

# SOURCE OF LAW

The Constitution of Islamic Republic  
of Pakistan, 1973 (As amended from  
Time to Time)

# Important Provisions of the Constitution

- Definition of State Article 7 (Defined for the purpose of Part II (Fundamental Rights and Principles of Policy))
- **The State means**
- The Federal Government,
- Majlis-e-Shoora (Parliament),
- A Provincial Government,
- A Provincial Assembly and
- Any such local or other authorities in Pakistan as are by law empowered to impose any tax or cess.

# What is the Federal Government? ( Please See Article 90 and for Cabinet Please See Article 91)

- The Hon'ble Supreme Court of Pakistan in the case of Mustafa Impex (PLD 2016 SC 808) examined the above question and after examining various provisions of the Constitution including history of Constitutional Jurisprudence, Rules of Business and Other laws and held that any act or statutory instrument by the Federal Government envisages to be taken up by the Cabinet, not by any other authority.

# What is Majlis-e- Shoora (Parliament)?

- Article 50 describes Majlis-e-Shoora (Parliament) of Pakistan consisting of :
- The President (Please See Article 41to 49) and
- Two Houses
- National Assembly (Please See Article 51 to 58)
- Senate. (Please See Article 59 to 61)

- The Provincial Governments (Please See Article 129 and for Cabinet Please see Article 130)
- Constitution of Provincial Assemblies (Please see Article 106 112)
- Appointment of The Provincial Governments (Please See Article 129 and for Cabinet Please see Article 130)
- Constitution of Provincial Assemblies (Please see Article 106 112)
- Governor of each Province (Please See Article 101 to 105)
- Local Government (Please See Article 140 A)

# Legislative Procedure (s)

- Article 70 of the Constitution, stipulates the procedure of introduction and passing of Bills to any matter in the Federal Legislative List.
- Prior to the Constitution (Eighteenth Amendment) Act, 2010, there existed two Lists namely Federal Legislative List or in the Concurrent Legislative List in the Fourth Schedule to the Constitution.
- However, after the Constitution (Eighteenth Amendment) Act, 2010, there remains only one List i.e. Federal Legislative List as contained in the Fourth Schedule to the Constitution. Legal consequence is that the National Assembly and Senate can only legislate on the subject matters contained in the Federal Legislative List and on all other subject matters, the Provincial Assemblies have a right to legislate.

# Procedure with respect to Money Bills. (Please See Article 73)

- Money Bill shall originate in the National Assembly and simultaneously when a Money Bill, including the Finance Bill containing the Annual Budget Statement, is presented in the National Assembly, a copy of thereof shall be transmitted to the Senate which may, within 14 days, make recommendations thereon to the National Assembly. The National Assembly shall, consider the recommendations of the Senate and after the Bill has been passed by the National Assembly with or without incorporating the recommendations of the Senate, it shall be presented to the President for assent.

# Money Bill

- It is noted from the reading of Article 73 as a whole, for the purpose of Chapter 2 of the Constitution, a Bill or amendment shall be deemed to be a Money Bill if it contains provisions dealing with all or any of the following matters, namely –



- (a) the imposition, abolition, remission, alteration or regulation of any tax;
- (b) the borrowing of money, or the giving of any guarantee, by the Federal Government, or the amendment of the law relating to the financial obligations of that Government;
- (c) the custody of the Federal Consolidated Fund, the payment of moneys into, or the issue of moneys from, that Fund;
- (d) the imposition of a charge upon the Federal Consolidated Fund, or the abolition or alteration of any such charge;
- (e) the receipt of moneys on account of the Public Account of the Federation, the custody or issue of such moneys;

- (f) the audit of the accounts of the Federal Government or a Provincial Government; and
- (g) any matter incidental to any of the matters specified in the preceding paragraphs.

# MONEY BILL

- A Bill shall not be deemed to be a Money Bill by reason only that it provides-
- (a) for the imposition or alteration of any fine or other pecuniary penalty, or for the demand or payment of a license fee or a fee or charge for any service rendered; or
- (b) for the imposition, abolition, remission, alteration or regulation of any tax by any local authority or body for local purposes.
- It has been further stipulated that If any question arises whether a Bill is a Money Bill or not, the decision of the Speaker of the National Assembly thereon shall be final.
- Every Money Bill presented to the President for assent shall bear a certificate under the hand of the Speaker of the National Assembly that it is a Money Bill, and such certificate shall be conclusive for all purposes and shall not be called in question.

# MONEY BILL BY PROVINCES (PLEASE SEE ARTICLE 115)

- It has been noted that under Article 115 of the Constitution, similar stipulation with regard to Money Bills have been given including assent of the Governor.

## POWER OF PRESIDENT AND GOVERNOR TO PROMULGATE ORDINANCES. (PLEASE SEE ARTICLE 89 FOR THE POWER AND ARTICLE 128 FOR THE POWERS OF GOVERNOR)

- POWER OF THE PRESIDENT - When the Senate or National Assembly are not in session, the President has been empowered to promulgate an Ordinance, if he is satisfied that circumstances exist which render it necessary to take immediate action, make and promulgate an Ordinance as the circumstances may require.
- An Ordinance so promulgated shall have the same force and effect as an Act of Majlis-e- Shoora (Parliament) subject to like restrictions as the power of Majlis-e-Shoora (Parliament, but every such Ordinance shall be laid –

- (a) shall be laid-
- (i) before the National Assembly if it contains provisions dealing with all or any of the matters specified in clause (2) of Article 73, and shall stand repealed at the expiration of 120 days from its promulgation or, if before the expiration of that period a resolution disapproving it is passed by the Assembly, upon the passing of that resolution
- Provided that the National Assembly may by a resolution extend the Ordinance for a further period of 120 days and it shall stand repealed at the expiration of the extended period, or if before the expiration of that period a resolution disapproving it is passed by the Assembly, upon the passing of that resolution:
- Provided further that extension for further period may be made only once.

- (ii) before both Houses if it [does not contain provisions dealing with any of the matters referred to in sub-paragraph (i)], and shall stand repealed at the expiration of 120 days from its promulgation or, if before the expiration of that period a resolution disapproving it is passed by either House, upon the passing of that resolution[:]
- Provided that either House may by a resolution extend it for a further period of 120 days and it shall stand repealed at the expiration of the extended period, or if before the expiration of that period a resolution disapproving it is passed by a House, upon the passing of that resolution:
- Provided further that extension for a further period may be made only once; and
- (b) may be withdrawn at any time by the President.

- Without prejudice to the provisions of clause (2) of Article 89-
- (a) an Ordinance laid before the National Assembly under subparagraph (i) of paragraph (a) of clause (2) shall be deemed to be a Bill introduced in the National Assembly; and
- (b) an Ordinance laid before both Houses under sub-paragraph (ii) of paragraph (a) of clause (2) shall be deemed to be a Bill introduced in the House where it was first laid.



# POWER OF THE GOVERNOR IN RESPECT OF ORDINANCE

- Under Article 128, almost similar powers have been conferred to a Governor of the Province, however in place of number of days i.e. 120 days as contained in Article 89, in case of Ordinance promulgated by a Governor, 90 days have been stipulated.

# Tax to be levied by law only. (Please See Article 77)

- No tax shall be levied for the purposes of the Federation except by or under the authority of Act of Majlis-e-Shoora (Parliament)].
- This Article i.e. Article 77 in my humble view has to be read with Article 127 wherein Article 77 has been made applicable viz. Provisions relating to National Assembly etc., to apply to Provincial Assembly.

# BILL BECOMING AN ACT.

- A Bill introduced by National Assembly/ Senate and by the Provincial Assembly is assented by the President or the Governor, as the case may be; such Bill after assent shall be called an “Act”

# STRUCTURE - FEATURES OF A STATUTE.

- To fully understand the principles and the doctrines, we must first look into the common structure or features of a fiscal statute which are narrated hereunder:

- Preamble explaining the reasons for promulgation
- Date of Commencement
- Name of the Statute
- Extend and Area of its applicability
- Definition Clause
- Section – Proviso – Explanation
- Charging Section
- Exemption Provisions
- Procedures of Assessment and Compliances
- Making of Assessment
- Recovery Provisions
- Penal Provisions
- Provisions regarding Remedies i.e. Appeal and Revision Provisions
- General and Special Provisions
- Administration/ Authorities and their Functions
- Rule making authority / Sub-ordinate legislation
- Saving and Repeal Provisions

# Charge/levy, Assessment, recovery/Collection

- In a fiscal statute there are three distinct types of provisions generally in every fiscal enactment, namely Charging provisions, Assessment provisions and Collection provisions.
- The Charging provisions, are such provisions which relate to the levy or charge of the tax, which usually state that tax is to be levied on what matter, or goods or income or service and in which manner and at what rate and matters relevant thereto.
- Assessment provisions which deal with the assessment, calculation or quantification of the tax for the purposes of determining the amount of tax due and payable or which has escaped collection or has been under assessed or assessed at a lower rate or on which excessive relief or refund has been allowed. In such provisions an element of addition of liability is woven into and such provisions are impregnated with the potential of adding to the liability of the Taxpayer, therefore same are not mere matter of procedure but have substantive provision as well.
- In respect of Collection provisions relates to the mode and manner of recovery or collection/recovery of the tax.

# Reliance: On the judgment on the point of three types of Fiscal Statute.

- Hon'ble Lahore High Court in the case of Friends Sons v. Deputy Collector Central Excise and Sales Tax, Lahore reported in PLD 1989 Lah. 337, referred recently with approval by Hon'ble Supreme Court of Pakistan in the case of MESSRS SUPER ENGINEERING AND ANOTHER VS COMMISSIONER INLAND REVENUE, KARACHI reported in 2019 PTD 1912 SC. Noon Sugar Mills Ltd. v. Commissioner of Income Tax, Rawalpindi reported in PLD 1990 SC 1156 = 1990 PTD 768 SC.

PRINCIPLES OF GENERAL ANTI-TAX AVOIDANCE RULE (  
GAAR) – ANTI TAX AVOIDANCE  
REFER SECTION 109 OF THE INCOME TAX ORDINANCE,  
2001

- REFER 2018 PTD 114 HIGH COURT OF SINDH IN THE CASE OF COMMISSIONER INLAND REVENUE, Zone-III VS MESSRS IGI INSURANCE COMPANY LTD.
- Tax Planning Vs. Anti-Tax Avoidance
- To be interpreted purposely



# PURPOSIVE INTERPRETATION GENERAL PRINCIPLE

- Purposive rather than a literal approach to interpretation was to be adopted while interpreting a statute. Any interpretation which advances the purpose of the statute was to be preferred rather than an interpretation which defeated its objects. Please See 2021 SCMR 1671.

PRINCIPLES OF INTERPRETATION – WORDS IN THE STATUTE HAVE TO BE READ IN THEIR PLAIN MEANING AND NOTHING CAN BE ADDED, SUBTRACTED OR IMPLIED.

- It is well established and important principle of interpretation of fiscal statutes that words in the statute have to be read in their plain meaning and nothing can be added, subtracted or implied to arrive at the interpretation.

PRINCIPLES OF INTERPRETATION – WORDS IN THE STATUTE HAVE TO BE READ IN THEIR PLAIN MEANING AND NOTHING CAN BE ADDED, SUBTRACTED OR IMPLIED.

- Reliance on the following judgments
- M/s. Indus Basin & Co. Vs. Commissioner of Income Tax reported as 2002 PTD 2169, Hon'ble High Court of Sindh
- Commissioner of Income Tax, E-Zone, Karachi Vs. M/s. W.J. Towell & Co., Agencies (Kuwait), Karachi reported as 2006 PTD 1709

PRINCIPLES OF INTERPRETATION – WORDS IN THE STATUTE HAVE TO BE READ IN THEIR PLAIN MEANING AND NOTHING CAN BE ADDED, SUBTRACTED OR IMPLIED.

- Judgment of Hon'ble Supreme Court of Pakistan in the case reported in 1986 PTCL CI 25 The Federation of Pakistan Vs. M/s. Zeal Pak Cement Factory Ltd.

# PRINCIPLES OF INTERPRETATION – CHARGING PROVISIONS- STRICT INTERPRETATION

- Collector of Sales Tax Vs. M/s. Abbot Laboratories (Pakistan) Pvt. Ltd., reported in 2010 PTD 592.
- It is trite principle of interpretation of a taxing statute that charging provisions are required to be construed strictly. It is also a trite principle that in taxing statute, a tax on any person is to be levied by clear and unambiguous words and the expressions used in charging sections are not to be stretched by any process of interpretation, so as to bring a person within the tax net not falling under the clear and plain language of the statute.
- A trite principle of interpretation of taxing statute that if there is any ambiguity the same has to be resolved in favour of subject. The Hon'ble Supreme Court reported as re : Province of Punjab Vs. Muhammad Aslam 2004 SCMR 1649 in which it has been held as under :
- “The provisions of the Act of 1958, being a taxing statute, are required to be construed strictly. There is no intendment or presumption about a tax. We have to go by the language clearly employed by the legislature in the fiscal statute.”

- Similarly, in another judgment reported as Commissioner of Income Tax Companies II, Karachi Vs. Messrs Muhammad Usman Hajrabai Trust Imperial Courts, Karachi, 2003 PTD 577, Division Bench of Hon'ble Court has held as under :-
- (a) “By now, it is a established principle of the interpretation of fiscal statutes that, a tax on any person is to be levied by clear and unambiguous words and the expressions used in the charging sections are not to be stretched by any process of interpretation so as to bring a person within the tax net, not falling under the clear and plain language of the statute.”

- (b) “In the judgments , it is clearly stated that, in taxing statute one has to look merely at what is clearly stated. There is no room for any intendment. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied, one can only look fairly at the language used. By now, it is established principle of the interpretation of fiscal statutes that, a tax on any person is to be levied by clear and unambiguous words and the expressions used in the charging sections are not to be stretched by any process of interpretation so as to bring a person within the tax net, not falling under the clear and plain language of the statute.”

- Further reliance to above legal propositions can also be made on the following reported judgments :
- (i) 1977 SCMR 371, Collector of Customs (Appraisement), Karachi and others Vs. Messrs Abdul Majeed Khan and others.
- (ii) 1971 SCMR 128 Messrs Hirjina & Co. (Paksitan) Ltd. Karachi Vs. Commissioner of Sales Tax Central, Karachi and
- (iii) PLD 1961 SC 119, Ltgd. Col. Nawabzada Muhammad Amir Khan Vs. The Controller of Estate Duty.”.
- Reference can also be made to the judgments of Hon’ble Supreme Court of Pakistan reported in 2016 SCMR 121, 2017 SCMR 1, 2017 SCMR 1136 and 2019 SCMR 282, 2021 SCMR 536.



# SPECIAL LAW VS GENERAL LAW

- It is well-established principle of law that where specific provision is made to deal with particular situation then it supersedes the general provision to the same effect.
- In the case of M/s. Sapphire Textile Mills Ltd. Vs. Collector of Central Excise & Inland Customs, Hyderabad 1990 CLC 456, their Lordships of Hon'ble High Court of Sindh observed at page 478 as under:-
- “Where specific provision is made to deal with a particular situation, then it supersedes the general provisions to the same effect.”
- Similar view has been expressed by the Hon'ble Supreme Court of Pakistan in the case of the State vs. Zia-ur-Rehman PLD 1973 (SC) 49 where their Lordships of the apex Court observed as under:-
- “Where in a statute, there are both general provisions as well as special provisions for meeting a particular situation, then it is a special provision which must be applied to that particular case or situation instead of general provisions.” <sup>33</sup>

- In the case of Golden Oraphies (Pvt) Ltd and others versus Director of vigilance, Central Excise, Custom and Sales Tax and others reported in 1973 SCMR 1635 where their lordships of Supreme Court observed as under:-
- “..the well settled rule of construction of legal instruments that when a special provision has been made on a subject and there is also a general provision susceptible of covering the same field and the matter is covered by both the provisions, the presumption would be that the general provision is not intended to interfere with the operation of the special provision and the case shall have to be dealt with under the latter provision.”

# WORDS DEFINED OR NOT DEFINED - HOW TO BE INTERPRETED.

- Where a word has been defined in a statute, such definition most authoritatively express legislative intend, which definition and construction was binding on court. 2021 PTD 933 High Court of Sindh in the case of Human Resources Solutions Pvt Ltd VS Federation of Pakistan.

- The words defined in a statute have to be adhered to. However, once a term/word is not defined in a statute, it has to be construed as in its popular sense and that if the statute is passed with reference to a particular trade, business or transaction, word are used therein which everybody conversant with the trade, business or transaction knows and understands to have a particular meaning. It has been held to be trite law of taxation that words used in tax laws until and unless defined in the Statute shall be taken in the same sense and meaning as is understood in the common parlance by the business community.

- Reference can be made to the judgments viz. Usmania Glass factory vs Sales Tax officer reported as (1970) 22 Tax 229, Collector of Customs vs. Abdul Majeed Khan reported as 1997 SCMR 371, Judgment of Honourable High Court of Sindh in the case of Commissioner of Income Tax Vs. Nazir Ahmed and Sons Pvt Ltd reported as 2004 PTD 921, 1985 CLC 1021 Civil and Military Press Vs. Pakistan. 17.
- In the case of Commissioner of Income Tax Vs. Nazir Ahmed and Sons Pvt Ltd reported as 2004 PTD 921, the Honourable High Court at page 940 W was pleased to hold as under.
- “The Trite Law of Taxation is that words used in tax law until and unless defined in the statute shall be taken in the same sense and meaning as is understood in the common parlance by the business community.

# SCHEDULE SHOULD YIELD TO THE MAIN STATUTE

- Very recently, the Hon'ble Supreme Court of Pakistan in Civil Petitions No.890-K to 909-K/2023 decided on 22. 11.2023 has held that a schedule/table is merely a supplement of the charging section and cannot go beyond it.

# SHOW CAUSE – ITS SCOPE AND PURPOSE

- Caretex v/s Collector Sales Tax & Federal Excise reported in 2013 PTD 1336, where their lordships in para-8 have laid the following principle.
- “8. Show-Cause Notice, is a foundational document, which is to comprehensively describe the case made out against the taxpayer by making reference to the evidence collected in support of the same. It is the narration of facts in the Show Cause Notice along with the supporting evidence which determines the offence attracted in a particular case Show Cause Notice is not a casual correspondence or a tool or license to commence a roving inquiry into the affairs of the taxpayer based on assumptions and speculations but is a fundamental document that carries definitive legal and factual position of the department against the taxpayer.”

- In a recent judgment the Hon'ble Supreme Court of Pakistan in the case of Commissioner Inland Revenue Vs M/s RYK Mills reported in 2023 SCMR 1856.at pages 1862 to 1864, have under scored the significance and purpose of a show cause notice.



# ADJUDICATION BEYOND THE GROUNDS IN THE SHOW CAUSE NOTICE

- It is well established principle of law that when adjudication order is passed on the basis of a ground not stated in the notice, said action is palpably illegal and void on the face of it.
- Judgments- the Collector Central Excise and Land Customs V/s Rahimdin reported in 1987 SCMR 1840

- Recently it has been applied by the Hon'ble Supreme Court in the case of M/s. Fateh Yarn (Pvt) Limited, Faisalabad V/s Commissioner Inland Revenue, Faisalabad reported in 2021 PTD 1392.

# TREAT OVERRIDE – SECTION 107 OF THE INCOME TAX ORDINANCE, 2001

- Treaties for Avoidance of Double Taxation under Section 107 of the Income Tax Ordinance, 2001 have to be given preference and would prevail over the provisions of domestic law. 2023 SCMR 1011 (Judgment of Hon'ble Supreme Court of Pakistan. There are several other judgments to same effect.

# PROVISO – SCOPE AND WHO TO BE INTERPRETED

- It is trite law that a Proviso is to be regarded as something which excepts a particular case from a general principal. The effect of a Proviso is to except something out of the preceding portion of the enactment and the words of proviso are to be construed strictly.
- Reliance can be placed on the following judgments of the superior courts.
- a) PLD 1958 SC 41 East and West Steamship Company V. Pakistan
- b) 1999 PTD 3518 M/s. Shahi Bottlers Ltd. Lahore V. CIT Central Zone Lah.
- c) PLD 1992 Kar 181 M/s. Muzafar Poultry Association Sindh Zone, Karachi.
- d) PLD 1970 Pesh 83 Khan Bahadur Mian Feroz Shah (represented by 10 heirs) v. The Commissioner of Income Tax, North Zone (West Pakistan). Lahore.
- e) PLD 1970 Peshawar 83
- f) 2007 SCMR 886 (Mrs. Farkhanda Talat V. Federation of Pakistan,

- Hon'ble High Court of Sindh in the case of Syed Nasir Ali versus Pakistan Secretary Ministry of law reported in 2010 PTD 1924 had elaborately examined the import of a Proviso and has reiterated the principles of law and very recently approved by Hon'ble Supreme Court but judgment is not available.

# EXPLANATION – SCOPE AND INTERPRETATION AND IS APPLICABILITY

- Kinds of Explanations.
- declaratory and clarificatory
- or for removal of doubt
- definitive in nature
- some of the explanations have enlarged and extended the scope of already enacted provisions.

- The explanations squarely fall within the normal purpose and scope of explanations, to wit, being declaratory, clarificatory, meant for removal of doubt, removing of obscurity or an ambiguity or filling in any obvious gap or correcting any pronouncement by the Court taking as judicial error by the Legislature, shall have the retrospective effect.

- However, the explanation whereby substantive legislation has been made or deeming provisions have been enacted or substantive provisions of law have been enlarged or extended creating new liabilities they shall not have retrospective effect.
- Please see various judgments including COMMISSIONER OF INCOME TAX, KARACHI VS M/S NAZIR AHMED AND SONS PVT LTD REPORTED IN 2004 PTD 921



# AMBIGUITY

- Provision of statute is to be held ambiguous only if it contains a word or phrase which in a particular context is capable of having more than one meaning.
- Or could be interpreted where two effects are obvious.

# RULE

- It is now a well-established principle of interpretation of statutes that Rules which are merely subordinate legislation, cannot override prevail upon the provisions of the parent Statute and whenever there is an inconsistency between a Rule and the Statute, the latter must prevail. This, however, envisages that all efforts to reconcile the inconsistency must first be made and the provisions of the parent Statute prevail only if the conflict is incapable of being resolved.

# RULE

- The case of Harjina Salt Chemicals (Pak.) Ltd. v. Union Council, Gharo and others 1982 SCMR 522 .
- Above rule has been re-affirmed in the case of (1) Mian Ziauddin v. Punjab Local Government and others 1985 SCMR 365, (2) Federation of Pakistan v. Azam Ali 1985 SCMR 386, (3) The Chairman Railway Board v. M. Wahabuddin & Sons PLD 1990 SC 1034 and (4) Multiline Associates v. Ardeshir Cowasjee PLD 1995 SC 423.
- Besides these judgments there is plethora of case-law on the subject decided from time to time by the superior Courts.
- SEE ALSO PTCL 2021 CL 821 High Court of Sindh.

# DOCTRINE OF MUTUALITY

- AS EXPLAINED BY HON'BLE HIGH COURT OF SINDH IN THE CASE OF KARACHI GOLF CLUB AND OTHERS REPORTED IN 2021 PTD 578
- The doctrine of mutuality is the principle which obligates an association of persons who are agreed inter se, not to derive profits or gains but to achieve, through their mutual contributions, a purpose or benefit in which all members should participate or would be entitled to do so. Its cardinal requirement is that all the contributors to the common fund must be entitled to participate in the surplus and that all the participants in the surplus must be contributors to the common fund; in other words, there must be complete identity between the contributors and the participators.

# MANDATORY OR DIRECTORY

- The Collector of Sales Tax, Gujranwala and others v. Messrs Super Asia Mohammad Din and Sons and others (2017 SCMR 1427), the Hon'ble Supreme Court has held that the ultimate test to determine whether a provision is mandatory or directory is that of ascertaining the legislative intent. The Court found that while the use of the word 'shall' is not the sole factor which determines mandatory or directory nature of a provision, it is certainly one of the indicators of legislative intent. Other factors include the presence of penal consequences in case of noncompliance, but perhaps the clearest indicator is the object and purpose of the statute and the provision in question. The Court concluded that it is the duty of the Court to garner the real intent of the legislature as expressed in the law itself.
- Principles of Directory and mandatory provisions and tests also elaborated by Hon'ble Supreme Court in the case of Province of Punjab Vs. Javed Iqbal reported in 2021 SCMR 328.

# REDUNDANCY CANNOT BE ATTRIBUTED TO STATUTORY PROVISIONS/ LEGISLATURE.

- Redundancy cannot be attributed to statutory provisions (or any part thereof) or to the Legislature.
- In this respect, the following judgments are relevant:-
- Collector of Sales Tax and Central Excise (Enforcement) and another Vs. M/s Mega Tech (Pvt.) Ltd (2005 SCMR 1166),
- Aftab Shahban Mirani and others Vs. Muhammad Ibrahim and others (PLD 2008 SC 779) and
- Messrs Master Foam (Pvt.) Ltd. and 7 others Vs. Government of Pakistan through Secretary, Ministry of Finance and others (2005 PTD 1537).

# WHAT EVER IS NOT SPECIFICALLY PROHIBITED IS PERMISSIBLE

- WHAT EVER IS NOT SPECIFICALLY PROHIBITED IS PERMISSIBLE AND PROHIBITION CANNOT BE PRESUMED.
- 2021 PLC (C.S) 304 LHC REFERRING TO VARIOUS DECISIONS OF SUPREME COURT

# EJUSDEM GENERIS AND NOSCITUR A SOCIIS

- -Ejusdem generis, principle of---Scope---Ejusdem generis principle was a principle of constriction whereby wide words associated in the text with more limited words were taken to be restricted by implication to matters of the same limited character---For the said principle to apply, there must be sufficient indication of the category or word that could be properly described as the class or genus, which was to control the general words---Genus must be narrower than the general words it was to regulate.



# EJUSDEM GENERIS AND NOSCITUR A SOCIIS

- Maxim NOSCITUR A SOCIIS---Scope---Word or phrase in an enactment must always be construed in the light of the surrounding text, and their colour and meaning must be derived from their context.
- Please See 2022 SCMR 1
- case of Government of Pakistan versus Muhammad Iqbal reported in PLD 1987 SC 427.

# EJUSDEM GENERIS AND NOSCITUR A SOCIIS

- Case of Commissioner of Income Tax Vs Orix Leasing Pakistan Limited, reported in 2007 PTD 1151
- Case of Jamat-I-Islami Pakistan v. Federation of Pakistan PLD 2000 SC 111 referred in 2007 PTD 1151
- Case of Commissioner Inland Revenue Vs. M/s Linde Pak Ltd reported in 2020 SCMR 333

# THE THINGS SHOULD BE DONE AS THEY ARE REQUIRED TO BE DONE OR NOT AT ALL.

- In the case of Muhammad Idrees Vs. Collector of Customs and others reported in PLD 2002 Karachi 60, at page 71 Paragraph 15, the Hon'ble Justice Muhammad Mujeebullah Siddiqui speaking for the court held as under:
- “It is established principle of law that the things should be done as they are required to be done or not at all. Nobody can be allowed to contravene, flout or violate the statutes or the rules framed thereunder in the name of national interest or any other so-called high or sublime idea or ideal. The Rule of law requires that every person in execution of should follow strictly the law as laid down and should not exceed the limit of law for any reasons whatsoever.”

- In the latest judgment by the Hon'ble Supreme Court of Pakistan reported in 2022 SCMR 2080 in the case of Mall Development (Pvt) Ltd vs. Waleed Khanzada and other such dictum has been held as under.
- “It is settled law that, when the law provides a particular manner of doing things, the must be done in that manner or not at all. Anything done to the contrary would be illegal, ex-facie erroneous and unsustainable in law.

# DEEMING PROVISIONS – SCOPE

- While interpreting a deeming provision in a statute, the court is bound to ascertain for what purpose, object, and between what persons the statutory fiction was to be resorted to. It has to be strictly interpreted.
- Please See Begum B.H. Syed v. Mst. Afzal Jehan PLD 1970 SC 29 and Mehreen Zaibun Nisa v. Land Commissioner, Multan and others PLD 1975 SC 397 and PLD 1997 SC 582.

# DEEMING PROVISIONS – SCOPE

- JUDGMENTS TO BE READ.
- PLD 1997 SC 582
- PLD 1988 SC 163
- PLD 1975 SC 397
- 2021 SCMR 116

# MAY AND SHALL

- Words “may” and “ Shall” in legal phraseology are interchangeable, depending on the context in which they were used, and were not to be interpreted with the rigidity which was attributed to them in common parlance. Orient Power Company (Pvt) Ltd VS Sui Northern Gas Pipelines Ltd 2021 SCMR 1728.
- Please See also PLD 1996 SC 182.

# RETROSPECTIVITY VS PROSPECTIVITY

- Firstly, unless the statute expressly provides otherwise, charging provisions are to be applied prospectively.
- Secondly, the assessment and recovery provisions are to be considered retrospectively unless the enactment expressly or impliedly provides otherwise.
- It must be pointed out that if in a case any existing rights are affected or the giving of retroactive operation cause inconvenience or injustice, then the Courts will not even in the case of a procedural statute, favour an interpretation giving retrospective effect to the statute.
- The Courts must lean against giving a statute retrospective operation on the presumption that the Legislature does not intend what is unjust. It is chiefly where the enactment would prejudicially affect vested rights, or the legality of past transactions, or impair existing contracts, that the rule in question prevails .



# RETROSPECTIVITY VS PROSPECTIVITY

- Even if two interpretations are equally possible, the one that saves vested rights would be adopted in the interest of justice, especially when dealing with a taxing statute.
- Statute , Notification, executive and administrative orders operates prospectively unless retrospective operation was expressly provided there in..
- The legislature which is competent to make a law, has full plenary powers within its sphere of operation to legislate retrospectively or retroactively.
- (ii) The vested rights can be taken away by such legislation and it can not be struck down on that ground.
- (iii) A statute cannot be read in such a way as to change accrued rights, the title to which consists in transactions past and closed or any fact or events that have already occurred.

# RETROSPECTIVITY VS PROSPECTIVITY

- M/s Super Engineering and another vs Commissioner Inland Revenue, Karachi, 2019 PTD 1912 SC Ch. Safdar Ali v. Malik Ikram Elahi and another (1969 SCMR 166), Muhammad Abdullah v. Imdad Ali (1972 SCMR 173), Bashir v. Wazir Ali (1987 SCMR 978), Mst. Nighat Yasmin v. National Bank of Pakistan (PLD 1988 SC 391), Yusuf Ali Khan v. Hongkong and Shanghai Banking Corporation, Karachi (1994 SCMR 1007), Malik Gul Hasan & Co. and 5 others v. Allied Bank of Pakistan (1996 SCMR 237) and Commissioner of Income Tax, Peshawar v. Islamic Investment Bank Ltd. (2016 SCMR 816). of Province of East Pakistan v. Sharafatullah PLD 1970 SC 514).Government of Pakistan Vs Muhammad Ismail. 2021 SCMR 1246. See Also PLD 1997 SC 582 Ellahi Cotton Mills Case.

WHAT CANNOT BE DONE DIRECTLY, CANNOT BE DONE INDIRECTLY EITHER.

- Case of M/s Pakistan Tobacco Vs. Federation of Pakistan reported in PTCL 2022 CL 202 (Islamabad High Court)
- Case of Director General Central Directorate of Savings and Others Vs. Abid Hussain and Others reported in 2023 SCMR 2100.

# SUBSTANCE OVER FORM

- In fiscal law, substance of the transaction over the form has to be preferred.
- Case of Habib Insurance Co. Ltd, v. Commissioner of Income Tax Karachi (PLD 1985 SC 109) and Commissioner of Income Tax v. Gammon (Pak) Limited, Karachi [(1966) 14 Tax 304 Karachi and
- Commissioner (legal division) Large Taxpayer Unit, Karachi Vs. M/s Brook Bond Pakistan Limited, Karachi reported in 2022 PTD 467

THANK YOU AND BEST OF LUCK.

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ADVOCATE SUPREME COURT