JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

WRIT PETITION NO. 799 of 2023

PAKISTAN TELECOMMUNICATION COMPANY LIMITED

Vs

COMMISSIONER INLAND REVENUE AUDIT-II, ETC.

Petitioner by : Mr. Wasim Abid and Abuzar Salman Khan, Advocates.

Respondents by : Mr. Tabar Afzal, Proxy counsel.

Date of hearing : 27.02.2025

MUHAMMAD AZAM KHAN, J.

1. The Petitioner [Pakistan Telecommunication Company Limited], has filed the instant Writ Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, **("Constitution")** challenging therein the Notice dated 18.01.2022 issued by the Commissioner Inland Revenue (Audit-II), Large Taxpayers Office, Islamabad **("Respondent No. 1")**.

2. The brief facts giving rise to the filing of the instant Writ Petition are that on 18.01.2022, the Commissioner Inland Revenue (Respondent No.1) issued a notice **(Impugned Notice")** ostensibly under Section 177 of the Income Tax Ordinance, 2001 **("Ordinance of 2001")** wherein it was informed that Respondent No.1 intends to carry out an audit of Tax Year 2018 of the Petitioner, therefore, information listed in the impugned notice be provided to the Respondent No.1. Being aggrieved of the Impugned Notice, the Petitioner has filed the instant Writ Petition.

3. The learned counsel for the Petitioner argued that the Impugned Notice is illegal, unlawful, *ultra vires*, of no legal effect, and without jurisdiction and hence is liable to be set aside; that the Impugned Notice is non-speaking, arbitrary, capricious and violative of Section 24-A of the General Clauses Act, 1897, therefore, the same is liable to be set aside; that the Impugned Notice has been issued without application of judicial mind, therefore, the same being arbitrary exercise of power is liable to be set aside; that it is evident from bare reading of Clause 105A of Part IV of the Second Schedule of the Income Tax Ordinance that income tax affairs of a person cannot be audited for four years after an audit has

been conducted; that the Petitioner's audit was conducted for the tax year 2014 which concluded on 30.06.2019, therefore, audit of tax year 2018 cannot be undertaken by the Respondents, in view of Clause 105A of Part IV of the Second Schedule of the Ordinance of 2001 **("Clause 105A")**; that even otherwise, the audit of the Petitioner for the tax year 2014 was concluded on 30.06.2019; that in view of Clause 105A, the audit of the Petitioner cannot be undertaken till the year 2023, therefore, Impugned Notice is without jurisdiction as the Respondents are barred from exercising jurisdiction in terms of Clause 105A; that it is settled law that an act which is without jurisdiction is *malafide*; that the Impugned Notice being without jurisdiction, suffers from *malafide* and is liable to be set aside; that the Impugned Notice is in violation of the Petitioner's rights guaranteed under Articles 4 and 10-A of the Constitution. Lastly, the learned counsel prayed for declaring and setting aside the Impugned Notice as being illegal, unlawful, *ultra vires* the Constitution, without jurisdiction, and of no legal consequence. He also prayed that the Respondents be directed not to conduct audit of the Petitioner for four years in accordance with Clause 105A and to restrain from proceeding with the Impugned Notice till final disposal of the instant Writ Petition.

4. On the other hand, the learned counsel on behalf of the Respondents argued that the Petitioner availed the opportunity to defend the initiation of audit proceedings vide its response dated 01.02.2022 and the Petitioner did not seek a personal hearing; that by operation of Clause 105A, a taxpayer would be exempted from provisions of Section 177 and 214C of the Ordinance of 2001 if their audit was conducted in the Tax Year 2018 onwards, however, the Petitioner's audit was conducted in the Tax Year 2014, which falls beyond the scope and ambit of Clause 105A; that the Petitioner's reliance on Clause 105A is based on an unsustainable and erroneous interpretation of law; that once initiated, audit proceedings cannot be quashed by retrospective operation in the absence of express language to that effect; that the Impugned Notice is not violative of law and is based on sound legal reasoning, which was already furnished to the Petitioner prior to its audit selection; that the Impugned Notice has been issued in accordance with the established legal position that ongoing audit proceedings, commenced in accordance with law, would not be affected by the enactment of Clause 105A; that Clause 105A was enacted with effect from 01.07.2022, which constitutes the Tax Year 2023; that upon plain reading of Clause 105A, it is evident that exemption thereunder would

apply if audit proceedings were conducted for the Tax Years 2020, 2021, 2019 or 2018, however, the Petitioner's last audit was conducted for the Tax Year, 2014, hence, it does not fall within the scope of Clause 105A; that the Petitioner's audit selection for the Tax Year 2018 was in accordance with law and well within the jurisdiction of the Respondents. Lastly, the learned counsel prayed for the dismissal of the instant Writ Petition and for the issuance of direction to the Petitioner to participate effectively in the audit proceedings for the Tax Year 2018.

5. I have heard the learned counsel for the parties and perused the available record with their able assistance.

6. The main contention of the Petitioner is that after the insertion of a new amendment under Clause 105A in the Second Schedule of the Ordinance of 2001, the Income Tax department cannot seek an audit of the Petitioner for the tax year 2018, on the ground that it's a beneficial legislation and will effect retrospectively. For ready reference, the newly amended Clause 105A is reproduced hereunder:-

> *"**(105A)**: The provisions of Section 177 and 214 C shall not apply to a person whose income tax affairs have been audited in any of the preceding four tax years:*
>
> *Provided that the commissioner may select a person under section 177 for audit with approval of the board."*

7. This new clause 105A was inserted by the Finance Act, 2022. Meaning thereby that the audit of an income taxpayer cannot be audited in the tax years 2021, 2020, 2019, and 2018. The audit of the Petitioner has already been conducted for the tax year 2014, which culminated on 30.06.2019. Thus, according to the version of the Petitioner, given the new amendment, the audit of the tax year 2018 will be illegal and against the express provision of the Ordinance of 2001; that in light of FBR's interpretation of Clause 105A *ibid*, the four years' time is to be calculated from the year the audit proceedings culminated. The second point raised by the Petitioner is that the new amendment being beneficial legislation is to be given retrospective effect from the date of amendment, in favor of the taxpayer.

8. The newly promulgated provision 105A in the Ordinance of 2001 is provided under the Chapter of exemptions from applicability of certain provisions, which reflects that it is a kind of concession or benefit and provides that audit under Section 177 and audit under Section 214C of the Ordinance of 2001 shall not apply to a person whose income tax affairs have been audited in any of the "preceding four tax years". This clearly provided that the said exemption or

concession is only available if the taxpayer has been audited in any of the preceding four tax years. The word "tax year" is defined under Section 74 (1) of the Ordinance of 2001, which is reproduced herein below:-

> *"**74. Tax year.— (1)** For the purpose of this Ordinance and subject to this section, the tax year shall be a period of twelve months ending on the 30th day of June (hereinafter referred to as 'normal tax year') and shall, subject to sub-section (3), be denoted by the calendar year in which the said date falls."*

9. The new amendment referred to "preceding four tax years" and it means that the audit of a particular tax year and not the date or year in which the audit is completed. Therefore, the Petitioner's selection of audit for the tax year 2018 (notwithstanding its completion in the year 2019) would be of the tax year 2018 and not of the tax year 2019 to claim any benefit of Clause 105A *ibid*. It is immaterial when the audit is completed as it will remain an audit for a particular tax year and it is only that tax year (2014 in this matter) which is relevant for calculating the period of concession under Clause 105A *ibid*. The finalization of the audit in a particular tax year is not at all relevant nor is it provided in Clause 105A. The Circular dated 21.07.2022 issued by FBR, whereby an example is given that if an audit of a taxpayer for the tax year 2017 has been finalized in the tax year 2022, then the said taxpayer can only be audited again after four tax years i.e. in the tax year 2027, has been discarded by the Sindh High Court in Constitution Petition No.D-6280 of 2024 vide order dated 20.01.2025, as it conflicts with the main provision of law. Scrutiny of record of the Petitioner reflects that the audit for the tax year 2014 was conducted and concluded in the year 2019, meaning thereby that no audit/proceedings under Section 177 (1) were conducted for any of the preceding four tax years as per the mandate of Section 105A of the Ordinance of 2001, hence, the Petitioner cannot claim the benefit provided under the Finance Act, 2022.

10. As far as the contention raised by the Petitioner's counsel that the new amendment has a retrospective effect is concerned, it is to be mentioned here that in the absence of any indication of its retrospective operation, it must not be given retrospective effect. Generally, beneficial legislation is to be given liberal interpretation, however, for the said legislation to have a retrospective effect, the beneficial legislation must carry curative or remedial content. Such legislation must, therefore, either clarify an ambiguity or an omission in the existing law and must therefore be explanatory or clarificatory. In the instant case, there is no

specific wording that the concession shall apply retrospectively, hence, it cannot be construed by any canon of interpretation that said amendments have a retrospective effect. Consequently, in the absence of any indication in the statute that the legislature intended for it to operate retrospectively, it must not be given retrospective effect. Reliance is placed on *M/s RAJBY Industries Karachi and others versus Federation of Pakistan and others,* **2023 SCMR 1407**. In any case, the Impugned Notice was issued to the Petitioner on 18.01.2022, while the amendment of Section 105A in the Ordinance of 2001 was enacted with effect from 01.07.2022, hence, the Petitioner cannot benefit from the new amendment. Even otherwise, the enactments relating to fiscal statutes will be interpreted to apply prospectively, rather than retrospectively.

11. In addition to the above, the power to select for audit through random or parametric balloting is provided under the law. Mere selection for audit does not cause any actionable injury to the taxpayer and the reason and objective for conducting an audit under a scheme of self-assessment is the regime provided by the Ordinance of 2001 to check the accuracy, truthfulness, and veracity of the returns filed by the taxpayers. Reliance is placed on *Commissioner of Inland Revenue, Sialkot versus Allah Din Steel and Rolling Mills,* **2018 SCMR 1328**.

12. In light of the above discussion, this petition, being devoid of any merits, is hereby ***dismissed***.

(MUHAMMAD AZAM KHAN)
JUDGE

Announced in the Open Court on _____ day of March 2025.

JUDGE

Sajid/--