Tax Credit under Section 168 of the Income Tax Ordinance, 2001 adjustable against Super Tax under Section 4C

Hon'ble Federal Constitutional Court of Pakistan ("FCC") holds that tax credit under Section 168 of the Income Tax Ordinance, 2001 ("ITO") is available for adjustment against Super Tax payable under Section 4C, as Section 4C(3) expressly incorporates all provisions of Chapter X of the ITO, including the statutory regime relating to tax credit and adjustment.

INTRODUCTION

M/s CM Pak Limited ("taxpayer"), a company engaged in the telecommunications sector and part of a Chinese multinational enterprise, was liable to pay Super Tax under Section 4C of the ITO for Tax Year 2022. Following the order of the Hon'ble FCC in M/s DG Khan Cement Company Limited v. Federation of Pakistan ("DG Khan Cement case"), wherein of the constitutional validity of Section 4C was upheld by the Hon'ble FCC, the Federal Board of Revenue ("FBR") issued a notice requiring the taxpayer to discharge its Super Tax liability. The taxpayer contended that it had excess taxes deducted at source for Tax Year 2022, which were adjustable against the Super Tax liability. The FBR declined to allow such adjustment.

Before the Hon'ble IHC, the principal question was whether the levy of Super Tax under Section 4C of the ITO constitutes a distinct and independent charge on income, separate from the tax imposed under Section 4 thereof, and whether income tax, including taxes collected or deducted at source, can be adjusted against the liability arising under Section 4C.

The Hon'ble IHC held that Section 4C constitutes a distinct and independent charge on income, separate from Section 4, and operates on a specially constructed income base. It further held that Section 4C(3) incorporates Chapter X only for procedural and machinery purposes relating to payment, collection, recovery and enforcement. The Hon'ble IHC distinguished procedural provisions from substantive rights and held that adjustment of withholding tax is a substantive right which cannot be inferred from general words of incorporation. It was further held that in the absence of an express provision, no adjustment of withholding tax against Super Tax could be allowed. The taxpayer thereafter preferred an appeal before the Hon'ble FCC.

FINDINGS OF THE HON'BLE FCC

The Hon'ble FCC observed that the question for determination was whether income tax in general and Super Tax in particular paid pursuant to Section 4C of the ITO is adjustable where there is tax credit within the meaning of Section 168 of the ITO.

The Hon'ble FCC examined Section 4C(3) of the ITO, which provides that the Super Tax shall be paid, collected and deposited on the date and in the manner specified in Section 137(1), and that all provisions of Chapter X of the ITO shall apply.

The Hon'ble FCC observed that Section 4C(3) first provides that Super 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." Since Section 137(1) already governs the date and manner of payment, the subsequent incorporation of "all provisions of Chapter X" cannot be reduced to be procedural, as doing so would render the latter redundant.

The Hon'ble FCC further observed that the expression "paid, collected and deposited" encompasses the statutory mechanism governing discharge of tax liability, including payment, collection, adjustment, credit and deposit. The Legislature, by using the expansive phrase "all provisions of Chapter X", intended to incorporate the complete statutory regime under Chapter X, including Section 168 and its tax credit provisions.

The Hon'ble FCC held that, had Parliament intended to limit the incorporation of Chapter X to procedural provisions, it could have expressly provided so. The Court cannot read such a limitation into the statute where none exists.

The Hon'ble FCC further observed that tax credit under Section 168 is conceptually and statutorily distinct from a refund under Section 170, which provides a separate statutory mechanism requiring an application before the Commissioner under Section 170(1).

The Hon'ble FCC observed that fiscal statutes ought to be construed in favour of the taxpayer and found no justification for holding that Super Tax under Section 4C cannot be adjusted against tax credit available under Section 168, thereby requiring the taxpayer to pursue only the refund mechanism under Section 170.

The Hon'ble FCC held that such interpretation finds no support in the statutory scheme. It further observed that a restrictive interpretation of the application of Chapter X to Section 4C is unwarranted, as no principled basis exists for selectively incorporating and restricting its provisions.

The Hon'ble FCC held that where Chapter X is applicable, its provisions must be given effect in accordance with their terms, including Section 168 where applicable. Any other interpretation would amount to reading a limitation into the statute which the Legislature has not imposed.

The Hon'ble FCC, however, clarified that it was not determining whether the tax was actually adjustable in the circumstances of the case or the extent of such adjustment, as the matter falls within the jurisdiction of the competent tax authority.

Therefore, the Hon'ble FCC converted the petitions into appeals and allowed them, setting aside the IHC judgement dated 25.03.2026. The taxpayer was held at liberty to seek adjustment before the competent taxing authority, which was directed to determine the claim in accordance with the ITO and the observations of the Hon'ble FCC. As such, all pending applications were accordingly disposed of.

SECTION 168 – CREDIT FOR TAX COLLECTED OR DEDUCTED

Section 168 of the ITO provides the mechanism for availing tax credit with respect to tax collected or deducted. Under Section 168(2), a tax credit is allowed against the tax due on the person's taxable income for the relevant tax year. Section 168 subsections (1) and (2) are reproduced hereunder:

Quote

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 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.

Unquote

The applicability of this tax credit mechanism to Super Tax under Section 4C was the main issue before the Hon'ble FCC.

COMMENTS

The judgement of the Hon'ble FCC clarifies that the tax credit available under Section 168 of the ITO is not excluded from the operation of Section 4C merely because Super Tax constitutes a separate and independent charge. Since Section 4C(3) expressly provides that all provisions of Chapter X shall apply, the mechanism of adjustment tax credit under Section 168 is available with respect to Super Tax.

The judgement therefore provides an important clarification for taxpayers having taxes deducted or collected at source.

The judgement also makes clear that the incorporation of Chapter X through Section 4C(3) cannot be selectively restricted to procedural provisions. Where Chapter X applies, its provisions, including Section 168, are to be given effect according to their terms. This prevents the Department from denying adjustment of tax credit against super tax liability.

This judgement provides relief to the taxpayer who can now avail adjustment of tax credit against its Super Tax liability, instead of only adjustment of determined refunds against super tax.