IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:
MR. JUSTICE MUHAMMAD ALI MAZHAR
MR. JUSTICE SYED HASAN AZHAR RIZVI

CIVIL REVIEW PETITIONS NO.432-K TO 459-K OF 2022 IN CIVIL PETITIONS NO.672-K TO 692-K OF 2021 & 694-K, 724-K TO 729-K OF 2021.
(Review against the order of this Court dated 23.05.2022)

Commissioner Inland Revenue Z-III, Corporate Regional Tax Office, Tax House, Karachi	(In C.R.P. 432-K to 437-K, 439-K, 441-K to 443-K, 445-K, 446-K, 448-K to 451-K & 453-K to 459-K/2022)
Commissioner Inland Revenue (Legal), Medium Taxpayers Office, Income Tax Building, Karachi	(In C.R.P. 438-K, 440-K, 444-K, 447-K & 452-K/2022)

... Petitioners

VERSUS

M/s MSC Switzerland Geneva & others	(In C.R.P. 432-K/2022)
M/s APL Co Pvt. Ltd. & others	(In C.R.P. 433-K, 441-K & 450-K/2022)
M/s Unilever PLC, UK & other	(In C.R.P. 434-K & 435-K/2022)
Proctor & Gamble Co. etc. & others	(In C.R.P. 436-K & 443-K/2022)
M/s Hino Motors Ltd. (Japan) & others	(In C.R.P. 437-K, 445-K, 446-K & 449-K/2022)
Freeport Shipping (LLC) & others	(In C.R.P. 438-K, 440-K, 444-K 447-K & 452-K/2022)
M/s. Gold Trade International Ltd. & others	(In C.R.P. 439-K/2022)
M/s. Detergent Products & others	(In C.R.P. 442-K/2022)
Standard Chartered Bank & others	(In C.R.P. 448-K & 453-K/2022)
Continental Global Holdings Netherland B.V & others	(In C.R.P. 451-K/2022)
Agha Khan Fund for Development & others	(In C.R.P. 454-K, 455-K, 456-K & 457-K/2022)
M/s Bashir Dawood & others	(In C.R.P.458-K & 459-K/2022)

...Respondents

For the Petitioners:	Dr. Shah Nawaz, ASC Mr. Irfan Mir Halepota, ASC
For the Respondent No.1:	Syed Mehmood Abbas, AOR (In CRP No.432-K,434-K,435-K,438-K,440-K,444-K,447-K,448-K,452-K & 453-K)
Date of Hearing:	09.02.2023

JUDGMENT

MUHAMMAD ALI MAZHAR, J. These Review Petitions have been brought to implore the review of the order dated 23.05.2022 passed by this Court whereby the Civil Petitions No. 672-K to 694-K and 724-K to 729-K filed by the petitioner were dismissed and leave was refused.

2. The transient facts of the case are that the tax returns filed by the taxpayers/respondents were considered erroneous and prejudicial to the interests of the Revenue, therefore proceedings were initiated under Section 4B of the Income Tax Ordinance, 2001 ("**2001 Ordinance**") and assessments were amended by the Deputy Commissioner, Inland Revenue ("**DC-IR**") under Section 4B (4) of the 2001 Ordinance. The tax payers filed appeals against the said orders but the Commissioner Inland Revenue (Appeals-III) ("**CIR (A)**") upheld the orders of the DC-IR. Being aggrieved, the appellate orders were assailed by the taxpayers/respondents before the Appellate Tribunal Inland Revenue, Karachi ("**Appellate Tribunal**") and, as a consequence thereof, the Appellate Tribunal directed the DC-IR to reduce the imposition of super tax which was inserted as Section 4B through the Finance Act, 2015 ("**Super Tax**"), by 50% in accordance with the provisions contained in the relevant Double Taxation Treaties ("**DTT(s)**") and also annulled the order of the CIR (A). The petitioners filed reference applications against the order of the Appellate Tribunal and raised certain questions of law, *inter alia*, that the objective of the extraordinary contribution of Super Tax imposed under Section 4B of the 2001 Ordinance is for the rehabilitation of temporarily displaced persons, the levy of which is a separate feature, and no exception is available to non-resident companies; the DTTs also mention Super Tax separately and independently from Income Tax, and this Super Tax is payable in addition to income tax as per the provided threshold of net profit/income at Rs.500 Million. After hearing the parties, the learned bench of High Court of Sindh dismissed the Income Tax Reference Applications and allowed the connected Constitution Petitions filed by tax payers vide consolidated judgment dated 31.03.2021 which was challenged in this Court, but the Civil Petitions for leave to appeal were also dismissed.

3. While arguing the Review Petitions, the learned counsel for the petitioners advocated that Article 2 of the DTTs between Pakistan and other countries mention the taxes payable in Pakistan as (i) income tax

(ii) super tax, and (iii) surcharge, but the levy of Super Tax under Section 4B of the 2001 Ordinance is separate and to be paid by all companies having a net profit of Rs.500 Million and above, and the DTTs mention Super Tax as separate from Income Tax. It was further articulated that the Super Tax was levied by the Parliament through proper legal procedure and that the Parliament has the authority under the Constitution of the Islamic Republic of Pakistan, 1973 ("**Constitution**") to levy Income Tax or Super Tax in special circumstances for the generation of extra funds, which in this case is for the rehabilitation of temporarily displaced persons. It was further averred that the Super Tax levied under Section 4B in 2015 is different from the kind contemplated in the DTTs, and the legislature is competent to levy multiple taxes on income under Entry No.47 of the Fourth Schedule to the Constitution. He further avowed that all such crucial aspects were ignored by the High Court and this Court too did not appreciate the question of law raised, hence the petitioners have preferred these review petitions.

4. Heard the arguments. Pursuant to the powers conferred under Section 107 of the 2001 Ordinance, the Federal Government may enter into a tax treaty, including tax information exchange agreement, multilateral convention, inter-governmental agreement or a similar agreement with a mechanism and ways and means for the avoidance of double taxation or the exchange of information for the prevention of fiscal evasion or avoidance of taxes including automatic and spontaneous exchange of information with respect to taxes on income imposed under the 2001 Ordinance, or any other law for the time being in force and, subject to Section 109, where any agreement is made in accordance with sub-section (1), the agreement shall have effect in so far as it provides the purposes for at least one of the following: (a) relief from the tax payable under the 2001 Ordinance; (b) the determination of the Pakistan-source income of non-resident persons; (c) where all the operations of a business are not carried on within Pakistan, the determination of the income attributable to operations carried on within and outside Pakistan, or the income chargeable to tax in Pakistan in the hands of non-resident persons, including their agents, branches, and permanent establishments in Pakistan; (d) the determination of the income to be attributed to any resident person having a special relationship with a non-resident person; and (e) the exchange of

information for the prevention of fiscal evasion or avoidance of taxes on income chargeable under the 2001 Ordinance and under the corresponding laws in force in that other country. Whereas the exactitudes of sub-Section (1) of Section 44 of the 2001 Ordinance, *inter alia*, accentuates that any Pakistan-source income which Pakistan is not permitted to tax under a tax treaty shall be exempt from tax under this Ordinance. At this juncture, it would be somewhat germane to allude to the case of Commissioner Inland Revenue (Legal Division), LTU, Islamabad v. M/s Geofizyka Krakow Pakistan Ltd. (**2017 SCMR 140**), wherein this Court, while examining the *raison d'etre* and philosophy of treaties for the avoidance of double taxation, held that such treaties have to be given preference and would prevail over the provisions of income tax law.

5. The dissonance involves different respondents who bank on different treaties applicable to them for the avoidance of double taxation and prevention of fiscal evasion between Pakistan and various contracting States. The learned High Court, while deciding the matter, primarily relied on the *Convention between the Islamic Republic of Pakistan and the Swiss Confederation for the Avoidance of Double Taxation with respect to Taxes on Income* ("**Swiss DTT**"). Upon a careful perusal of the relevant treaties, we too have come to the well-founded conclusion that Article 2 of the Swiss DTT, which enumerates the "Taxes Covered", is fundamentally analogous to the correlating provisions in the other relevant treaties which was taken by the High Court as a benchmark. The Notification for the Swiss DTT articulates that the Islamic Republic of Pakistan signed the Convention for the avoidance of double taxation with respect to taxes on income, which was made pursuant to the powers conferred by sub-section (1) of Section 107 of the 2001 Ordinance, and the same was to come into force and have effect from 29.11.2018, whereas Section 4B of the 2001 Ordinance was inserted vide the Finance Act, 2015. The learned High Court in the impugned judgment reproduced and discussed Article 2 of the Swiss DTT which defines the species and nature of taxes covered under the treaty and the taxes imposed on behalf of a contracting State. The aforesaid Article spotlights the existing taxes covered under the Convention i.e. a) in Pakistan: the income tax; the super tax and the surcharge *(hereinafter referred to as "Pakistan tax")* and b) in Switzerland: the federal, cantonal and communal taxes on income (total income, earned income, income

from capital, industrial and commercial profits, capital gains, and other items of income) *(hereinafter referred to as "Swiss tax").* The Convention is also made applicable to any identical or substantially similar taxes which are imposed after the date of signature of the Convention in addition to, or in place of, the existing taxes by either Contracting State with the rider that the competent authorities of the Contracting States shall notify each other of any substantial changes which have been made in their respective taxation laws.

6. While interpreting the provisions of the treaties, an imperative precept cannot be lost sight of i.e. that the treaties are parleyed, executed and implemented at a government level including DTTs with different countries for the avoidance of double taxation and prevention of fiscal evasion after several considerations and underlying principles. The provisions in the treaties comprehend and exemplify that the laws of two contracting States will govern the taxation of income in the respective territories except where a contrary provision is incorporated in the treaty. When any definite and unambiguous stipulation is assimilated in the Double Taxation Avoidance treaty or Agreement, said provision will obviously supplant and supersede the general provisions encompassed under Tax Laws. However, the fact remains that the foremost purposefulness of a DTT is required to be explored in the background of ministering commercial relations between treaty partners and as being essentially a bargain between the two signatories thereof as to the division of tax revenues between them in respect of income falling to be taxed in both jurisdictions. The interpretation of treaties as envisaged under Article 31 of the Vienna Convention on the Law of Treaties, 1969 is a process of progressive encirclement where the interpreter starts under the general rules whereunder (1) A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose; (2) The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes: (a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty; (b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty. [Ref: https://www.icc-cpi.int/sites/default/files/RelatedRecords/CR2018_04585.PDF].

American Jurisprudence (Second Edition), Volume 68, Taxes, at page 51, delineates the concept and acumen of "Double taxation" as under:-

> "The subject of double taxation has many ramifications, including the determination of what constitutes any double taxation which might be prohibited, the question of whether any double taxation is or is not prohibited by the constitution in the absence of a specific provision to that effect, and the question of whether any prohibition of double taxation applies to excise taxes.
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> While double taxation is not to be favored, and a statute is to be construed, if possible, to avoid such a result, the claim, frequently made, that a particular sales tax is invalid because it results in double or duplicate taxation, has not met with favor in the courts, which have held either that no double taxation resulted, or that the claimed double taxation was not precluded by the constitution.
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> Double taxation in the prohibited sense can exist only if the subject of both taxes is the same; if both taxes are imposed upon the same property, for the same purpose, by the same state or government, during the same tax period.
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> Sales taxes levied by distinct sovereignties, each for its own governmental purposes, against the same persons and on the same tax basis, are lawful; and the same appears to be true of sales taxes levied both by a state and its political subdivision.
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> There is no double taxation when two separate and distinct privileges are being taxed even though the subject matter to which each separate transaction pertains may be identical; and two separate and distinct levies under the same act on two separate and distinct entities do not constitute double taxation.
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> Although double taxation is never presumed, such a tax may be levied unless there is some constitutional inhibition against it; and in some jurisdictions the courts have declared that they found nothing in the constitution that limits the number of taxes that the legislature in its judgment may see fit to enact".

7. It also cogently manifests from the document of the treaty that the Convention has been made applicable to any identical or substantially similar taxes which are imposed after the date of signing of the Convention. The High Court in the impugned judgment considered the pros and cons of the entire controversy and the questions of law raised and thereafter reached to the analytical conclusion that the levy of Super Tax is identical to the levies that existed at the time the treaties came into force, hence the tax-payers within the realm of double taxation treaties are either exempt or, wherever applicable, liable to pay the Super Tax at reduced rates in terms of their respective treaties. The relevant paragraphs of the High Court judgment are reproduced for the ease of convenience as under:-

> "11. We find ourselves unable to sustain the respondents' argument that super tax, as denoted in the Treaty, cannot be equated with *super tax*, as presently in force, as the present tax was not levied when the Treaty was executed, for two reasons. Firstly, since exceptional treatment is required to be accorded to taxes on income, per the Treaty, and the present super tax has already been determined to be a specie thereof. And secondly, upon reliance on Article 2(3) of the Treaty which states that the benefit of

> the Treaty shall also extend to any identical or substantially similar taxes which are imposed in the future.
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> 12. Klaus Vogel on Double Taxation Conventions explicates, with respect to Article 2, that the ambit of the said provision extends to existing taxes and subsequent taxes, that are identical or substantially similar to existing taxes. A similar view is expounded in the commentary by the Organization for Economic Cooperation and Development ("OECD") as contained in OECD's Model Tax Convention 2010. *Carlo Garbino* in *Judicial Interpretation of Tax Treaties* specifies that *new taxes*, in the nature enumerated supra, fall squarely within the ambit of the relevant double taxation treaty. It is considered significant to mention that OECD guidelines, including the commentary thereon, have been judicially accepted, inter alia by earlier division benches of this Court, as instruments of reference while interpreting double taxation treaties.
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> 13. It is imperative to denote that we have been assisted with no cogent rationale to consider super tax, under consideration herein, being at any variance to the nature of existing taxes mentioned in the Treaty. Even upon independent assessment of the character of super tax, as levied presently. we find it to be prima facie identical / substantially similar to the existing levies expounded in the Treaty. Therefore, the case of present tax payers is clearly clinched per Article 2(3) of the Treaty.
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> 14. In view of the binding pronouncements holding super tax to be a tax on income coupled with our finding that the present levy is identical/substantially similar to the levies existing at the time that the Treaty was entered into, we are of the considered view that tax-payers, who are otherwise qualified and fall within double taxation treaties between Pakistan and respective foreign countries are either exempt or, wherever applicable, liable to pay super tax at reduced rate(s) in terms of their respective treaties; hence, we had determined these references and petitions vide our short order dated 31.03.2021. These are the reasons for our aforementioned short order".

8. There is no hard and fast rule that in all circumstances this Court is obligated to pass a detailed leave refusing order. As a matter of fact, the *lis* reached this Court after sifting and straining the bone of contention between the parties through the judicial hierarchy, including the original and appellate orders/judgments of the Courts below. In this case too, the judgment of the Appellate Tribunal was challenged in the High Court through Reference Applications including some direct writ petitions for enforcement of provisions contained in the treaties and the High Court not only examined the soundness and propriety of the judgment of Appellate Tribunal but also considered the question of law raised through Reference Applications *vis-à-vis* the grounds raised in the connected writ petitions and as an aftermath, concurred with the judgment of the Appellate Tribunal and dismissed the Reference Applications and allowed the connected petitions. At the leave granting stage, the paramount factor is only to consider the soundness and aptness of the impugned judgment/order to ascertain whether a case for leave to appeal is made out or not for further proceedings in the matter. The judgment of the Appellate Tribunal was merged in the High Court judgment and against such concurrent findings there was no

rationality or sagacity to start from scratch or to begin at the beginning or make a fresh start. The doctrine of merger presupposes the existence of two independent things, the greater of which would swallow up or may extinct the lesser one by the process of absorption. It is defined generally as the absorption of a thing of lesser importance by a greater, whereby the lesser ceases to exist, but the greater is not increased, an absorption or swallowing up so as to involve a loss of identity and individuality. [Ref: Bashir Ahmed Badini D&SJ & others versus Honorable Chairman & Member of Administration Committee, High Court of Balochistan & others (**2022 SCMR 448**).

9. Now we embark to mull over the review jurisdiction. Indeed, this Court has the power to review its judgment under Article 188 of the Constitution, subject to the provisions of any Act of Parliament and of any rules made by this Court. In the same parlance, Order XXVI of the Supreme Court Rules, 1980 is germane to the "Review Jurisdiction" wherein, subject to the law and the practice of the Court, this Court may review its judgment or order on grounds similar to those mentioned in Order XLVII, Rule 1, CPC and in a criminal proceeding, on the ground of an error apparent on the face of the record. The prerequisite of filing a review application is that the Advocate signing the application shall specify, in brief, the points upon which the prayer for review is based and shall add a certificate in the form of a reasoned opinion that review would be justifiable in that particular case. It is clearly provided in the aforesaid Rule that, in case the Court comes to the conclusion that the Review Application was vexatious or frivolous, the Advocate or the Advocate-On-Record drawing the application shall render himself liable to disciplinary action. Whereas under Order XLVII, Rule 1, CPC, an aggrieved person may file an application for review of the judgment and order on the ground of discovery of new and important information or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason.

10. We have considered the leave refusing order in the aforesaid Civil Petitions passed by this Court, as well as the judgment of the learned High Court in unison but we do not find any justification or rationale to entertain and consider the review petitions when the High Court

has extensively considered all the questions raised before it and comprehensibly discussed the pros and cons and passed a reasonable consolidated judgment which did not warrant any interference and was therefore affirmed by this Court. It is a well settled exposition of law that review may be entreated only in instances or occurrences of errors in the judgment or order, floating on the surface of record with a substantial impact on the final outcome of the *lis*, but it does not connote and entail a right of rehearing of the decided case despite there being a mindful and thoughtful decision on the point of law as well as of fact. Every judgment articulated by the Courts of law is presumed to be a solemn and conclusive determination on all points arising out of the *lis*. Mere irregularities having no significant effect or impact on the outcome would not be sufficient to warrant the review of a judgment or order, however, if the anomaly or ambiguity is of such a nature so as to transform the course of action from being one in the aid of justice to a process of injustice, then obviously a review petition may be instituted for redressal to demonstrate the error, if found floating conspicuously on the surface of the record, but a desire of re-hearing of the matter cannot constitute a sufficient ground for the grant of review which, by its very nature, cannot be equated with the right or remedy of appeal. The clemency by dint of review is accorded to nip in the bud an irreversible injustice, if any, done by a Court such as misconstruction of law, misreading of the evidence and non-consideration of pleas raised before a Court that would amount to an error floating on the surface of the record, but where the Court has taken a conscious and deliberate decision on a point of fact or law, a review petition will not be competent. Review by its nature is neither commensurate to a right of appeal or opportunity of rehearing merely on the ground that one party or the other conceived himself to be dissatisfied with the decision of the court, nor can a judgment or order be reviewed merely because a different view could have been taken.

11. Nowadays, it has become almost a fashion and/or custom to file review applications fleetingly and unthinkingly in routine on the basis of certificates issued by the advocates with a plain replica of the grounds urged in the main petition or appeal without any accurate allusion to any error in the judgment or order which warrants or merits reversal. We, in all fairness, denounce this fashion or practice which wastes the precious time of the Court with the exception in the clearest

form, that while adverting to a provision or construction of any law and/or Constitution, some errors are apparent on the face of the record which caused substantial injury which requires some remedial measures to advance the cause of justice for which not only the specific ground(s) should be mentioned in the certificate of the advocate, but it should be pinpointed also in the review petition rather than mentioning sweeping and stereotypical grounds having no significance or nexus with the case. While issuing the certificate and drawing the review application, the advocates should be mindful and conscious that they are not issuing certificate for advocating vexatious or pointless review application. In order to avoid wasting the precious time of the Court, especially keeping in mind the huge backlog of dockets waiting in the queue for disposal, the advocate should, before issuing the certificates, sincerely consider whether a fit case of review is made out or not. The following case study brings to light the plethora of local and foreign dictums rendered time and again *vis-à-vis* the powers of review of a judgment or order. The *rationes decidendi* deducible therefrom are reproduced as under: -

> 1. The grounds available for seeking review under Order XXVI of the Supreme Court Rules, 1980 are, *inter alia*, mistakes or errors which are self-evident and found floating on the face of the record, or the production of new and important evidence which was not in the knowledge of the applicant after the exercise of due diligence and which could not be produced at the time the order under review was made, which, if noticed earlier, would have material bearing on the final result of the case and, if not corrected, may perpetuate illegality and injustice [Ref: M/s Habib and Company and others v. Muslim Commercial Bank and others (**PLD 2020 SC 227**); Engineers Study Forum (Regd.) and another v. Federation of Pakistan and others (**2016 SCMR 1961**); Government of Punjab and others v. Aamir Zahoor-ul-Haq and others (**PLD 2016 SC 421**); Haji Muhammad Boota and others v. Member (Revenue) BOR and others (**2010 SCMR 1049**); Sh. Mehdi Hassan v. Province of Punjab thr. Member, BOR and others (**2007 SCMR 755**)];
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> 2. Orders based on an erroneous assumption of material facts, or without adverting to a provision of law, or a departure from undisputed construction of law and Constitution may amount to an error apparent on the face of the record. However, where there is a material irregularity but there is no substantial injury consequent thereon, the exercise of power to review to alter the judgment would not necessarily be required as the irregularity must be of such a nature as to convert the process from being one in the aid of justice to a process of gross injustice [Ref: Haji Muhammad Boota and others v. Member (Revenue) BOR and others (**2010 SCMR 1049**); Abdul Rauf and others v. Qutab Khan and others (**2006 SCMR 1574**); Lt-Col. Nawabzada Muhammad Amir Khan v. The Controller of Estate Duty, Government of Pakistan (**PLD 1962 SC 335**)];
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> 3. Misconstruction of law, misreading of the evidence on record and non-consideration of pleas raised before a Court would amount to an error floating on the surface of record. [Ref: Land Acquisition Officer and Assistant Commissioner, Hyderabad v. Gul Muhammad thr. legal heirs (**PLD 2005 SC 311**)];

4. It is incorrect to say that when two views on a question of law are possible and the Court has taken one view, the fact that the other view is a more acceptable view would render the first view an error apparent on the face of the record. Thus, where the Court has taken a conscious and deliberate decision on a point of fact or law, a review petition will not be competent [Ref: Board of Intermediate and Secondary Education, Lahore through Chairman v. Bashir Ahmad Khan (**PLD 1997 SC 280**); Major (Retd.) Barkat Ali and others v. Qaim Din and others (**2006 SCMR 562**)];

5. Where two conclusions drawn simultaneously appear to be the outcome of banking upon a hyper technicality, with the consequence that both the views became destructive of each other, this by itself is a sufficient ground for review of the judgment [Ref: Abdul Hakeem and others v. Khalid Wazir (**2004 SCMR 1770**)];

6. Where the judgment under review is found to have directed the doing of something which is in conflict with the Constitution or law, then it will be the duty of the Court to amend such error. However, it was observed on the scope of review that the incorrectness of a conclusion can never be a ground for review as it would amount to granting the Court a jurisdiction to hear appeals against its own judgments which is not permissible [Ref: Suba thr. legal heirs v. Fatima Bibi thr. legal heirs and others (**1996 SCMR 158**); Lt-Col. Nawabzada Muhammad Amir Khan v. The Controller of Estate Duty, Government of Pakistan (**PLD 1962 SC 335**)];

7. The fact that the conclusion drawn in a judgment is wrong would not warrant the review of the same, but if the conclusion is wrong because something manifest has been ignored by the Court or the Court has not considered an important aspect of the matter, a review petition would lie [Ref: Major (Retd.) Barkat Ali and others v. Qaim Din and others (**2006 SCMR 562**)];

8. A judgment cannot be reviewed merely because a different view could have been taken, rather a review petition would lie only when there is an alleged error in the judgment which is evident and can be established without elaborate arguments [Ref: S. Sharif Ahmad Hashmi v. Chairman, Screening Committee, Lahore and another (**1978 SCMR 367**); M/s Sajjad Nabi Dar & Co. v. The Commissioner of Income-Tax, Rawalpindi Zone, Rawalpindi (**PLD 1977 SC 437**)];

9. The review petition would also be competent if some relevant evidence or question of fact or law has been overlooked which, had it been considered by the Court, might materially have affected the judgment of the Court. [Ref: Suba thr. legal heirs v. Fatima Bibi thr. legal heirs and others (**1996 SCMR 158**); M/s M. Y. Malik & Co. and 2 others v. M/s Spendlours International (**1995 SCMR 922**); M. Moosa v. Muhammad and others (**1975 SCMR 115**)];

10. Review jurisdiction does not allow the re-hearing of a decided case, more so when the Court has given a conscious and deliberate decision on the point of law as well as of fact while disposing of the constitution petition before it. Moreover, the grounds not urged or raised at the time or hearing the constitution petition cannot be allowed to be raised in the review proceedings [Ref: Engineers Study Forum (Regd.) and another v. Federation of Pakistan and others (**2016 SCMR 1961**); Mirza Bashir Ahmad v. Abdul Karim (**1976 SCMR 417**)];

11. Review cannot be granted on the ground that certain facts require re-appraisement by the Court [Ref: Basharat Khan v. The State (**1984 SCMR 1033(1)**); Muhammad Nazir v. The State (**1979 SCMR 89**); Kala Khan and others v. Misri Khan and others (**1979 SCMR 347**); Syed Saghir Ali v. Mehar Din and others (**1968 SCMR 729**); Lt-Col. Nawabzada Muhammad Amir Khan v. The Controller of Estate Duty, Government of Pakistan (**PLD 1962 SC 335**)];

12. Factual controversy cannot be a ground to invoke review jurisdiction of this Court especially when it appears to have been abandoned and not pressed during the hearing of the earlier appeals [Ref: Wahajuddin and another v. Razia Begum etc. (**1979 SCMR 241**)];

13. If the Court has taken a conscious and deliberate decision on a point of fact or law, a review petition will not be competent. The circumstance that the view canvassed in the review petition is more reasonable than the view already accepted by the Court in the impugned order, of which review is sought, would not be sufficient to maintain a review petition. [Ref: Major (Retd.) Barkat Ali and others v. Qaim Din and others (**2006 SCMR 562**)].

14. In the case of Abdul Ghaffar-Abdul Rehman and others v. Asghar Ali and others (**PLD 1998 SC 363**), following principles of law are deducible:

(i) That every judgment pronounced by the Supreme Court is presumed to be a considered, solemn and final decision on all points arising out of the case;

(ii) that if the Court has taken a conscious and deliberate decision on a point of fact or law, a review petition will not lie;

(iii) that the fact the view canvassed in the review petition is more reasonable than the view found favour with the Court in the judgment/order of which review is sought, is not sufficient to sustain a review petition;

(iv) that simpliciter the factum that a material irregularity was committed would not be sufficient to review a judgment/order but if the material irregularity was of such a nature, as to convert the process from being one in aid of justice to a process of injustice, a review petition would lie;

(v) that simpliciter the fact that the conclusion recorded in a judgment/order is wrong does not warrant review of the same but if the conclusion is wrong because something obvious has been overlooked by the Court or it has failed to consider some important aspect of the matter, a review petition would lie;

(vi) that if the error in the judgment/order is so manifest and is floating on the surface, which is so material that had the same been noticed prior to the rendering of the judgment the conclusion would have been different, in such a case a review petition would lie;

(vii) that the power of review cannot be invoked as a routine matter to rehear a case which has already been decided nor change of a counsel would warrant sustaining of a review petition, but the same can be pressed into service where a glaring omission or patent mistake has crept in earlier by judicial fallibility;

(viii) that the Constitution does not place any restriction on the power of the Supreme Court to review its earlier decisions or even to depart from them nor the doctrine stare decisis will come in its way so long as review is warranted in view of the significant impact on the fundamental rights of citizens or in the interest of public good;-

(ix) that the Court is competent to review its judgment/order suo motu without any formal application;

(x) that under the Supreme Court Rules, it sits in divisions and not as a whole. Each Bench whether small or large exercises the same power vested in the Supreme Court and decisions rendered by the Benches irrespective of their size are decisions of the Court having the same binding nature."

15. In the case of Irshad Masih and others v. Emmanuel Masih and others (**2014 SCMR 1481**) it was held that there is no cavil to the proposition that reversal of conclusion earlier reached by this Court, after full consideration of the question is not possible in the exercise of review jurisdiction as a review cannot be granted for merely re-examination of the same arguments. It is to be noted that re-arguing a case on merits as well as additional grounds is beyond the scope of review petition. Besides that a mere desire of re-hearing of the matter cannot constitute sufficient ground for the grant of review. It is well settled by now that "where petitioner took up all material grounds

taken by him during the course of hearing of appeal and dealt with and decided in judgment under review and thus sought rehearing of arguments addressed by him at time of hearing and disposal of appeal and wished a different decision from one already given without satisfying jurisdictional requirement necessary for maintaining review petition. The petition was dismissed" (Akbar Ali Bukhari v. State Bank of Pakistan (**1981 SCMR 518**)). The re-hearing of the case in garb of review petition cannot be allowed as held in case titled Zulfiqar Ali Bhutto v. The State (**PLD 1979 SC 941**) and more so review cannot be granted on the ground that certain facts require re-appraisement by Supreme Court, (Basharat Khan v. The State (**1984 SCMR 1033 (1)**), Muhammad Nazir v. State (**1979 SCMR 89**), Kalal Khan v. Misri Khan, (**1979 SCMR 347**) and Saghir Ali v. Mehar Din (**1968 SCMR 729**))."

16. Justice Qazi Faez Isa and others Vs President of Pakistan and others **(PLD 2022 SC 119).** The gist of this judgment is that under Order XLVII of the Code of Civil Procedure, 1908 three grounds for review are provided: (1) discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of, or could not be produced by, the party seeking review at the time when the decree was passed or order made; (2) some mistake or error apparent on the face of the record; (3) or any other sufficient reason. The third ground has been interpreted by the courts to be read ejusdem generis in the context of two preceding grounds. It is notable that the ground, "error apparent on the face of the record", is common for review in both civil and criminal proceedings. The expression, "error apparent on the face of the record", as observed by Hamoodur Rehman, J. in Anwar Husain v. Province of East Pakistan, cannot be defined with precision or exhaustiveness, and there would always remain an element of indefiniteness inherent in its very nature. It is to be determined in each case on the basis of its own peculiar facts. whenever Judges of these courts are pointed out, in review jurisdiction conferred by the Constitution or law, something in their judgment or order to be in conflict with the Constitution or any law of the land, it becomes their duty to unhesitatingly correct that error. Duty of the Judges of the apex Court of the country is more thoughtful and profound in this regard, as there is no other court which can correct their error, and the principles of law enunciated in their judgments are, under Article 189 of the Constitution, binding on all other courts in the country.

17. Mukesh v. State (NCT of Delhi) **(2018) 8 SCC 149**. The power of review of the Supreme Court as envisaged under Article 137 of the Constitution is no doubt wider than review jurisdiction conferred by other statutes on the Court. Article 137 empowers the Supreme Court to review any judgment pronounced or made, subject, of course, to the provisions of any law made by Parliament or any rule made under Article 145 of the Constitution. An application to review a judgment is not to be lightly entertained and this Court could exercise its review jurisdiction only when grounds are made out as provided in Order XLVII Rule 1 of the Supreme Court Rules, 2013 framed under Article 145 of the Constitution of India. This Court in Sow Chandra Kante and another v. Sheikh Habib, **(1975) 1 SCC 674** speaking through Justice V.R. Krishna Iyer on review has stated the following in para 10: "A review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. A mere repetition, through different counsel, of old and overruled arguments, a second trip over ineffectually covered ground or minor mistakes of inconsequential import are obviously insufficient." It is sufficient to refer to judgment of this Court in Kamlesh Verma vs. Mayawati and others **(2013) 8 SCC 320**, where this Court has elaborately considered the scope of review. In paras 17 & 18, following has been laid down: "17. In a review petition, it is not open to the Court to reappreciate the evidence and reach a different conclusion, even if that is possible. Conclusion arrived at on appreciation of evidence cannot be assailed in a review petition unless it is shown that there is an error apparent on the face of the record or for some reason akin thereto. This Court in Kerala SEB v. Hitech Electrothermics & Hydropower Ltd. held as under: (SCC p. 656, para 10) 18. Review is not rehearing of an original matter. The power of review cannot be confused with appellate power which enables a superior court to correct all errors committed by a

subordinate court. A repetition of old and overruled argument is not enough to reopen concluded adjudications."

18. M/s Thungabhadra Industries Ltd. v. Government of Andhra Pradesh thr. Deputy Commissioner, Commercial Taxes, Anantapur **(AIR 1964 SC 1372)**. The fact that on the earlier occasion the court held on an 'identical state of facts that a substantial question of law arose would not per se be conclusive, for the earlier order itself might be erroneous. Similarly, even if the statement was wrong, it would not follow that it was an "error apparent on the face of the record", for there is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterized as vitiated by "error apparent". A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected. but lies only for patent error. We do not consider that this furnishes a suitable occasion for dealing with this difference exhaustively or in any great detail, but it would suffice for us to say that where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it, a clear case of error apparent on the face of the record would be made out. No questions of fact were involved in the decision of the High Court in T.R.Cs. 75 to 77 of 1956. The entire controversy turned on the proper interpretation of r. 18(1) of the turnover & Assessment Rules and the other pieces of legislation which are referred to by the High Court in its order of February 1956 nor could it be doubted or disputed that these were substantial questions of law. In the circumstances therefore, the submission of the appellant that the order of September 1959 was vitiated by "error apparent" of the kind envisaged by O. XLVII r. 1, Civil Procedure Code when it stated that "no substantial question of law arose" appears to us to be clearly well-founded. Indeed, learned Counsel for the respondent did not seek to argue that the earlier order of September 1959 was not vitiated by such error."

19. Sow Chandra Kante and another v. Sheikh Habib **(1975) 1 SCC 674**. A review of a judgment is a serious step and reluctant resort to it is proper only where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility. A mere repetition, through different counsel, of old and overruled arguments, a second trip over ineffectually covered ground or minor mistakes of inconsequential import are obviously insufficient. The very strict need for compliance with these factors is the rationale behind the insistence of counsel's certificate which should not be a routine affair or a habitual step. It is neither fairness to the Court which decided nor awareness of the precious public time lost what with a huge backlog of dockets waiting in the queue for disposal, for counsel to issue easy certificates for entertainment of review and fight over again the same battle which has been fought and lost. The Bench and the Bar, we are sure, are jointly concerned in the conservation of judicial time for maximum use. We regret to say that this case is typical of the unfortunate but frequent phenomenon of repeat performance with the review label as passport. Nothing which we did not hear then has been heard now, except a couple of rulings on points earlier put forward. May be, as counsel now urges and then pressed, our order refusing special leave was capable of a different course. The present stage is not a virgin ground but review of an earlier order which has the normal feature of finality."

20. Northern India Caterers (India) Ltd. v. Lt. Governor of Delhi **(1980) 2 SCR 650**. It is well settled that a party is not entitled to seek a review of a judgment delivered by this Court merely for the purpose of a rehearing and a fresh decision of the case. The normal principle is that a judgment pronounced by the Court is final, and departure from that principle is justified only when circumstances of a substantial and compelling character make it necessary to do so. Sajjan Singh v. State of Rajasthan **[1965] 1 S.C.R. 933, 948** For instance, if the attention of the Court is not drawn to a material statutory provision during the original hearing, the Court will review its judgment. G. L. Gupta v. D. N. Mehta **[1971] 3 S.C.R. 748-760** The Court may also reopen its judgment if a manifest wrong has been done and it is necessary to pass an order to do full and effective justice. O. N. Mahindroo v. Distt. Judge Delhi & Anr **[1971] 2 S.C.R. 11, 27**. Power to review its judgments has been conferred on the Supreme Court by Art. 137 of the Constitution, and that power is subject to the

provisions of any law made by Parliament or the rules made under Art.145. In a civil proceeding, an application for review is entertained only on a ground mentioned in XLVII rule 1 of the Code of Civil Procedure, and in a criminal proceeding on the ground of an error apparent on the face of the record. (Order XL rule 1, Supreme Court Rules, 1966). But whatever the nature of the proceeding, it is beyond dispute that a review proceeding cannot be equated with the original hearing of the case, and the finality of the judgment delivered by the Court will not be reconsidered except "where a glaring omission or patent mistake or like grave error has crept in earlier by judicial fallibility." Chandra Kanta v. Sheikh Habib (**[1975] 3 S.C.R. 933**)."

21. Delhi Administration v. Gurdip Singh Uban and others (**AIR 2000 SC 3737**). "15. In Thungabhara Industries Ltd. v. Government of Andhra Pradesh, [1964] 5 SCR 174, this Court stated that there was a real distinction between a mere erroneous decision and a decision which could be characterized as vitiated by 'error apparent' and that a 'review' was by no means an 'appeal' in disguise. This legal position was reiterated in subsequent judgments of this Court. "16. At the outset, we have to refer to the practice of filing review applications in large numbers in undeserving cases without properly examining whether the cases strictly come within the narrow confines of Rule XL of the Supreme Court Rules. In several cases, it has become almost everyday experience that review applications are filed mechanically as a matter of routine and the grounds for review are a mere reproduction of the grounds of special leave and there is no indication as to which ground strictly fails within the narrow limits of the Rule XL of the Rules. We seriously deprecate this practice. If parties file review petitions indiscriminately, the time of the court is unnecessarily wasted, even if it be in chambers where the review petitions arc listed. Greater care, seriousness and restraint is needed in filing review applications."

12. In the wake of the above discussion, we do not find any illegality or material error in the leave refusing order to persuade us to exercise review jurisdiction. Consequently, these review petitions are dismissed.

Judge

Judge

Karachi the
9th February, 2023
Khalid
Approved for reporting