FEDERAL CONSTITUTIONAL COURT OF PAKISTAN

(Appellate Jurisdiction)

Present:
CHIEF JUSTICE AMIN-UD-DIN KHAN
JUSTICE AAMER FAROOQ

F.C.P.L.A. Nos.1276 AND 1277 OF 2026
(Against judgment dated 25.03.2026, passed by the Islamabad High Court, Islamabad in Writ Petitions No.1125 and 1126 of 2026)

CM Pak Limited, through its authorized Officer	…Petitioner(s) *(in both cases)*

Versus

The Federation of Pakistan, through Secretary, Revenue Division & others	…Respondent(s) *(in both cases)*

For the Petitioner(s)	:	Mr. Salman Akram Raja, ASC Syed Rifaqat Hussain Shah, AOR assisted by M/s Asad Ladha, Advocate and Sabir Hussain, Assistant Manager (Litigation)
For the Respondent(s)	:	Mr. Ali Nawaz Kharral, ASC Mr. Zahid Sohail, Manager (Legal) and Mr. Muhammad Arsalan, Assistant Manager.
Date of Hearing	:	30.06.2026

JUDGMENT OF THE COURT

JUSTICE AAMER FAROOQ:

1. The question that falls for determination before this Court is whether the Income tax in general and Super Tax in particular paid pursuant to section 4C of the Income Tax Ordinance, 2001 is adjustable where there is tax credit within the meaning of section 168 of the Income Tax Ordinance, 2001. For the reasons that follow, we answer the question in the affirmative.

A

2. The Petitioner is a company incorporated under the laws of Pakistan and forms part of a Chinese multinational enterprise engaged in the telecommunications sector. The controversy arises from the insertion of section 4C into the Income Tax Ordinance, 2001 (**'**ITO**'**),

whereby the legislature imposed a Super Tax on the income of specified high-earning sectors at the rates prescribed in Division II-B of Part I of the First Schedule to the ITO. The Super Tax was conceived as an additional charge on income (as defined in s.4C(2) of the ITO). Following its enactment, the constitutional validity of section 4C was assailed before the superior courts. The challenge ultimately culminated in its *vires* being upheld. See, PLD 2026 FCC 62 at p.9.

3. Following the affirmation of the constitutional validity of the Super Tax by this Court, the Federal Board of Revenue (**'**FBR**'**) issued a notice dated 09.02.2026 requiring the Petitioner to discharge its liability towards the Super Tax. In response, an exchange of correspondence ensued between the Petitioner and the FBR, wherein the Petitioner maintained that: "Company has available excess taxes deduction at source of Rs. 2,212,433,254 relating to tax year 2022 which is adjustable against the super tax payable as determined by good self in the notice dated February 19, 2026." Ref. Copy of the Petitioner Company's Reply dated 16.02.2026, Annex L with the petition. FBR declined. Aggrieved by such refusal, the Petitioner invoked the constitutional jurisdiction of the Islamabad High Court under Art. 199 of the Constitution of the Islamic Republic of Pakistan, 1973. The constitutional petitions were dismissed by the High Court *vide* judgment dated 25.03.2026.

4. Petitioner once again aggrieved, seeks leave to appeal before this Court against the impugned judgment. We have heard the learned counsel for the parties at length.

JUDGMENT OF THE FEDERAL CONSTITUTIONAL COURT OF PAKISTAN

B

5. We start from the basic provision of the law against which the adjustment is sought under s.168 of ITO. S.4C of the ITO i.e., the charging provision reads as follows:

> **4C. Super tax on high earning persons. —** (1) A super tax shall be imposed for tax year 2022 and onwards at the rates specified in Division IIB of Part I of the First Schedule, on income of every person:
>
> Provided that this section shall not apply to a banking company for tax year 2022.
>
> (2) For the purposes of this section, "income" shall be the sum of the following:
>
> (i) profit on debt, dividend, capital gains, brokerage and commission;
> (ii) taxable income (other than brought forward depreciation and brought forward business losses) under section 9 of the Ordinance, excluding amounts specified in clause (i);
> (iii) imputable income as defined in clause (28A) of section 2 excluding amounts specified in clause (i); and
> (iv) income computed, other than brought forward depreciation brought forward amortization and brought forward business losses under Fourth, Fifth, Seventh and Eighth Schedules.
>
> *(3) The tax payable under sub-section (1) shall be paid, collected and deposited on the date and in the manner as specified in sub-section (1) of section 137 and all provisions of Chapter X of the Ordinance shall apply.*
>
> (4) Where the tax is not paid by a person liable to pay it, the Commissioner shall by an order in writing, determine the tax payable, and shall serve upon the person, a notice of demand specifying the tax payable and within the time specified under section 137 of the Ordinance
>
> (5) Where the tax is not paid by a person liable to pay it, the Commissioner shall recover the tax payable under sub-section (1) and the provisions of Part IV, X, XI and XII of Chapter X and Part I of Chapter XI of the Ordinance shall, so far as may be, apply to the collection of tax as these apply to the collection of tax under the Ordinance.
>
> (5A) The provisions of section 147 shall apply on tax payable under this section.
>
> (6) The Board may, by notification in the official Gazette, make rules for carrying out the purposes of this section.

(Emphasis supplied in italics)

6. The provision of law as cited above i.e., s.4C(3) provides categorically that the super tax *shall be* paid, collected, and deposited on the date and manner as specified in s.137 sub-section 1, and the *all provisions of Chapter X shall apply*. The provision first stipulates that

the tax shall be "paid, collected and deposited on the date and in the manner as specified in sub-section (1) of section 137" and thereafter separately provides that "all provisions of Chapter X of the Ordinance shall apply." The reference to section 137(1) already governs the date and manner of payment. Therefore, the subsequent incorporation of "all provisions of Chapter X (including s.168 of the ITO)", cannot be reduced to the same procedural function, as that would render the latter phrase redundant. The expression "paid, collected and deposited" is itself indicative of the entire statutory mechanism governing the discharge of tax liability, including its payment, collection, adjustment, credit, and deposit etc. By employing the expansive phrase "all provisions of Chapter X", which includes s.168[1] and the same delineates on credit for

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[1] **168. Credit for tax collected or deducted.** — (1) For the purposes of this Ordinance —
(a) the amount of any tax deducted from a payment under Division III of this Part [or Chapter XII] shall be treated as income derived by the person to whom the payment was made; and (b) the amount of any tax collected under Division II of this Part [or Chapter XII] or deducted under Division III of this Part 8[or Chapter XII] shall be treated as tax paid by the person from whom the tax was collected or deducted.
(2) Subject to sub-sections (2A), (2B),] (3) and (4), where an amount of tax has been collected from a person under Division II of this Part [or Chapter XII] or deducted from a payment made to a person under Division III of this Part or Chapter XII], the person shall be allowed a tax credit for that tax in computing the tax due by the person on the taxable income of the person for the tax year in which the tax was collected or deducted.
[(2A) Where a company is a member of an association of persons which is taxed in accordance with section 92 and an amount of tax has been collected from an association of persons under Division II of this Part or Chapter XII or deducted from a payment made to the said association under Division III of this Part or Chapter XII, the company shall be allowed a tax credit, in respect of tax collected or deducted from the association of persons, according to the following formula, namely: —

$$(A/B) \times C$$

Where —
A is the amount of share of profits before tax received by the company as a member from the association of persons;
B is the taxable income of the association of persons; and
C is the amount of tax withheld in the name of the association of persons.

(2B) No tax credit shall be allowed for any tax collected or deducted from an association of persons in respect of an amount for which credit has been allowed under sub-section (2A) to a company being a member of the association.

(3) No tax credit shall be allowed for any tax collected or deducted that is a final tax under—
(ca) sub-section (1E) of section 152
(cb) sub-section (2) of section 152A
(ea) sub-section (2) of section 154A
(f) sub-section (3) of section 156;

tax collected or deducted, the legislature intended to incorporate the complete statutory regime under Chapter X including tax credit regime, and not merely Chapter X's procedural aspects. Had Parliament intended otherwise, it could have expressly limited the incorporation to procedural provisions. The Court cannot read such a limitation into the statute where none exists.

7. We are not, in these proceedings, concerned with the question whether the tax is, in fact, adjustable in the circumstances of the case and if so, then how much. That determination falls within the jurisdiction of the competent tax authority. Our task is confined to answering the legal question framed in paragraph 1 of this judgment, which we answer in the affirmative. A tax credit under s.168 of the ITO is conceptually and statutorily distinct from a refund claimed under s.170 of the ITO. Section 170 establishes a self-contained statutory mechanism for claiming a refund, which necessarily requires an application to be made before the Commissioner under section 170(1). See generally, *Hamid Ashraf v. Commissioner Inland Revenue, Lahore*, 2020 SCMR 843 (per SYED MANSOOR ALI SHAH, J.). It is equally well settled that fiscal statutes ought to be construed in favour of the taxpayer. See generally, *Messers Rajby Industries Karachi* v. *Federation*

(g) sub-section (2) of section 156A
[and]
(k) sub-section (7) of section 236Z
(4) A tax credit allowed under this section shall be applied in accordance with sub-section (3) of section 4.
(5) A tax credit or part of a tax credit allowed under this section for a tax year that is not able to be credited under sub-section (3) of section 4 for the year shall be refunded to the taxpayer in accordance with section 170.
(6) Notwithstanding anything contained in any other law or any rules for the time being in force, no amount shall be deducted on account of service charges from the tax withheld or collected by any person under the provisions of this Ordinance.
(7) In case any amount is deducted on account of service charges, by the person, the said person will be liable to pay the said amount to the Federal Government and all the provisions of this Ordinance shall apply in so far as they apply to the recovery of tax.

of Pakistan, 2023 SCMR 1407 (Per MUHAMMAD ALI MAZHAR, J.) We find no justification for holding that super tax paid under s.4C of the ITO is incapable of being adjusted where there is tax credit under s.168 of the ITO, thereby compelling the taxpayer to pursue only the refund mechanism under s.170. Such an interpretation finds no support in the statutory scheme. Interpreting the application of Chapter X to s.4C's scheme in a constrained way is unwarranted. No principled basis has been offered for such a selective incorporation and restrictive interpretation. If Chapter X is attracted, its provisions must be given effect in accordance with their terms, including s.168 where applicable. To hold otherwise would amount to reading into the statute a limitation that the legislature has not imposed.

C

8. In view of the foregoing reasons, the petitions are converted into appeals and are accordingly allowed. The impugned judgment dated 25.03.2026 is set aside and the writ petitions filed by the Petitioner are disposed of with declaration and direction that the Petitioner shall be at liberty to seek adjustment, if any, before the competent taxing authority, which shall determine such claim in accordance with the ITO and the observations made herein. All pending applications also stand disposed of.

CHIEF JUSTICE

JUDGE

Islamabad
30.06.2026
Misal Shah/*
APPROVED FOR REPORTING