IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:
MR. JUSTICE UMAR ATA BANDIAL, CJ
MR. JUSTICE AMIN-UD-DIN KHAN
MR. JUSTICE SYED HASAN AZHAR RIZVI

C.P.57/2023, C.M.A.3499/2023 IN C.P.57/2023, C.P.58-61, 202, 214, 215, 221-223, 234-255, 257, 259, 260, 280, 281, 294-299, 315, 358, 359, 362, 395-407/2023, C.M.A.324/2023 IN C.P.NIL/2023, C.P.447, 448, 151-K TO 165-K, 568, 512, 513, 519, 521, 542, 555, 570, 637, 629, 630, 640/2023, C.M.A.760/2023 IN C.P.NIL/2023, C.P.231-K TO 256-K, 523/2023, C.M.A.492/2023 IN C.P.NIL/2023, C.M.A.799/2023 IN C.P.NIL/2023, C.M.A.800/2023 IN C.P.NIL/2023, C.P.662, 653, 672-674, 791, 815, 847, 868, 869, 681-684, 688-690, 692, 693, 831, 792, 922, 923/2023, C.M.A.1108/2023 IN C.P.NIL/2023, C.P.432-K TO 438-K, 486, 1030, 1031, 352-K TO 365-K/2023, C.M.A.840/2023 IN C.P.NIL/2023, C.P.1136-1142/2023, C.P.484-K, 485-K/2023, C.M.A.438-K/2023, C.P.1342, 1480, 582, 1948, 1987, 2086/2023, C.P.74-K TO 85-K, 125-K/2023 AND C.M.A.2191/2023 IN C.P.NIL/2023

Irfan Hussain Halai and others ...Petitioner(s)/ Applicant(s)

Versus

Federation of Pakistan through the Secretary Revenue Division, Ministry of Finance, Revenue and Economics Affairs and ex-Officio Chairman, FBR, Islamabad and others ...Respondent(s)

For the Petitioner(s) : Mr. Muhammad Makhdoom Ali Khan, Sr. ASC
Mr. Arshad M. Tayebaly, ASC alongwith Omer Memon and Aitzaz Manzoor
Mr. Ali Raza, ASC
Mr. Tariq Aziz, ASC
Mr. Rashid Anwer, ASC video link from Karachi
Mr. Faisal Siddiqui, ASC
Mr. Shehzad Ata Elahi, ASC
Mr. Muhammad Aleem ASC video link from Karachi
Ms. Lubna Pervez, ASC video link from Karachi
Mr. Taha Alizai, ASC video link from Karachi
Mr. Jehanzeb Awan, ASC
Mr. Isaac Ali Qazi, ASC
Mr. Abid Hussain Shaban, ASC
Mr. Arshad Hussain Shah, ASC

ATTESTED
Senior Court Associate
Supreme Court of Pakistan
Islamabad

Mr. Rashid Hafeez, ASC

For the Respondent(s)/ FBR	:	Dr. Shah Nawaz, ASC video link from Karachi Mr. Asim Majeed, Member FBR Legal Mr. Aijaz Hussain, Addl. Commissioner LTO Karachi
Date of Hearing	:	12.06.2023

ORDER

The learned counsel for the petitioners have contended that the omission of the words "capital gains" made in 2010 by the 18th Amendment to the Constitution from Entry 50 of the Federal Legislative List in the Constitution divests the Federation of the power to tax immoveable property as a "capital asset". It is for that reason that Finance Act, 2010 (**"Act"**) abolished the levy of CVT on transfers of immoveable property whereafter the said taxing power in relation to the said transfers of immoveable property now vests in the Provincial Governments. It is urged that the impugned judgment of the learned High Court has adopted a semantic approach for interpreting Entry 50 for the reason that without recourse to any commentary on the meaning of the expression "not including" it has been held that the expression "*except*" would have more suitably excluded the power of the Federation from taxing the capital value of immovable property as a capital asset. And that "not including" does not do so. It is explained that the amendment made in Entry 50 through the 18th Amendment to the Constitution in the year 2010 has denuded the Federation of the power to tax immovable property in any manner. Further that the impugned judgment presumes that notwithstanding the repeal of the Provincial Legislative List a residuary power of taxation resides with the Federation. When the legislative fields of the Parliament are exhaustively enumerated in the Federal Legislative List read with Article 142 of the Constitution then no residuary legislative power to make laws imposing unspecified taxes can be presumed.

2. The learned counsel for the petitioners have urged that the impugned judgment has misconstrued the petitioners' objection regarding legislative incompetence of the Federation to impose the impugned tax. That the petitioners are entitled to one right of appeal without fully complying the revenue's demand of tax created by Section 8(2)(b) of the Act. Reference is made to two earlier orders passed by this Court granting interim relief in Civil Petitions No.3282-L/2022 etc vide order dated 06.02.2023 and No.1442-K/2022 etc vide order dated 22.03.2023, wherein the *vires* of tax measures by the Federal Government and the Provincial Governments were challenged. Keeping in view the petitioners' grounds of challenge the treatment thereof by the impugned judgment and the terms of interim relief granted in the afore-noted petitions, it is directed that petitioners shall deposit 50% of the amount of tax demanded from them by the respondent tax authorities and the recovery of the balance amount of the impugned tax shall be secured by the petitioners through bank guarantees drawn in terms satisfactory to the concerned taxing officer.

3. **<u>C.M.A.324/2023 IN C.P.NIL/2023, C.M.A.760/2023 IN C.P.NIL/2023, C.M.A.492/2023 IN C.P.NIL/2023, C.M.A.799/2023 IN C.P.NIL/2023, C.M.A.800/2023 IN C.P.NIL/2023 And C.M.A.1108/2023 IN C.P.NIL/2023:</u>** These applications are filed by parties who did not challenge the

impugned tax under Section 8(2)(b) of the Act before the learned High Court. However they are aggrieved by the judgment of the learned High Court dated 30.12.2022 which is already under challenge before the Court in the above noted petitions. The applicants have approached the Court against the said judgment and seek permission to directly file petitions here on the principle laid down in judgment reported as **"H.M. Saya & Co., Karachi versus Wazir Ali Industries Ltd., Karachi"** (PLD 1969 SC 65).

4. As the impugned judgment is already under challenge before this Court on common questions of law, these applications are accordingly allowed. Petitions are directed to be registered.

5. Relist on an early date.

Sd/- CJ
Sd/- J
Sd/- J

CERTIFIED TO BE TRUE COPY
Senior Court Associate
Supreme Court of Pakistan
Islamabad

Islamabad
12.06.2023
Rashid+Naseer

Not approved for reporting