

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

ITRA 103 of 2026

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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1. For orders on office objection No.1
2. For orders on CMA No.897/2026
3. For orders on CMA No.898/2026
4. For hearing of main case

13.05.2026

Messrs. Ali Almani and Akbar Sohail, advocates for the applicant
Mr. Asad Aftab Solangi, advocate for respondent

Following question of law had been proposed for determination :

Whether super tax under Section 4C of the Income Tax Ordinance, 2001 (“ITO”) can be imposed on capital gains when no such gain or taxable income arises under Section 37 of the ITO?

It is stated that the said question has been addressed by this Court vide order dated 07.05.2026 passed in ITRA 383 of 2023 and connected matters, which is reproduced herein below:

“In these four references the question jointly proposed for determination is as follows:

“Whether no Super Tax is payable on capital gain arising on disposal of immoveable property or securities either being held beyond a certain period or is inherited or is otherwise exempted under the Ordinance?”

In this regard we are assisted with the recent judgment of the honourable Federal Constitution Court of Pakistan passed on 27.01.2026 in the case of DG Khan Cement Company Limited and another vs. The Federation of Pakistan thr. Secretary Revenue Islamabad and others (CA No.1243/2020) and connected matters. Paragraph 92 whereof reads as follows:

92. It is, however, clarified and held that super tax is an additional tax on income drawing its legislative sanction from Entry 47 of Part I of the Federal Legislative List of the Constitution. The necessary corollary to the above is that if a certain class of income is exempt from tax under the law regulating it i.e. the Ordinance, super tax shall also not be payable in respect of such income. For instance, where no tax is payable on capital gains arising on disposal of immovable property or securities either for being held beyond a certain period or is inherited or is otherwise exempted under the Ordinance, no super tax shall be payable either on such capital gains on disposal of immovable property or securities. Likewise, the same principal shall apply to any capital gain on disposal of agricultural property, which even otherwise cannot be subjected to any tax on income arising therefrom either by usage or by disposal.

In view hereof the aforementioned question is answered in the negative in favour of the taxpayer and against the department. These reference applications stand disposed of accordingly.

A copy of this decision may be sent under the seal of this Court and the signature of the Registrar to the learned Appellate Tribunal, as required per section 133(8) of the Income Tax Ordinance, 2001”

In *mutatis mutandis* application of the aforesaid order the said question is answered in favour of the applicant and against the respondent. The reference application stands disposed of. The amount secured vide order dated 22.04.2026 may be returned to the applicant upon proper verification and identification.

A copy of this decision may be sent under the seal of this Court and the signature of the Registrar to the learned Appellate Tribunal, as required per section 133(8) of the Income Tax Ordinance, 2001.

Judge

Judge

Amjad