No.	14155/23
949.	W.P. No.	14169/23
950.	W.P. No.	14220/23
951.	W.P. No.	14245/23
952.	W.P. No.	14301/23
953.	W.P. No.	14306/23
954.	W.P. No.	14400/23
955.	W.P. No.	14460/23
956.	W.P. No.	14474/23
957.	W.P. No.	14527/23
958.	W.P. No.	14594/23
959.	W.P. No.	14596/23
960.	W.P. No.	14737/23
961.	W.P. No.	14739/23
962.	W.P. No.	14986/23
963.	W.P. No.	15060/23
964.	W.P. No.	15368/23
965.	W.P. No.	15440/23
966.	W.P. No.	15454/23
967.	W.P. No.	15485/23
968.	W.P. No.	15870/23

969.	W.P. No.	15871/23
970.	W.P. No.	15912/23
971.	W.P. No.	15922/23
972.	W.P. No.	15932/23
973.	W.P. No.	15936/23
974.	W.P. No.	16055/23
975.	W.P. No.	16075/23
976.	W.P. No.	16408/23
977.	W.P. No.	16570/23
978.	W.P. No.	16784/23
979.	W.P. No.	16837/23
980.	W.P. No.	16915/23
981.	W.P. No.	16977/23
982.	W.P. No.	17000/23
983.	W.P. No.	17023/23
984.	W.P. No.	17186/23
985.	W.P. No.	17499/23
986.	W.P. No.	17508/23
987.	W.P. No.	17633/23
988.	W.P. No.	17661/23
989.	W.P. No.	17663/23
990.	W.P. No.	17691/23
991.	W.P. No.	17794/23
992.	W.P. No.	17870/23
993.	W.P. No.	17874/23
994.	W.P. No.	17879/23
995.	W.P. No.	17881/23
996.	W.P. No.	17984/23
997.	W.P. No.	18110/23
998.	W.P. No.	18134/23
999.	W.P. No.	18146/23
1000.	W.P. No.	18147/23
1001.	W.P. No.	18150/23
1002.	W.P. No.	18187/23
1003.	W.P. No.	18489/23
1004.	W.P. No.	18537/23
1005.	W.P. No.	18542/23
1006.	W.P. No.	18577/23
1007.	W.P. No.	18585/23
1008.	W.P. No.	18661/23
1009.	W.P. No.	18677/23
1010.	W.P. No.	18703/23
1011.	W.P. No.	18706/23
1012.	W.P. No.	18708/23
1013.	W.P. No.	18710/23
1014.	W.P. No.	18712/23
1015.	W.P. No.	18727/23
1016.	W.P. No.	18757/23
1017.	W.P. No.	18767/23
1018.	W.P. No.	18773/23
1019.	W.P. No.	18847/23

1020.	W.P. No.	19375/23
1021.	W.P. No.	19474/23
1022.	W.P. No.	19612/23
1023.	W.P. No.	19748/23
1024.	W.P. No.	20091/23
1025.	W.P. No.	20129/23
1026.	W.P. No.	20138/23
1027.	W.P. No.	20478/23
1028.	W.P. No.	20597/23
1029.	W.P. No.	20703/23
1030.	W.P. No.	20756/23
1031.	W.P. No.	20757/23
1032.	W.P. No.	20764/23
1033.	W.P. No.	20788/23
1034.	W.P. No.	20790/23
1035.	W.P. No.	20880/23
1036.	W.P. No.	20908/23
1037.	W.P. No.	20917/23
1038.	W.P. No.	21098/23
1039.	W.P. No.	21220/23
1040.	W.P. No.	21244/23
1041.	W.P. No.	21525/23
1042.	W.P. No.	21543/23
1043.	W.P. No.	21560/23
1044.	W.P. No.	21613/23
1045.	W.P. No.	21615/23
1046.	W.P. No.	21625/23
1047.	W.P. No.	21738/23
1048.	W.P. No.	21742/23
1049.	W.P. No.	21913/23
1050.	W.P. No.	21955/23
1051.	W.P. No.	22078/23
1052.	W.P. No.	22088/23
1053.	W.P. No.	22414/23
1054.	W.P. No.	22515/23
1055.	W.P. No.	22625/23
1056.	W.P. No.	22920/23
1057.	W.P. No.	23074/23

(Shahid Jamil Khan)
Judge