Judgment Summary

M/s. DG Khan Cement Company Ltd. & others v. Federation of Pakistan

Court	Federal Constitutional Court of Pakistan
Bench	Amin-ud-Din Khan, CJ; Syed Hasan Azhar Rizvi, J; Syed Arshad Hussain Shah, J
Author	Amin-ud-Din Khan, CJ (with an additional concurring note by Rizvi, J)
Lead case	C.A. 1243/2020 and connected matters (the "Super Tax cases")
Hearings	5–27 January 2026 (17 days)
Short order	27 January 2026
Subject	Vires of sections 4B and 4C of the Income Tax Ordinance, 2001 (super tax)

1. Facts

These consolidated proceedings concerned the constitutional validity and scope of two charging provisions of the Income Tax Ordinance, 2001 (the Ordinance): section 4B (super tax for the rehabilitation of Internally Displaced Persons, inserted by the Finance Act 2015) and section 4C (super tax on "high earning persons," inserted by the Finance Act 2022).

Section 4B was originally enacted as a temporary fiscal measure to fund rehabilitation of persons displaced by counter-terrorism operations, initially for tax year 2015. It was extended year-on-year and ultimately imposed at 0% on all persons except banking companies from tax year 2019 onwards; banks remained chargeable up to tax year 2022.

Section 4C was inserted by the Finance Act 2022 (assented 26 June 2022; effective 1 July 2022). It imposes super tax "for tax year 2022 and onwards" on "every person" at progressive rates set out in Division IIB, Part I, First Schedule to the Ordinance. The First Proviso to Division IIB prescribed a flat 10% rate, for tax year 2022, for fifteen specified sectors (airlines, automobiles, beverages, cement, chemicals, cigarette & tobacco, fertilizer, iron and steel, LNG terminal, oil marketing, oil refining, petroleum and gas exploration and production, pharmaceuticals, sugar and textiles) where income exceeded Rs. 300 million. Banks were excluded for tax year 2022 and brought in by a Second Proviso for tax year 2023 onwards.

The petitioners — chiefly large corporates including DG Khan Cement, Maple Leaf Cement, Ibrahim Fibers, Habib Rafiq, Saif Holding, Colgate-Palmolive (Pakistan), National Investment Trust, Mari Petroleum, Pakistan Oilfields and others — challenged the levies before the High Courts of Sindh, Lahore, Islamabad and Peshawar. A separate set of grievances was raised by oil exploration and production (E&P) companies, whose taxation is governed by the Fifth Schedule to the Ordinance read with the Regulation of Mines & Oilfields and Mineral

Development (Government Control) Act, 1948 and their respective Petroleum Concession Agreements (PCAs) executed with the President of Pakistan, which contain fiscal-stability ("freezing") clauses.

2. Legal Issues

The Court framed the following principal questions for decision, common to both sections (with question (i) common, question (ii)–(viii) specific to section 4C, and the locus standi question independent):

- Issue I — Nature of the levy: Whether the super tax under section 4B (and section 4C) is a "tax" competently passed as part of a Money Bill under Article 73 of the Constitution, or a "fee" (or other non-tax levy) for a special purpose, which would render the Finance Act mode of enactment constitutionally infirm.
- Issue II — Vires of section 4C: Whether section 4C, viewed in isolation and read with Division IIB, is intra vires the Constitution, specifically Entry 47 of the Federal Legislative List and Articles 4, 18, 23, 24 and 25.
- Issue III — Retroactive application to tax year 2022: Whether section 4C, enacted on 26 June 2022 and effective 1 July 2022, can validly charge super tax on income arising in tax year 2022 (1 July 2021 – 30 June 2022), or whether such income constitutes a "past and closed transaction" immune from later legislative imposition.
- Issue IV — Definition of "income" in section 4C(2): Whether the composite definition of "income" for super-tax purposes — which disallows brought-forward depreciation, amortization and business losses, and which aggregates income from final tax, minimum tax, separate-block and Fifth/Seventh/Eighth Schedule regimes — is constitutionally permissible.
- Issue V — First Proviso (15 sectors at 10%) and Article 25: Whether the classification of fifteen specified sectors for a higher rate of 10% in tax year 2022 amounts to unreasonable, arbitrary or hostile discrimination.
- Issue VI — Banking companies (tax year 2023): Whether section 4C applies to banks for tax year 2023 (and onwards), notwithstanding Rule 7C of the Seventh Schedule and the proviso to section 4C(1).
- Issue VII — Capital gains under section 37A and the Eighth Schedule: Whether income from capital gains on listed securities, assessed under section 37A read with the Eighth Schedule and section 100B, falls within the charge of section 4C.
- Issue VIII — E&P companies (Fifth Schedule): Whether sections 4B and 4C apply to petroleum income of E&P companies, and if so, whether the Rule 4 ceiling of the Fifth Schedule (read with each PCA's freezing clause) caps the aggregate burden.
- Issue IX — Maintainability / locus standi: Whether appeals filed by the Commissioner Inland Revenue and the Federal Board of Revenue (rather than by the Federation), in absence of a Cabinet decision and an Attorney General's certificate under Rule 14(1A) of the Rules of Business 1973, are competently filed.
- Issue X — Territorial reach of High-Court directions: Whether the Islamabad High Court's direction in the Pakistan Oilfields judgment, requiring FBR to issue a circular implementing the read-down of section 4C across Pakistan, was within its constitutional jurisdiction.

3. Litigation History

Section 4B cases

All four High Courts that adjudicated section 4B challenges upheld it as intra vires:

- Lahore High Court (Single Bench) in D.G. Khan Cement Company Ltd. v. Federal Board of Revenue, 2018 PTD 287 (29.12.2017), upheld section 4B as a validly enacted tax.
- Islamabad High Court (Single Bench) in The Attock Oil Company Ltd. v. Federation of Pakistan, 2019 PTD 934, applied section 4B to E&P companies' Fifth-Schedule income, holding the Ordinance to be the special law on income tax, prevailing over the Act of 1948.
- Lahore High Court (Division Bench) in D.G. Khan Cement Company Ltd. v. Federation of Pakistan, 2020 PTD 1186.
- Sindh High Court (Division Bench) in HBL Stock Fund v. Additional CIR, 2020 PTD 1742; and Pakistan Tobacco Company Ltd. v. Federation of Pakistan, 2022 PTD 1730 (Islamabad High Court, Single Bench).

Affected taxpayers filed CPLAs in the Supreme Court of Pakistan; the intra-court appeal against the Attock Oil judgment (ICA 17/2019) remained pending in the Islamabad High Court.

Section 4C cases

The High Courts diverged sharply on section 4C:

- Sindh High Court in Shell Pakistan Ltd. v. Federation of Pakistan, 2023 PTD 607 — declared section 4C intra vires but held it inapplicable to tax year 2022 (relying on the 0% section 4B rate for that year as a representation by Revenue), and struck down the First Proviso as discriminatory.
- Lahore High Court (Single Bench) in Service Global Footwear Ltd. v. Federation of Pakistan, 2023 PTD 1120 (27.06.2023) — held section 4C validly enacted but reduced the First Proviso rate from 10% to 4% as discriminatory.
- Lahore High Court (Division Bench) in Service Global Footwear (2024 PTD 1271, 16.05.2024) — set aside the retrospective application to tax year 2022 on "past and closed transactions" grounds.
- Islamabad High Court (Single Bench), Fauji Fertilizer Company Ltd. v. Federation of Pakistan, 2024 PTCL CL. 594 (20.07.2023) — read down section 4C: excluded income under final/separate regimes; held it inapplicable to tax year 2022 as a past and closed transaction; carved out exempt provident/benevolent funds; and held it inapplicable to E&P companies' Rule-1 Fifth Schedule income beyond the Rule 4 ceiling.
- Islamabad High Court (Single Bench), Pakistan Oilfields Ltd. v. Federation of Pakistan, judgment dated 15.03.2024 in W.P. 2436/2023 — replicated Fauji Fertilizer for tax year 2023, set aside notices, and directed FBR to issue an administrative instruction under section 214(1) of the Ordinance to its field formations across Pakistan to apply the read-down construction.

By order dated 12.03.2025, the Supreme Court (under the then-extant Article 186A) directed all section 4B and 4C matters pending in the High Courts (writ petitions, intra-court appeals and pending CPLAs) to be transferred and clubbed for unified adjudication. Following the Constitution (Twenty-Seventh Amendment) Act, 2025 (assented 13.11.2025), the Supreme Court appeals stood transferred under Article 175F to the Federal Constitutional Court, which heard the consolidated matters over seventeen days in January 2026.

4. What the Court Held

By a unanimous short order dated 27 January 2026, supplemented by the detailed reasons authored by Amin-ud-Din Khan, CJ (with an additional concurring note by Rizvi, J), the Federal Constitutional Court held as follows:

- (i) Section 4B is intra vires the Constitution and applies as enacted from tax year 2015 onwards at the rates in Division IIA. It is a tax, not a fee; rests on intelligible income-based classification; is not discriminatory; and falls within Entry 47 of the Federal Legislative List. The High-Court judgments upholding it expound the correct law.
- (ii) The maintainability objection is rejected. Appeals by the Commissioner Inland Revenue / FBR are competent; and in any case the Federation, already arrayed as respondent, was transposed as appellant. Several appeals were also filed by the Federation.
- (iii) Section 4C is intra vires the Constitution and applies for tax year 2022 and onwards. Crystallization of accounts on 30 June 2022 does not freeze tax liability; the legislature can impose a fresh charge where none existed before. The Sindh, Islamabad and Lahore High Court findings to the contrary are set aside.
- (iv) Amended Division IIB rates (Finance Act 2023) apply for tax year 2023; the contrary direction in Pakistan Oilfields is set aside.
- (v) The composite definition of "income" in section 4C(2) — including final, minimum and separate-regime income — is validly enacted. The Islamabad High Court's reading down on this point is set aside.
- (vi) The FBR-circular direction issued by the Islamabad High Court in Pakistan Oilfields is beyond jurisdiction and set aside.
- (vii) Capital gains on securities under section 37A and the Eighth Schedule are within section 4C (specifically section 4C(2)(i) and (iv)), since super tax is a self-contained charge independent of section 4. However, where a class of capital gain is itself exempt under the Ordinance (e.g. by holding period or inheritance, or agricultural property), no super tax is payable on it.
- (viii) E&P companies: Sections 4B and 4C, by virtue of Rules 4AA and 4AB of the Fifth Schedule, apply to petroleum income — but only to the extent the aggregate of taxes does not exceed the Rule 4 ceiling (read with each PCA). Recovery is capped, not extinguished. PCA-by-PCA assessments must be made by the Commissioner with reference to the applicable taxing law (1922 Act, 1979 Ordinance or 2001 Ordinance) governing each agreement. Section 4C otherwise applies in full to E&P income from sources falling under sub-sections (2)(i)–(iii). Paragraph 5(4) of Pakistan Oilfields is modified accordingly.
- (ix) Banking companies: Section 4C applies to banks from tax year 2023 (excluded for 2022 by the proviso) at the rates amended by the Finance Act 2023.
- (x) Benevolent / provident / gratuity / pension funds holding valid exemption certificates under the Ninth Schedule read with the Second Schedule are not liable to super tax under section 4C. Such funds must furnish their certificates to the concerned Commissioner within fifteen days; the Commissioner shall pass an absolution order within seven days thereafter.
- (xi) The First Proviso to Division IIB (15 sectors at 10% for tax year 2022) is constitutionally valid: the differentia is intelligible, the nexus rational, and the classification permissible under Article 25. Contrary findings of the Sindh, Lahore and

Islamabad High Courts are set aside.

All appeals, petitions and transfer cases were disposed of accordingly.

5. Reasoning

Issue I — Tax or fee? The nature of the levy

The petitioners (led by Mr. Makhdoom Ali Khan, Senior ASC) argued that because section 4B was enacted to fund a special purpose — the rehabilitation of internally displaced persons — the levy raised revenue for a specific object and was therefore a fee, not a tax. As a fee, it could not have been passed through a Money Bill under Article 73. In the alternative, it was contended that the levy did not satisfy the criteria of a tax either, and so was equally infirm. Reliance was placed on the Workers' Welfare Fund case (PLD 2017 SC 28), Durrani Ceramics (PLD 2015 SC 354) and the Income Support Levy case (PLD 2022 SC 640).

The Court agreed with the ratio of the Lahore, Sindh and Islamabad High Courts (in particular, the Single Bench of the Lahore High Court in D.G. Khan Cement) and rejected the fee characterization. The decisive features were that the revenue raised under section 4B went into the consolidated revenue stream as part of the common burden, with no element of quid pro quo for any particular service rendered to the payer. The character of the levy is determined by its triggering incidence (income) and not by the destination of the revenue. Section 4B therefore satisfies the essential indicia of a tax and falls squarely within Entry 47 of the Federal Legislative List.

The same reasoning, the Court held, applies to section 4C. The additional argument concerning the absence of a non-obstante clause and the absence of the prefix "in addition to" (used in section 55 of the 1922 Act and section 10 of the 1979 Ordinance) was rejected: those words are not constitutionally indispensable, and the High Courts had correctly found no ambiguity in the charging language.

Issue II — Vires of section 4C

The Court held section 4C to be a self-contained charge on income, validly traceable to Entry 47 of the Federal Legislative List read with Article 73(2)(a). The legislature has full plenary power, subject to constitutional limits, to impose, abolish, remit, alter or regulate a tax through a Finance Act. The provision does not transgress Articles 4, 18, 23 or 24: reasonable taxation, even where onerous, is not an unlawful restriction on the right to carry on business or to hold property. The challenge to legislative competence therefore fails.

Issue III — Application to tax year 2022 and the "past and closed" argument

This was the most contested ground. The taxpayers argued — relying on the Powerline case, the Molasses case and the Shahnawaz line of authority — that tax liability for tax year 2022 crystallised on 30 June 2022, and that section 4C, having been enacted on 26 June 2022 with effect from 1 July 2022, could not reach back to that closed accounting period. They invoked the doctrines of vested rights, past and closed transactions, and promissory estoppel.

The Court rejected each strand of the argument, for the following reasons:

- Plenary power. The legislature has full power to legislate with retrospective effect on civil matters; the constitutional bar on retrospective legislation is confined to criminal liability. Mekotex (PLD 2024 SCMR 1168), Molasses, Elahi Cotton Mills (PLD 1997 SC 582), and Pakistan v. Salahuddin (PLD 1991 SC 546) were applied.

• No statutory anchor for vested rights. Per Mekotex, a right matures into a past and closed transaction only when its specific investitive facts are completed under a particular statutory provision. The taxpayers did not identify any such provision in the Ordinance. A sweeping characterization of commercial decisions as "past and closed" would, if accepted, immunize every profitable tax year from later legislative intervention.

• The Ordinance contemplates post-30-June revisability. Returns are filed under section 114 after the year-end; deemed assessments under section 120 remain open to amendment under section 122; audit and reassessment can lawfully increase liability. The taxpayers could articulate no principled distinction between such permissible post-30-June enhancements and a fresh statutory charge operating in the same temporal window.

• Promissory estoppel does not run against the legislature. Following Pakistan v. Salahuddin, Muhammad Ashraf (PLD 1993 SC 176) and Army Welfare Sugar Mills (1992 SCMR 1652), the legislature, by its very nature, makes law rather than representations. Section 4C is not a curative or validating provision; it is a fresh charge imposed in the exercise of ordinary plenary authority.

• The cited authorities do not assist the taxpayers. Molasses concerned a curative provision (section 31-A of the Customs Act 1969) and struck down executive action, not the legislation itself. Islamic Investment Bank Ltd. identified a right vested in the State, not the taxpayer, and was decided against the taxpayer on a transitional question. The Powerline case neither raised promissory estoppel nor displaced Shahnawaz, and was given express prospective effect in its own paragraph 43.

The Court added two supporting observations. The Finance Act 2022 was enacted against a recorded revenue shortfall of approximately Rs. 215 billion; Article 80 of the Constitution permits Parliament to bridge that shortfall by way of a fresh direct charge. Additionally, no taxpayer before the Court who admittedly fell within section 4C had denied earning more than Rs. 150 million in tax year 2022; the contention was therefore one of principle rather than of impossibility.

The phrase "for tax year 2022 and onwards" was found to be unambiguous, and section 4C was therefore held to apply validly to tax year 2022. The Court additionally rejected the Sindh High Court's reasoning that section 4B being charged at 0% for tax year 2022 barred the application of section 4C: sections 4B and 4C are distinct charges, both on income, capable of operating concurrently.

Issue IV — The composite definition of "income"

The Islamabad High Court (in Fauji Fertilizer) had read section 4C down so as to exclude any income falling under a final or presumptive tax regime, on the footing that such income lay outside the conventional scheme of income taxation. The Court rejected both premises:

• What is or is not "income" is a legislative question. Following Elahi Cotton Mills (PLD 1997 SC 582), Parliament may make taxable as income that which is not income in the ordinary commercial sense; concessions for losses, expenses and depreciation may be withdrawn by the legislature; sources ordinarily taxed under the normal regime may be moved into a final-tax regime by legislative choice; and the character of the levy remains a direct tax on income regardless of its final-tax form.

• The composite definition prevents discrimination. The four clauses of section 4C(2) capture income arising under the normal, final, minimum and separate regimes. Restricting section 4C to normal-regime income would mean a person earning Rs. 500 million from profit on debt under section 7B would escape super tax, while a person

earning the same amount as taxable business income would be liable. Such a result would itself contravene Article 25; the composite definition is the legislature's answer to that discrimination.

- Imputation under clause (iii) brings parity, not penalty. The imputation mechanism in section 4C(2)(iii), read with section 28A, operates to put final-tax taxpayers on parity with normal-regime taxpayers, not to impose a heavier burden on them.

The Islamabad High Court's reading down on this ground was therefore set aside. The Court clarified, however, that where a class of income is itself exempt under the Ordinance (for example, capital gains by virtue of holding period or inheritance, or capital gains on agricultural property), no super tax is payable on it — super tax being an additional tax on income, it cannot extend further than the underlying tax it supplements.

Issue V — The First Proviso (15 sectors at 10%) and Article 25

All three High Courts had struck down the First Proviso to Division IIB as offensive to Article 25. The Federal Constitutional Court reversed, applying I.A. Sherwani v. Government of Pakistan (1991 SCMR 1041) and Elahi Cotton Mills:

- Article 25 does not require mathematical precision; it requires only that any classification rest on intelligible differentia and bear a rational nexus to the legislative object. In the fiscal field the legislature is allowed "some play in the joints," and courts must not insist on "delusive exactment."

- The triggering incident under the First Proviso remains income — income of more than Rs. 300 million in tax year 2022. Within the class of high earners, the legislature drew a further sub-class: fifteen sectors that, on unrefuted statistical data placed by the Revenue, had recorded windfall profits in tax year 2022 (one sector showing income growth of approximately 9,702% over the prior year). Certified data from the Chief Commissioner LTO Lahore showed that 92 taxpayers in the 10% bracket had a mean income of Rs. 3,004 million, against 303 taxpayers in the 4% bracket with a mean income of Rs. 950 million — a ratio of roughly 3.16:1, with internal comparators (47 taxpayers within the same fifteen sectors, but below the Rs. 300 million threshold, paying only the 4% rate) confirming that the differentiation is within, and not across, the sectoral class.

- The differentia — windfall profitability during the relevant macroeconomic dislocation, attributable to systemic infrastructure, exposure to FMCG and import-export volumes, and currency-fluctuation effects on inelastic-demand stocks — was specifically explained on record and substantially unrefuted (only one counsel, for tobacco interests, sought to challenge it). The classification therefore rests on an intelligible differentia with a rational nexus to a legitimate legislative object.

- The exclusion of banking companies from section 4C for tax year 2022 was likewise principled: banks were already subject to section 4B super tax for that year and to an additional charge under Rule 6C(6A) of the Seventh Schedule. The legislative judgment that further imposition was unwarranted reinforces, rather than undermines, the rationality of the overall scheme.

- The reliance on Burmah Shell Storage (1993 SCMR 338) — that where a charging provision and a Schedule are irreconcilable, the Schedule must yield — was misplaced: section 4C casts the charge on income, while the First Proviso merely calibrates its rate within the class of high earners. There is no inconsistency, only classification within the terms of the charge.

Issue VI — Banking companies for tax year 2023

Dr. Farogh Naseem, ASC, contended for banking companies that the imposition of section 4C on banks for tax year 2023 itself engaged retrospective operation, in the same way as the year-2022 charge on other taxpayers. The Court rejected this submission. Banks were expressly excluded from section 4C for tax year 2022 by the proviso to section 4C(1); they were brought within the charge for tax year 2023 onwards by the Second Proviso to Division IIB. By the time the Finance Act 2023 was passed, the Seventh Schedule was already on notice that section 4C would attach to banking income from tax year 2023 at 10%. The 2023 Finance Act did not revise that rate so far as banks were concerned. The contention that banks were swept into a retrospective net therefore misrepresented the statutory scheme. The Islamabad High Court's acceptance of the argument in Pakistan Oilfields proceeded on a material misapprehension and was set aside.

Issue VII — Capital gains under section 37A and the Eighth Schedule

Mirza Mehmood Ahmed, ASC, argued that capital gains on listed securities, being assessed under a separate block under section 37A read with the Eighth Schedule, lay outside section 4C. The Court rejected the submission. Section 4C is a self-contained charge on income, deriving its independent force from Entry 47 of the Federal Legislative List; it is not parasitic on section 4. Section 100B(1) expressly provides that the tax on capital gains on listed securities shall be "computed, determined, collected and deposited in accordance with the rules laid down in the Eighth Schedule," and that such tax includes "super tax under Section 4C." The point therefore stood resolved by the express statutory text. Capital gains under section 37A fall within section 4C(2)(i) and (iv). The qualification, mentioned above, is that where the underlying capital gain is itself exempt (holding period, inheritance, or agricultural property), no super tax is payable.

Issue VIII — E&P companies and Rule 4 of the Fifth Schedule

The petroleum companies (led by Mr. Makhdoom Ali Khan, Senior ASC, and Mr. Salman Akram Raja, ASC) advanced two main submissions: first, that the freezing clause in each PCA fixes the applicable rates of tax as at the date of the agreement; second, that on principles of harmonious construction and lex specialis, Rule 4 of the Fifth Schedule (specific to E&P companies) must prevail over section 4C (a general charge). The Revenue countered that PCAs are executive instruments incapable of fettering Parliament's legislative competence, and that Rules 4AA and 4AB — expressly inserted to apply sections 4B and 4C to E&P income — would be reduced to surplusage if Rule 4 were read as a blanket bar.

The Court's finding rested on the internal structure of the Ordinance, not on according PCAs any independent constitutional weight:

- Rule 4AB places section 4C's application by virtue of the Fifth Schedule (see section 4C(2)(iv)), thus importing Rule 4 as a constraint, not displacing it.
- Rule 4 has not been expressly overridden; a later provision of the same Ordinance must be read harmoniously with it, not as an implied repeal.
- Rule 4 and Rule 4AB can operate together: Rule 4AB establishes that section 4C applies; Rule 4 caps the aggregate at which the combined burden may arrive.
- Where the aggregate of ordinary income tax and section 4C does not exceed the PCA ceiling reflected in Rule 4, section 4C is recoverable in full; where it exceeds the ceiling, section 4C is recoverable only to the extent of the available gap. Section 4C is not rendered inapplicable; its recovery is simply capped.

Because PCAs were executed under three different taxing regimes — the 1922 Act, the 1979 Ordinance and the 2001 Ordinance — and because their freezing clauses are not uniform, no single blanket ruling could be given. The Court directed Commissioners Inland Revenue to undertake a PCA-by-PCA assessment placing the terms of each PCA in juxtaposition with the 1948 Act and the applicable taxing law, and to issue fresh notices after due hearing. Section 4C otherwise applies in full to E&P companies' income from sources falling under section 4C(2)(i)–(iii). Paragraph 5(4) of Pakistan Oilfields was modified accordingly.

Issue IX — Maintainability and locus standi of Commissioner / FBR

Mr. Makhdoom Ali Khan raised a two-fold maintainability objection: (a) that taxation is the Federation's exclusive domain and FBR / Commissioner cannot suffer cognizable grievance from a striking down of the charging provision; and (b) that even if such an appeal lay in principle, the present appeals lacked Cabinet sanction, the Attorney General's certificate under Rule 14(1A) of the Rules of Business 1973, and compliance with section 8 of the FBR Act 2007. Reliance was placed on Rasheed Ahmad v. Federation of Pakistan (PLD 2017 SC 121).

The Court rejected the objection:

- Aggrieved-person status. The High-Court judgments operated directly upon the Commissioner — quashing notices issued under section 4C, setting aside FBR circulars, and restraining the Commissioner from applying the provision. A judicial pronouncement that denudes a public functionary of his statutory duty creates a direct grievance. The Court applied the line of authority running from Zahid Nadeem (1996 MLD 506), through Azam Malik (PLD 2005 SC 686) and Abdul Jabar (2017 SCMR 1213), to Cherat Cement (2018 PTD 1617) and Nestle Pakistan (2025 PTD 1634).
- Article 185(3) and Article 175F confer the right of appeal on any person, subject to the conditions there prescribed; they do not import any qualifying "aggrieved person" test absent from the text.
- Rasheed Ahmad distinguished. Its ratio addresses the internal propriety of engaging private counsel, governed by the Rules of Business 1973. The Revenue Division has, by virtue of a long-standing 1994 exemption, conducted its tax litigation in its own right since then without recourse to the Law and Justice Division.
- Factual ground cut from under the objection. The record disclosed that several intra-court appeals had in fact been filed by the Federation, contrary to the statement at the Bar. Neither the Federation nor the FBR had at any stage disowned the Commissioner's pleadings.
- The fetish-of-technicalities caution. Following the admonition in Abdul Jabar, where the State's jurisdictional competence to defend its taxing statute is not in doubt, technicalities cannot be allowed to defeat the ends of justice.

In any event, the Federation, already arrayed as respondent in the appeals, was transposed by the Court as appellant in exercise of its inherent power for just and proper adjudication.

Issue X — Territorial reach of the FBR-circular direction

In Pakistan Oilfields, the Single Judge of the Islamabad High Court had directed the FBR to issue an administrative instruction under section 214(1) of the Ordinance to all subordinate Inland Revenue officers across Pakistan, requiring them to apply the court's reading-down of section 4C nationwide where no contrary mandamus existed. The Federal Constitutional Court found this to exceed the Islamabad High Court's territorial jurisdiction under Article 199 (which restricts a High Court's writ to official persons and acts within its territory), and to

have the practical effect of overruling decisions of other High Courts not by superior appellate jurisdiction but by a court of co-ordinate rank. The direction was set aside. The broader question of territorial jurisdiction over petitioners outside the Islamabad High Court's territory, which the Revenue had pressed at earlier stages but did not press before the FCC, was left to be addressed in a future case.

Disposition. All appeals, petitions and transfer cases were disposed of in the terms of the short order dated 27 January 2026, as elaborated in the detailed reasons. Justice Syed Hasan Azhar Rizvi recorded a separate concurring note agreeing with the ultimate conclusions but offering independent reasons, particularly on the tax/fee distinction, the rejection of the discrimination challenge to the First Proviso, and the operation of Rule 4 of the Fifth Schedule for E&P companies.

Prepared by Mandviwalla & Zafar, Advocates. This summary is intended as a working note on the judgment and does not substitute for the operative text. Citations are to the judgment as released; page references in the underlying record have not been reproduced.