Muhammad Shafi Siddiqui J.- I have had the privilege of reading the judgment authored by my learned brothers. However, with all the humility at my command I am not in agreement with the conclusion drawn therein and reasons assigned, hence the following note is my separate disagreement (reasoning and conclusion).

2. Impugned in these civil appeals is a common order passed in wealth tax appeals, in terms whereof the concurrent findings of three statutory forums below were set aside and by allowing appeals, the exercise of option to seek exemption of a residential house was extended to both spouses. Leave was granted in these matters on 21.09.2021 on the count whether the Tribunal was justified in disallowing the exemption in regard to a house at Islamabad under clause (12) (1) of Part I of the Second Schedule of the Wealth Tax Act, 1963 (hereinafter referred to as "**the Act**"). In terms of the order of this Court dated 21.09.2021, the interpretation of clause (12) (1) of Part I of the Second Schedule read with section 5 of the Act, falls to be determined under the given circumstances.

3. We have heard the learned counsel and perused the material available on record.

The question as framed while granting leave on 21.09.2021 was in fact, a question framed before the Appellate Court when the appeals were heard and decided in terms of the impugned orders. The question framed was as under:

> *Whether the learned Tribunal was justified in disallowing the exemption in regard to a house at Islamabad under clause 12(1) of Part-I of second schedule of the Wealth Tax Act, 1963.*

The questions ought to have been differently framed while granting leave. Once the appeal was allowed, reversing the concurrent findings of three statutory forums below, the questions I propose to decide now are as under:

(i) whether the Appellate Court was justified in reversing the concurrent findings of statutory forums below;

(ii) whether the interpretation provided by the High Court in the impugned orders in respect of the aforesaid clause read with section 5 of the Act was lawful and the exemption could be extended to both spouses; and

(iii) whether the High Court could have adjudged the constitutionality and the vires of clause (12) if at all it offends any Article of the Constitution of the Islamic Republic of Pakistan, 1973.

The two questions framed by the High Court while hearing the afore-referred appeals are as under:

> *"Whether on the facts and in the circumstances of the case, the learned Tribunal was justified to disallow the exemption of house at Islamabad being a residential one under clause 12 (1) of Part 1 of second schedule of the Wealth Tax Act, 1963?*
>
> *Whether on the facts and in the circumstances of the case clause 12 (1) of Part 1 of the second schedule of the Wealth Tax Act, 1963 is discriminatory under article 25 and ultra vires of the Constitution?"*

4. We must begin with the understanding that the Wealth Tax Act was a taxing statute enacted to impose and regulate wealth tax. Exemptions are exceptions to the general rule of taxability. They do not constitute the principal object of the enactment. Under the Wealth Tax Act, 1963, section 3 creates a charge on the wealth of the assessee for a financial year commencing from 1st July 1963, whereas section 3A of the Act charges tax on undisclosed assets. Under the scheme of the Wealth Tax Act, the net wealth/assets at the corresponding valuation creates a charge for every financial year at the rate specified in the schedule attached therewith. The subject exemption initially came by virtue of section 5 of the Wealth Tax Act when the law was introduced. However, section 5 was substituted by the Finance Act, 1996 and the

exemptions available under sections 5(1) and 5(2) were then consolidated under Part I of the Second Schedule. Thus, the Act levied and charged wealth tax whereas exemption is only a permissive option to be exercised as framed and not otherwise. This is reiterated because it is an important consideration in fiscal laws. The assessment years under consideration were 1997-98 to 2000-01.

5. Under section 14 of the Act the returns were filed by the respondent assessee for the respective years. In considering exemption claimed by the assessee in her wealth tax returns for the respective years in respect of the residential House No.10 Street No.16, F-6/3, Islamabad, the assessing officer took the notice of the claim and having the regard to the law, that her (assessee's) spouse, as an existing assessee, had already claimed exemption for the same assessment years in respect of House No.5, Zaman Park, Lahore (another house), in view of the proviso to clause (12) (1) of Part I to the Second Schedule of the Act. The officer opined that the option could have been exercised by **either** of the spouse. Additionally, she also failed to prove that the house was purchased out of foreign remittances which were brought or remitted by her into Pakistan or received by her from outside Pakistan. The later however was not a material proposition that was argued before us nor was any question framed.

6. Aggrieved of it, the respondent preferred appeals before the Commissioner of Income Tax (Appeals) and in the penultimate para of the order at page 26, the exemption claim was declined. The respondent yet again got aggrieved of the order of the Commissioner (Appeals) and preferred wealth tax appeals. In terms of para 9 of the order, the Tribunal also declined to extend the option of exemption to the respondent. The matter was then taken to the High Court where the wealth tax appeals were heard and the concurrent findings of three

statutory forums below were reversed. The High Court while allowing the appeals extended reasons that the forums below misconceived that the option was not available to both spouses. The impugned orders also read as if the (exercise of option by one of the spouses) operate only when the husband and wife resides in the same house. In such a situation, one assessee can claim exemption under the aforesaid clause. The underlining is for clarity and emphasis added. The reasoning provided by the High Court is as under:

> *"The proviso states that this option can only be exercised by either of the spouse meaning that where the husband and wife reside in the same house then only one assessee can claim exemption under Clause 12 (1) of Part 1 of the Second Schedule of the Act against that residential house. The Appellate Tribunal understanding that since the husband of the Appellant has exercised his option under Clause 12 (1) of the Second Schedule of the Act, the Appellant is not entitled to the exemption is misconceived because the husband of the Appellant in his own independent right sought exemption under Clause 12 (1) of Part 1 of the Second Schedule of the Act for his residential house in Lahore. The Appellant as an independent assessee for the purpose of wealth tax. The Appellant claims exemption for her house owned and occupied by him (her) does not oust the Appellant from the purview of Clause 12 (1) of Part 1 of the Second Schedule of the Act. In this case the husband and wife spend part of the year in Lahore and part of the year in Islamabad, hence both houses are in their personal occupation. Furthermore, each is an independent assessee for the purposes of wealth tax and each in their own right seeks exemption against different properties. Therefore we find that the Appellant is entitled to the grant of exemption under Clause 12 (1) of Part 1 of the Second Schedule of the Act as the exemption and the benefit given under Part 1 of the Second Schedule of the Act is given independently to an assessee irrespective of the fact that their spouse has availed the exemption in relation to some other property. In this regard we find that the Appellate Tribunal's interpretation of Clause 12(1) of Part 1 of the Second Schedule of the Act is incorrect yet as such no element of discrimination is made out."*

7. We are unable to reconcile such reasoning within the frame of aforesaid clause (12) of the Act.

Under the tax laws an exemption generally means that although a person, income, asset, transaction or class of persons would otherwise fall within the charging provision, the law exempts it from tax liability

under certain conditions. There are several ways to deal different kinds of exemptions, such as exemption from the charge itself, exemption through a specific provision, exemption by notification, exemption subject to conditions and/or partial exemption, etc.

The person claiming the exemption generally has to bring himself or herself clearly within such exemption frame. An assessee filing a return under section 14 of the Act is under an obligation to discharge the obligation in terms of section 14, whereas any relaxation claimed is governed by clause (12) to the Second Schedule to be read with section 5 of the Act.

After the amendment carried out in section 5, by virtue of Finance Act, 1996 the exemptions were transmitted to Part I of the Second Schedule and in turn, to its clause (12) for the purposes of present controversy. Initially, when section 5 was amended by virtue of the Finance Act of 1st July 1996, clause (12) was not amended and the exemptions in terms of clause (12) of the Second Schedule, Part I were provided for on 9th July 1996 by virtue of S.R.O.595(I)/96. The driving force here thus, is not section 5 rather clause (12) which too is governed by its proviso. The Second Schedule of the Act, thus, in essence, deals with exemption from wealth tax as an exception.

To me, what is more important in interpreting the clause is to see whether the exact wording of the proviso to clause (12) of Part I of the Second Schedule restricts the property eligible for exemption, the assessee entitled to such exemption, or both.

8. A plain reading of clause (12) permits the exemption to be availed by only one spouse, not by both spouses separately. For ease of convenience, I reproduce clause (12) of Part I of the Second Schedule to the Act:

> *"(12) (1) one residential house, owned and occupied by the assessee for purposes of his own residence, where the assessee opts to exclude such house from his assets:*
>
> *Provided that such option may be exercised by either of the spouse;*
>
> *Provided further that where an assessee exercises an option under this sub-clause, proviso (a) to sub-paragraph (2) of paragraph A of the First Schedule shall not apply.*
>
> *(2) One shop owned and occupied by the assessee for the purposes of his own business;*
>
> *(3) This clause shall apply to an assessee to whom provisions of sub-para (2) of paragraph A of Part-I of the First Schedule apply.*

9. In between clause (12) (1) and its proviso the punctuation colon mark (:) is used. It indicates that what follows is intended to explain, qualify, or limit the preceding statement. Here, the colon introduces a proviso that qualifies the preceding general rule. Proceeding further to explain the intent of the above clause, there are three features of the provision which to my understanding are decisive.

10. The first is "either". It is a limiting expression. Legislature did not purposely use "by each spouse, by both spouses or by either spouse in respect of his/her respective residential property". It simply says "either of the spouse". In ordinary statutory usage, where two persons are identified, "either" means one or the other of the two. Thus, the proviso restricts the otherwise individual "exemption entitlement" contained in clause (12). So, the limit of the frame of clause (12) read with the proviso is: **one residential house → one option → exercisable by either spouse**. It is not two residential houses, two independent options by both spouses respectively.

11. The second decisive factor is that if both husband and wife could independently claim the exemption for their respective residential houses, the proviso's restriction concerning the exercise of the option would lose much of its practical significance. The interpretation should give meaningful effect to the proviso rather than to render its restrictive language redundant.

12. The third is the phrase “such option”. The wording regulates the exercise of “the option” by either spouse. It supports the interpretation that the legislature contemplated a single statutory election exercisable by one spouse, rather than two independent exemptions arising merely from separate ownership of residential houses.

In case it is understood as explained in the impugned orders, the proviso would have virtually no restrictive function if both spouses are allowed to claim independent exemption.

13. The main clause already says that exemption is available “to the assessee” in respect of a residential house owned and occupied by that assessee. If husband and wife were each entitled independently to exclude a house in which they had an ownership interest, there would be little purpose in adding “such option may be exercised by either of the spouse”. The proviso was inserted precisely because legislature wanted to address the spousal situation and determine how the option was to operate between them. The spousal situation is in fact a “class” of assessees that has been carved out when it comes to the exercise of an option between husband and wife. The natural construction is, therefore, that the two spouses are treated as a class to have one election seeking exemption in relation to a residential house, with a choice as to which spouse would exercise such option if both are assessees. Indeed, it is for the couple to decide as to who would exercise such option. There may be a situation where husband and wife are co-owners with equal share and the argument would be of two options as each is an assessee therefore, each can exclude his/her own half but that too would overlook the proviso. The legislature has not merely said that the house is exempt according to each assessee’s ownership share, it has introduced an option, and then expressly provided that the option may be exercised by either spouse. Thus, the question is not who owns

what share and who could then exercise the respective options in respect of the same property; rather the legislative intent concerns who may exercise the statutory option to exclude the residential house.

14. I fail to reconcile the view that the word “either” could ordinarily identify each of the two persons (spouses) capable of exercising a choice as explained in the majority’s judgment in terms of paragraph 14. If such is the understanding, then there was no logic in providing such a proviso as the proposed interpretation could have been easily arrived at without it. It indeed extinguishes the rights arising out of the exemption clause to claim exemption if the assessee happens to be a spouse of a person who has already exercised the option in this regard, but this is how the law of exemption stood when it was enforced.

15. The importance of a proviso to the provision of law and that too in a taxing statute is of a significant connotation. The conventional proposition is also that a proviso ordinarily qualifies, limits or excepts something from the main enactment. The Court has to ascertain the legislative intention from the language and scheme of the statute. If the proviso itself creates an exception or exemption, it must be given effect according to its own terms. This is particularly important in tax statutes as at times a proviso may conclude or operate, in substance as “Notwithstanding the main provision, tax shall not be payable in the specified circumstance.” It therefore has the effect of a non-obstante clause. When the legislature frames a law in such a way, the proviso becomes the driving force. Thus, in fiscal matters, the exemption must be applied according to its precise requirements. The proviso thus is read as a condition precedent to claim generalized exemption. The exemption “conditions” cannot be curtailed by importing self-claimed rights, that the legislature has specifically excluded.

16. In addition to the above analysis, it is a settled principle of fiscal jurisprudence that the burden lies upon the taxpayer to establish entitlement to a statutory exemption. Reliance in this regard is placed upon **(i)** *Pakistan Stock Exchange Limited v. Commissioner Inland Revenue* Zone-VI, Karachi (2026 SCMR 373), **(ii)** *Pakistan Match Industries (Pvt.) Ltd. v. Assistant Collector, Sales Tax and Central Excise Mardan* (2019 SCMR 906), and **(iii)** *Hashwani Hotels Ltd. v. Government of Pakistan* (2007 SCMR 1131). Applying the principles discussed in the aforesaid judgments of this Court to clause (12) (1) of Part I of the Second Schedule to the Act, the expression "one residential house" read with the proviso permitting the option to be exercised by "either of the spouse" cannot be construed to confer separate exemptions upon both spouses in respect of two different residential houses.

17. The majority's view in interpreting the proviso would effectively convert the exemption of "one residential house" into an exemption of two residential houses merely because the properties are held or occupied by different spouses. Such an interpretation would render the statutory limitation ineffective and attribute to the proviso a meaning that is inconsistent with the jurisprudence settled in the aforesaid judgments. The proviso must be construed harmoniously with the main clause and cannot be interpreted to enlarge the exemption beyond the limit prescribed by the legislature. The exemption is available only within the limits and conditions prescribed by law. Where the proviso expressly restricts the benefit to one residential house for a class i.e., spouses, the Court cannot extend that benefit to a second house to the same class (husband and wife) by adopting an interpretation that effectively substitutes "one house for each spouse" for the words enacted by the legislature. This amounts to claiming the exemption benefit twice in respect of two separate houses by relying upon the separate identities

of the spouses, otherwise identified as a class in the proviso. We must not lose sight of the fact that an exemption provision must be strictly construed.

18. A proviso to an exemption provision can indeed carve out a class of persons, cases, or transactions from the operation of the main exemption provision and while it (proviso) drives the substantive law for its effective application, it can indeed operate as an exception, qualification or restriction upon its substantive enactment.

19. As in the instant case, a general exception is given to all assessees, but when it comes to the exercise of such a right by assessee who happen to be husband and wife, they are identified as a “class” in the proviso and the legislature has limited the exercise of the option to either spouse, against which no statutory challenge has been made independently.

20. There was nothing that could have prevented the legislature, while carving out the substantive law to which the proviso was attached, from extending the exemption to "each spouse", "each assessee", "one house owned by the assessee", and "a spouse". Thus, when the legislature was clear that the exemption was to apply to either of the spouses, its intention must be given effect.

21. The proviso would indeed apply to a situation where a husband has more than one wife, as the proviso has limited the exercise of the option to either of the spouse. The legislature deliberately provides an exemption on the basis that it may be claimed once and by one, in the matrimonial bond, rather than once by every individual assessee, despite both being in a matrimonial bond and living happily. So, the class identified in the proviso is one category that is spouses forming one household and would at their option be entitled to one residential house exemption. This was/is the law as it stood and legislature’s intent

is obvious. The other class is of persons not falling within that relationship who would be governed differently and that is of an individual assessee.

22. A class identified as husband and wife while exercising an option is separated from others on the basis of a reasonable differentia. The legislature is clear in explaining itself that one exemption per matrimonial unit is available rather than two exemptions mainly because the spouses are separately assessed.

23. Consequently, the questions have been answered accordingly and I hold that the interpretation provided by the High Court was not justified when it reversed the concurrent findings of three statutory forums below. Since, the interpretation provided in the impugned orders is not in accordance with the law and followed by the reasoning assigned in the aforesaid paragraphs, these appeals are allowed and the impugned orders dated 28.10.2019 are set aside.

Judge

Approved for reporting
[*]