

**11<sup>th</sup> KTBA CASE LAW UPDATE  
(August 21, 2023)**

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**Dear Members,**

A brief update on a recent decision on “**no Super Tax where Capital Gains on Property having a holding period of 4 Years or more is Zero**” by Appellate Tribunal Inland Revenue, Karachi is being shared with you for your knowledge.

This update is in line with the efforts undertaken by our “**CASE LAW UPDATE COMMITTEE**” apprise our Bar members with important court decisions.

You are equally encouraged to share any important case law, which you feel that should be disseminated for the good of all members.

You may contact the Committee Convener Mr. Shams Ansari or at the Bar’s numbers 021-99212222, 99211792 or email at [info@karachitaxbar.com](mailto:info@karachitaxbar.com) & [ktba01@gmail.com](mailto:ktba01@gmail.com)

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President

August 21, 2023

**(M. Mehmood Bikiya)**

Hon. General Secretary

August 21, 2023

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**NO SUPER TAX WHERE CAPITAL GAINS ON PROPERTY HAVING A HOLDING PERIOD OF 4 YEARS OR MORE IS ZERO.**

**Appellate Authority: Appellate Tribunal Inland Revenue**

**Appellant: Sunehri Industries (Private) Limited, Karachi Section: 37(3A) of the Income Tax Ordinance, 2001.**

**Detailed order was issued on June 13, 2023 [I.T.A No. 1305/KB/2023].**

**Background:** For the tax year 2022, the taxpayer claimed that if the holding period of an immovable property exceeds 4 years, the capital gain on its disposal would be considered as zero as per the law and since the capital gain would be zero, there should not be any charge of Super Tax on such zero value Capital Gains. The appeal was accepted and as a result, the imposition of Super Tax was held illegal.

**Decision of the Court:**

**First Ruling of the Court:** According to sub-section (3A) at serial No. 5 of the Ordinance, if the holding period of an immovable property exceeds four (04) years, the Gain on its disposal will be Zero as per the law. Additionally, no capital gain tax is applicable as per Division VIII, Part-I of First Schedule to the Ordinance on zero gains. The zero rate of tax is not mentioned in Division VIII; it is the gain that becomes zero. Therefore, the quantum of gain computed under the Table of section 37(3A) for income tax purposes should also be considered for the levy of super tax. This is also supported by the definition of 'tax' under section 2(63), which includes any tax imposed under Chapter II. Consequently, two different computations of the same income are not possible for the levy of income tax and super tax unless specifically provided, as in section 4C(2)(ii).

**Second Ruling of the Court:** While there is no doubt that the holding period of more than 04 years under section 37(3A) results in zero capital gains for the purpose of levy of super tax, it is worth mentioning the principle upheld by higher judicial authorities, which is that when two interpretations are equally possible, the one favoring the taxpayer had to be adopted. Reference is made to the case of 2019 SCMR 282.

**Conclusion:**

There are numerous instances concerning immovable property, where, due to the holding period, no gain was computed under the law, leading to no tax liability under section 37(3A). However, an ambiguity arose whether super tax, governed by a separate section, could be imposed on such capital gains. To resolve this controversy, the Tribunal has effectively concluded that the computation of Capital Gains as mentioned under the relevant provisions of section 37 should be considered for the purposes of Super Tax under section 4C as well, which is in accordance with the settled principles of interpretation of statute.

Considering its implications, it is expected that the said order may be challenged before the Higher Courts. Nonetheless, until it is overruled, according to the law of precedence, the decision remains binding.

**NOTE: Members are requested to read the complete order attached herewith.**

**DISCLAIMER:**

This update has been prepared for KTBA members and carries a brief narrative on a detailed Judgment and does not contain an opinion of the Bar, in any manner or sort. It is therefore, suggested that the judgment alone should be relied upon. Any reliance on the summary in any proceedings or project would not be binding on KTBA.

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Best regards

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President

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