JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Crl. Appeal No. 138/2023

The State

Versus

Said Jan Afridi, etc.

Appellant by: Hafiz Ahsaan Ahmed Khokhar, Advocate.
M. Anwar, I.O.

Respondents by: Hafiz Munawar Iqbal, Advocate.

Date of Hearing: 21.05.2024.

MOHSIN AKHTAR KAYANI, J:- Through this Crl. Appeal, the appellant/State through I.O, Directorate of Intelligence & Investigation, IR has challenged the order dated 04.01.2023, passed by learned Judge Special Court (Customs, Taxation & Anti-Smuggling), Rawalpindi/Islamabad, whereby respondents were acquitted u/s 265-K Cr.P.C. in complaint case No.03/2020, dated 22.07.2020, U/S 3, 4 & 8 of Anti-Money Laundering Act, 2010.

2. Brief facts referred in the instant appeal are that as per report u/s 173 Cr.P.C. accused/respondents established a business in Dubai in the name & style of HEAVY EQUIPMENT TRANSPORT CO. & SAID JAN GENERAL TRADING CO, who returned back to Pakistan during the year 2013-2014. It is in the record that accused respondents have received remittances in their bank accounts amounting to Rs.64,14,280/- during Tax

Year 2014 while they have claimed Rs.1,45,31,610/- in their replies. The difference of amount of Rs.81,17,330/- remained un-explained. This amount was required to be offered for taxation under Section 11(5) of the Income Tax Ordinance (**ITO**), 2001 but they failed to pay tax on the said income. The accused respondents have claimed Debt Receipts of Rs.106,996,657/- between Tax Years 2014 to 2017, however, they failed to provide any explanation regarding sources of income/nature of the said amount. Hence, this amount remained unexplained and chargeable to tax under Section 111(1)(a) of the Income Tax Ordinance, 2001. The accused respondents have also claimed various Interbank Transfers of Rs.7,781,698/- for Tax Years 2015 to 2017 and failed to put forth any explanation. This amount also remained un-explained and chargeable to tax under Section 111(1)(a) of the Income Tax Ordinance, 2001. The accused respondents have claimed amounts received on account of vehicles sold amounting to Rs.45,301,956/- between the years 2016 & 2017 but failed to furnish any documentary evidence/bank statements regarding sources/nature of transactions. This amount remained un-explained and chargeable to tax under Section 111(1)(a) of the Income Tax Ordinance, 2001. A detailed investigation report dated 06-07-2020 was prepared by one Suhail Abbas (Deputy Director) and referred the same to Chief Commissioner Inland Revenue. The report contains the details of 16 bank accounts of the Respondent (Said Jan Afridi) and the notices of 176(1)(b) of ITO 2001 were sent to him to explain his sources of income from year 2014 to 2017 However, all the notices sent to Respondent regarding the explanation of true sources of income with allied documents,

as to why respondent's case must not be treated under the provision of concealment of income tax evasion u/s 111 of ITO 2001 and why he must not be proceeded under AMLA 2010, however, respondent failed to dispense with any explanation. In its report the Deputy Director finalized that Respondents have following un- explained/concealed income (Rupees):

Tax Year	**Net un-explained/concealed income (Rupees)**
2014	66,561,815/-
2015	84,884,527/-
2016	21,193,667/-
2017	59,392,803/-
Total	231,965,812/-

During investigation accused respondents found involved in money laundering from predicate offences of false statement in verification u/s 192 of the Income Tax Ordinance, 2001, concealment of income/furnishing inaccurate particulars of income u/s 192A of the Income Tax Ordinance, 2001 as provided us XIIA of the Schedule-I of the Anti- Money Laundering Act, 2010. Accordingly, a complaint/Challan was submitted before the Court for trial.

3. Complaint case No.3/2020 dated 22.07.2020 was filed by the I.O Muhammad Anwar (I&I IR) against the Respondent and two others (his sons) u/s 192 and 192A of ITO as predicate offence and reproduced the above year wise breakdown of un-explained amount and sought permission to investigate the offences.

4. The I.O also forwarded and application u/s 8 AMLA 2010 in the complaint case No. 3/2020 before the learned Special Judge to attach the

properties and freeze the bank accounts of the respondents. Pursuant to the above application of I.O/Muhammad Anwar, learned Special Judge (Customs, Taxation & Anti-Smuggling), Rawalpindi/Islamabad granted permission to investigate the Respondents and froze the bank accounts and also attached the properties of the respondents vide order dated 22.07.2020. The I.O Muhammad Anwar sent notice u/s 8 of AMLA 2010 to the respondents on 28.07.2020.

5. Respondents filed petition u/s 265-K Cr.P.C. in the complaint case with the objection that 192 and 192A in the Schedule of AMLA has been added through SRO No. 425(1)/2016 dated 20.05.2016 which cannot take retrospective effect in terms of Article 12 of the Constitution of Islamic Republic of Pakistan, 1973. Therefore, the bank credits of 7.961 Million rupees based on IO's investigation report) for tax year 2017 were presumed as un-explained source of income on which the tax computed comes at Rs.1.388 Million, which is far below the threshold of Rs.10/- Million as an essential condition for predicate offence in terms of schedule of AMLA 2010.

6. Pursuant to the application of respondent's u/s 265-K CrPC the learned Special Judge dismissed the application of the Respondents by observing that the criminal liability of the accused pertaining to the year 2017 will be determined after the recording of evidence and the instant matter is at the stage of faming of charge. Therefore, *prima-facie* sufficient material is available on record to frame the charge against the accused

7. Learned Special Judge (Customs, Taxation and Anti-Smuggling) charged the accused u/s 3, 4 and 8 AMLA 2010 for predicate offences of

false statements in verification u/s 192 and concealment of income/furnishing inaccurate properties of income under Sections 192A of ITO 2001 in the following manner:-

> *"I, Tariq Mahmood Zargham, District & Sessions Judge/Judge Special Court (Customs, Taxation & Anti-Smuggling). Rawalpindi/Islamabad do hereby charge you Said Jan Afridi, Said Fareed & Abubakar accused persons are as under:-*
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> 1. *That you accused being taxpayer established a business in Dubai in the name & style of HEAVY EQUIPMENT TRANSPORT CO. & SAID JAN GENERAL TRADING CO. and returned back to Pakistan during the year 2013-2014. It is evident from record that you accused have received remittance in your bank account amounting to Rs.6,414,290/ during Tax Year 2014 while you have claimed Rs.14,531.610/- in replies. The difference amount of Rs.8,117,330/- remained un-explained. This amount was required to be offered for taxation under section 11(5) of the Income Tax Ordinance, 2001. You failed to pay tax on said income.*
> 2. *That you have claimed Debt Receipts at Rs. 106,996,657/ between Tax Years 2014 to 2017. However, you are failed to provide any explanation regarding sources / nature of the said amount. Hence this amount remained unexplained and chargeable to tax under section 111(1)(a) of the Income Tax Ordinance, 2001.*
> 3. *That you have claimed various Interbank Transfers at Rs.7,781,698/- for Tax Years 2015 to 2017 and failed to put forth any explanation. This amount remained un- explained and chargeable to tax under section 111(1)(a) of the Income Tax Attested to be Ordinance, 2001.*

4. *That you have claimed amounts received on account of vehicles sold amounting to Rs.45,301,956/- between Tax Years 2016 & 2017 but failed to furnish any documentary evidences/bank statements regarding sources/nature of transactions. This amount remained un-explained and chargeable to tax under section 111(1)(a) of the Income Tax Ordinance, 2001.*

Thus, you accused persons were involved in money laundering as well as you accused persons have committed an offence punishable u/s 3, 4 and 8 of the Anti- Money Laundering Act, 2010 from predicate offences of false statement in verification u/s 192 of the Income Tax Ordinance, 2001, concealment of income / furnishing inaccurate particulars of income u/s 192A of the Income Tax Ordinance, 2001 as provided u/s XIIA of the schedule-l of the Anti-Money Laundering Act, 2010, which is within the cognizance of this court.

And I hereby direct that you accused persons be tried by this court for the said charge."

8. Total 19 PWs' statements were recorded by the Special Judge including Muhammad Anwar/I.O/PW-18 and Suhail Abbas (Deputy Director-IR/PW19. In his statement the I.O/PW-I8 conceded that the audit of respondents pertaining to years 2014-2017 is under process and not yet concluded as per his personal knowledge. Also said that the report he has submitted u/s 173 CrPC containing his signatures has nowhere mentioned income tax evasion.

9. Respondents again filed a petition u/s 265-K Cr.P.C. before the Special Judge with the grounds that the I.O Muhammad Anwar who investigated the matter and exercised the powers u/s 111 of ITO 2001 has

alleged that the assets provisionally attached were required through concealed taxable income for the year 2014-17 are:-

Tax Year	**Net un-explained/concealed income (Rupees)**
2014	62,561,815/-
2015	43,734,527/-
2016	7,913,667/-
2017	7,960,803/-
Total	122,170,812/-

Respondents again objected that Section 192 and 192A of ITO, 2001 in the Schedule of AMLA have been added through SRO No. 425(1)/2016 dated 20.05.2016 which cannot take retrospective effect in terms of Article 12 of the Constitution of Islamic Republic of Pakistan, 1973. Therefore, the bank credits of 7.961 Million rupees based on I.O's investigation report for tax year 2017 were presumed as un-explained source of income on which the tax computed come at Rs.1.388 Million, which is far below the threshold of Rs.10/- Million as an essential condition for predicate offence in terms of schedule provided in AMLA 2010. Further objected that the Inspector has no power to impose liability u/s 111, 230 and 209 of ITO 2001. Also, as per the SRO No.115(1)/2015, dated 09.02.2015, which was superseded by SRO No. 272(1)/2021 Dated 02.03.2021 the office of the Director General (Intelligence and Investigation, Inland Revenue) has been empowered specifically to exercise and perform functions of ITO 2001, specified in column No.4 of above referred SROs. Under the said SROs the Inspector is not empowered to impose liability of Section 111 of ITO, 2001. Therefore, the accused be acquitted.

10. The Special Judge reproduced the details from the report under Section 173 Cr.PC. submitted by the I.O and held that the 2014-2016 period

is excluded and whereas the tax for year 2017 is concerned the same does not meet the threshold of tax amount of 10 Million rupees. The Special Judge relied on the judgment of IHC in WP. No. 3095/2021 (Altaf Ahmed Gondal vs FOP etc.) that to attract the offence of money laundering there has to be a nexus of the proceeds of crime with one of the predicate offences described under the schedule of the Act 2010 and in case proceeds of crime are not relatable to the predicate offences then offence under the Act of 2010 would not be attracted. Learned Special Judge accepted the petition of respondents under Section 265-K Cr.P.C. and acquitted the accused from the charge. Hence, this appeal.

11. Learned counsel for the appellant/State contends that powers exercised U/S 265-K Cr.P.C. is not permissible at this stage, especially when 19 PWs have been recorded and trial was likely to be concluded in near future; that learned trial court has totally ignored that the accused have given false statement while submitting Returns/wealth statements, concealed income where tax sought to be evaded is more than Rs..10/- Million, which brings the cases of accused/respondents under AMLA, 2010 and ITO, 2001 and whereas the same could only be ascertained through documentary evidence in the final judgment. The interbank transfer of Rs.7,781,698/- in the tax years 2015 to 2017 and respondents/accused failed to put any explanation, therefore, this amount remained un-explained and chargeable to tax u/s 111(1)(a) of the ITO, 2001. The respondents have not been able to explain their sources of income, receipts against the vehicles sold, and debt receipts, thus after investigating the source of income, appellant reached to the conclusion

that respondents have been committing the offence of money laundering u/s 3 of the AMLA, 2010 through commission of predicate offence of tax evasion u/s 192A and false statement in verification u/s 192 of the section XIIA of the Schedule-I of Anti-Money Laundering Act, 2010 without paying due income tax thereon concealed income; that learned trial court was not justified in relying on Article 12 of the Constitution of Islamic Republic of Pakistan, 1973 by holding that AMLA, 2010 was not applicable for the tax years 2014, 2015 and 2016 as Section XIIA was inserted in Schedule-I to AMLA, 2010 on 20.05.2016, whereas the accused filed income tax returns for 2014, 2015 and 2016 on 07.09.2018 which is posterior to the date 20.05.2016, which squarely falls within the period when Section 192 and 192A of the ITO, 2001 were declared as predicate offences; that learned trial court was not justified in relying on judgment passed by this Court in W.P No. 3095/2021 titled Altaf Ahmad Gondal vs. Federation of Pakistan necessitating nexus between predicate offence and proceeds of crime, whereas Section 3 of the AMLA, 2010 has a broader scope; that trial court has ignored the material evidence on record and acquitted the respondents despite overwhelming evidence including authorization available from Directorate of I&I, IR, which fully covers the investigation aspect of agency, especially when the tax evaded amount comes to Rs.122,100,000/-.

12. Conversely, leaned counsel for the respondents/accused contends that the impugned order is self-explanatory and as such no illegality has been demonstrated by the appellant/State, especially to the cut of date of offence u/s 192 & 192A of ITO, 2001, which was included in the Schedule-I of the AMLA, 2010 and notified on 20.05.2016 and prior to that the same

could not be covered under AMLA, 2010, therefore, any proceedings conducted by the trial court or I.O are beyond the authority and resultantly, trial court has rightly concluded by acquitting the respondents, even the threshold established the *prima-facie* offence of money laundering which is Rs.10/- Million is not made out; that till date tax authorities have not calculated any evasion of tax against the respondents.

13. Arguments heard, record perused.

14. Perusal of record reveals that complaint case No.03/2020 dated 22.07.2020 was filed by the Directorate of Intelligence & Investigation-IR, against the Said Jan Afridi and his sons Said Fareed and Abubakar under Section 21(2) of the AMLA, 2010 before the Special Judge (Customs, Taxation & Anti-Smuggling), Rawalpindi/Islamabad in the alleged offences in terms of Section 192, 192A of the ITO, 2001 read with Sections 3, 4 & 8 of the AMLA, 2010 for the tentative tax evasion of Rs.116/- Million with the allegation that respondent No.1/Said Jan Afridi who owned several businesses and declared nominal income, whereas respondents No.2 & 3 real sons of respondent No.1 own properties and maintain bank accounts in their names are believed to be from crime proceeds. In the complaint, State alleged that the accused are concealing income, furnishing inaccurate particulars of income and acquiring assets from proceeds of crime by committing predicate offences of tax evasion and concealing taxable income, under the AMLA, 2010. It has been highlighted in the complaint that respondent No.1 registered on tax roll on 29.01.2018 and failed to declare any business activity and the year wise break down of the

discrepancies / un-reconciled amounts found in the records submitted/declared by the accused are as follows:-

Tax Year	Net un-explained/concealed income (Rupees)
2014	Rs. 66,561,815/-
2015	Rs. 84,884,527/-
2016	Rs. 21,193,667/-
2017	Rs. 59,392,803/-
Total	Rs.231,965,812/-

15. As per the stance of, I.O irreconcilable amounts are far greater than Rs.10/- Million and the complainant has reasonable grounds to believe that the accused are in violation of Section 192, 192A of the ITO, 2001, read with Sections 3, 4 & 8 of the AMLA, 2010, hence, charges have to be initiated. The trial court after receiving the complaint along with application for attachment of bank accounts and properties u/s 8 of the AMLA, 2010 attached all the bank accounts and properties of the respondents and passed the order dated 22.07.2020 in which I.O was permitted for investigation and attached the accounts temporarily, there-after extended the attachment of properties and accounts through various orders. Notice U/S 9(1) of the AMLA, 2010 was issued by the I.O by referring the income and record including the remittances of the tax year 2014, 2015, 2016 and 2017 respectively. After submission of final report U/S 173 Cr.P.C. charge was framed on 06.01.2022 by the trial court to which respondents/accused pleaded not guilty and claimed trial. 19 PWs have been recorded including the I.O Muhammad Anwar/PW-18, except PW-18 majority of the witnesses are private persons or bank officials, who produced bank records and record of business transactions of respondents/ accused during tax year 2014 to 2017.

16. Before proceeding with the factual aspect of the case, I have gone through the procedure provided under the AMLA, 2010 as to how and under what circumstances the jurisdiction under this law has to be exercised. On plain reading of this law, it appears that investigation in terms of Section 9 by the I.O should be started not later than seven (07) days of order and attachment made under sub-section (1) of Section 8 whereas attachment of property in terms of Section 8(1) could only be initiated on the request of I.O, "*on the basis of report in possession of I.O received from the concerned investigating agency by order in writing, with prior permission of the Court and thereafter the properties were provisionally attached if the I.O reasonably believes to be the properties involved in money laundering*, therefore, the very initiator of the case under AMLA, 2010 with reference to Section 192 & 192A of the ITO, 2001 is the root of which the intelligence and investigation-IR can proceed only.

17. It has settled that Section 192 & 192A of the ITO, 2001 were added in the Schedule-I of the AMLA, 2010 for the first time vide SRO No.425(I)/2016, dated 14.05.2016 to the following effect:-

> ***[Section XIIA The Income Tax Ordinance, 2001***
>
> *192.* ***Prosecution for false statement in verification*** *– where tax sought to be evaded is* ***ten million rupees or more***
>
> *192A.* ***Prosecution for concealment of income*** *– where tax sought to be evaded is* ***ten million rupees or more***

These two specialized crimes have been enlisted in the Schedule-I with reference to Section 2(XXVI) that are predicate offences.

18. The term reasonable believes or reasonably ground for believing is to be considered in terms of judgment rendered by the Supreme Court of

Pakistan reported as ***PLD 1952 Federal Court 19 (Moulvi Fazul-Qader Choudhury v. Crown)***, whereby it was held that:-

> *A distinction between the expressions 'reasonable grounds for believing' and 'reasonable suspicion' and interpreted the expression. It has held that a certain amount of suspicion is caused by the conduct of a person but the word "believe" is a much stronger word and, moreover, it would require that the belief must be a reasonable one.*

In the case titled ***PLD 1968 SC 349 (Ch. Abdul Malik vs. The State)*** the Supreme Court of Pakistan has explained the expression as follows:

> *"Reasonable grounds" is an expression which connotes that the grounds be such as would appeal to a reasonable man for connecting the accused with the crime with which he is charged, "grounds" being a word of higher import than "suspicion". However, strong a suspicion may be it would not take the place of reasonable grounds. Grounds will have to be tested by reason for their acceptance or rejection. The reasonableness of the grounds has to be shown by the prosecution by displaying its cards to the Court, as it may possess or is expecting to possess as demonstrating evidence available in the case both direct and circumstantial."*

Supreme Court of Pakistan in another case reported as ***1995 SCMR 1249 (Chaudhry Shujat Husain vs. The State)*** has observed and held as follows:

> *"The term "reason to believe" can be classified at a higher padestal than mere suspicion and allegation but not equivalent to prove evidence. Even the strongest suspicion cannot transform in "reason to believe." In Nisar Ahmad's case the criteria laid down seems to be that where some tangible evidence is available against the accused which, if left unrebutted, may lead to the inference of guilt."*

Division Bench of Lahore High Court, Lahore in the case reported as ***PLD 2021 Lahore 411 (Sheikh Shahid Jamal vs. National Accountability Bureau and Others)*** dilated upon the term reasonable grounds to believe held that:-

> 21. Halsbury's Laws of India (Volume 5(1) explains:
>
> > "*A person is said to have 'reason to believe' a thing, if he has sufficient cause to believe that thing but not otherwise.* The term `reason to believe' is not a matter of *purely subjective satisfaction. The belief*

> *must be of an honest and reasonable man. It must be held in good faith and this faith must not be merely pretense. There must be relevant material to sustain such a belief and must not be based on mere suspicion, gossip or rumour. 'Reason to believe' suggests that there must be prima facie material even if such material is not precise or absolutely certain without any possibility of doubt. However, the belief must be that of an honest and reasonable person based upon relevant materials and circumstances ... Suspicion or doubt may not be raised to the level of 'reason to believe'. Whether there was sufficient cause to have reason to believe is a question of fact."*

22. In AIR 1972 AP 318 (K. Munivelu v. The Government of India and others) the Andhra Pradesh High Court held that "reasons to believe' means coming to a final conclusion on the basis of the information that a thing, condition, statement or a fact exists."

26. The importance of distinguishing between "reasonable suspicion" and "reasonable grounds to believe" lies in the fact that they set different standards for judicial assessment of whether a legal threshold has been met in a particular case. In the former it suffices if the concerned person thinks that there is a possibility, which is, more than fanciful, that the relevant facts exists. ***Da Silva v. Regina, [2006] 4 All. ER 900.***

> *On the other hand, the standard applicable to "reasonable grounds to believe" has both an objective and subjective facet. "The person concerned must not only subjectively believe that the standard has been met, but the grounds must be objectively justifiable in the sense that an ordinary prudent person in his place would conclude that there were indeed reasonable grounds."* ***Ronald Percy Storrey v. Her Majesty the Queen, [1990] 1 S.C.R. 241.***

19. Hence, the Investigation Officer of the Intelligence & Investigation Directorate has to demonstrate *prima facie* on the basis of some incriminating material with certainty and without possibility of any doubt that the income or the property of taxpayer or non-taxpayer is based upon the parameters of proceeds of crime and the accused has concealed the said income in order to evade the tax or submitted false declaration, which is otherwise within the parameters of Sections 192 and 192A of the I.T.O, 2001, therefore, heavy onus has been shifted upon the I.O to justify the reasonable grounds in such type of cases of Anti-Money Laundering.

20. The scheme of law gave rise to a technical procedural requirement and extending powers to intelligence and investigation I&I-IR in terms of Section 24 of the AMLA, 2010 for investigation and appointment of I.Os but the primary requirement is report initiated by the I.O which is to be made basis of entire superstructure under AMLA, 2010.

21. In my humble estimation, I.O before preparing a report has to go through each and every aspect of tax record to collect such data from where the minimum requirement of offences u/s 192 & 192A of the ITO, 2001 is visibly seen. Section 192 of the ITO, 2001 deals with the prosecution for statement in verification of any return or in other documents furnished to the I.O under ITO, 2001 which is false and the person who is furnishing verification knows or believes to be false, therefore, sentence of three years imprisonment and fine has been provided. Similarly, Section 192A deals with the prosecution for concealment of income and such aspect is determined during the assessment of tax by the tax authorities in tax regime provided under ITO, 2001, concealment of income under Section 192A includes suppression of any income or amount chargeable to tax claiming of any deduction for any expenditure not actually incurred or any act referred to in sub-section (1) of Section 111 of ITO, 2001, un-explained income or assets defined as follow:-

> *111.* ***Unexplained income or assets.****- (1) Where-*
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> *(a) any amount is credited in a person's books of account;*
>
> *(b) a person has made any investment or is the owner of any money or valuable article; [1][]*
>
> *(c) a person has incurred any expenditure 2[; or]*
>
> *[3][(d) any person has concealed income or furnished inaccurate particulars of income including-*

(i) the suppression of any production, sales or any amount chargeable to tax; or

(ii) the suppression of any item of receipt liable to tax in whole or in part,]

and the person offers no explanation about the nature and source of the amount credited or the investment, money, valuable article, or funds from which the expenditure was made [suppression of any production, sales, any amount chargeable to tax and of any item of receipt liable to tax] or the explanation offered by the person is not, in the Commissioner's opinion, satisfactory, the amount credited, value of the investment, money, value of the article, or amount of expenditure [suppressed amount of production, sales or any amount chargeable to tax or of any item of receipt liable to tax] shall be included in the person's income chargeable to tax under head "Income from [Other Sources"] to the extent it is not adequately explained

[Provided that where a taxpayer explains the nature and source of the amount credited or the investment made, money or valuable article owned or funds from which the expenditure was made, by way of agricultural income, such explanation shall be accepted to the extent of agricultural income worked back on the basis of agricultural income tax paid under the relevant provincial law.)

22. We look into the mode and manner in which prosecution has been initiated in such type of cases, it is necessary to highlight the following factors on the part of accused:-

i. the income tax record for the particular years i.e. return after 2016 onwards to be considered only;

ii. such tax record *prima-facie* reflects the inaccurate particulars and concealment of income or un-explained income or assets in which a person/accused is made in investigation or the

owner in main or valuable article, incurred any expenditure, suppression of any income, sales for any amount chargeable to tax;

iii. the person to whom charge has satisfactorily been explained, in the tax regime and commissioner has given an information that those suppressed concealed income, items, articles are liable to tax;

iv. all those details provided to the tax authorities in terms of tax return or any other document has been verified by the accused persons and those particular documents furnished in this regard are found to be false on the basis of verification report by the I.O.

23. The above referred requirements have to be appreciated by the I.O and he should start investigation in terms of Section 9 of AMLA, 2010 after the attachment by the Court in terms of Section 8 of AMLA, 2010. I.O was further required to sought permission from the court in terms of Section 9A of AMLA, 2010 to use such techniques including undercover operations, intercepting communications, assessing computer system and controlled deliver for investigation of offences of money laundering, associated predicate offences and financing of terrorism within a period of sixty days, therefore, on the first glance this court is of the view that in order to proceed in terms of offences u/s 192 & 192A ITO, 2001, which are basis of the offence charged in this case, the threshold requires two

separate satisfaction levels before proceeding in the trial for offence u/s 3 & 4 of the AMLA, 2010:-

i. firstly the income tax authorities were satisfied that assets were concealed or income remained un-explained for which the income tax authorities have initiated the proceedings under ITO, 2001 by exercising the powers in terms of Section 176 of ITO, 2001 where Commissioner may by notice in writing, require any person, whether or not liable for tax under this Ordinance to furnish the Commissioner or an authorized officer, any information relevant to any tax leviable;

ii. Similarly, the Commissioner may arrange a special audit panel to obtain any information, require production of any record, on which required information is stored and examined the premises or impound any account, document, etc. which is necessary for examination purposes and prosecution;

iii. The Commissioner may call for any record or document including books of accounts for the purpose of audit in terms of Section 177 of the ITO, 2001 and after completion of audit obtain taxpayer explanation on all the issues raised in the audit or audit observations, findings and proceed accordingly;

iv. All tax returns are to be treated as assessment order in terms of Section 120 of the ITO, 2001, which were furnished by any person having taxable income for that tax year subject to the amendment of assessment in terms of Section 122 of the ITO, 2001 where further explanation, opportunities and show cause notices have been envisaged before amending the assessment order if the same is erroneous or so far it is prejudicial to the interest of revenue on the basis of any definite information and such re-assessment or amendment

could not be conclusively settled unless the taxpayer has been provided an opportunity of being heard;

v. All the assessment orders or amendment in assessment is subject to revision u/s 120A, 120B, 124A the appeals to Commissioner in terms of Section 127 and appeal to the Appellate Tribunal Inland Revenue in terms of Section 131 of the ITO, 2001.

24. In the light of above parameters, it has clearly been established in the scheme of law that income tax regime shall be satisfied at-least to the extent of minimum requirement before proceeding against any person, who withholds the tax or conceals income or gives inaccurate information or false declaration and when this process has been thrashed out by the ITO, Commissioner Appeal and Appellate Tribunal Inland Revenue, the question of disputed facts stand resolved from all angles and these orders have disclosed the factors of concealment of income, inaccurate information, avoidance of leviable income by any person, tax evasion and submission of false document or proves providing false verification, if all or any of these factors were demonstrated, then the case in terms of Section 192 & 192A of ITO, 2001 has *prima-facie* been made out and those tax authorities should have disclosure to the person who was found involved but these factors are to be proceeded in terms of Section 192 & 192A of the ITO, 2001 failing which minimum requirement for gathering information for initiation of proceedings under AMLA, 2010 is not readily available to the I.O as those requirements have to be demonstrated in the report of investigation agency or I.O in terms of Sections 8 & 9 of AMLA, 2010.

25. Now adverting towards the second threshold which deals with the predicate offences in terms of Section 2(xxvi) of AMLA, 2010, every offence specified in Schedule-I of the Act is a "predicate offence" but the other requirements of Section 3 of offence of money laundering of AMLA, 2010 is also key factor to be considered if a person is charged for the offence u/s 3 of the AMLA, 2010 at-least it has to be demonstrated prima-facie before charging the person that he acquires, converts, possess, uses or transfers property, knowing or having reason to believe that such property is proceeds of crime and that person is involved in concealing and disguising the true nature, origin, location of those properties or he participates in, associates, conspires to commit, attempts to commit, aids, abets, facilitates in proceeds of crime then offence of money laundering come into existence. The predicate offence at one angle is a key factor in the offence of money laundering and the second factor is the proceeds of crime including the properties, economic benefits which has been generated directly or indirectly from the commission of predicate offence. Ordinarily, the examples given in proceeds of crime are with reference to narcotics or terrorism financing concept but in the present era this aspect has been changed from these two particular classes, therefore, prosecution is under obligation to at-least demonstrate that the properties, assets, money or amount which is visibly seen from the tax record in terms of ITO, 2001 was made out of other offence and those dirty money was required to conceal for its source, fake transaction, misrepresented, book keeping accounts, etc. then it becomes offence of money laundering.

26. Now adverting towards the question of onus to prove, at first the burden of proof regarding the scheduled offence (tax evasion in our case) is on the prosecution, the prosecution has to prove that the assessee has evaded the tax and deliberately hide his income/assets which are taxable. If the assessee fails to confer reasonable explanation and there is *prima facie* reasonable doubt that the unexplained money is proceeds of crime then the assessee is accused of money laundering and the onus shifts on the accused to prove that he/she is not involved in money laundering. No one can be directly or at first be accused of money laundering for having unexplained amount or banking transactions unless given a chance to explain the source of income under 176 (1)(b) of ITO 2001. In such situation the burden of proof lies on the accused. Reliance has been placed upon ***2023 PCrLJ 38 Islamabad (Muhammad Rafiq vs. DG FIA, Islamabad)***.

27. Above mentioned predicate offences of 192 and 192A (scheduled offences of the AMLA), all matters connected therewith or incidental thereto are exclusively triable by learned Special Judge (Customs, Taxation and Anti-Smuggling). The question of jurisdiction to try the matters of customs, taxation and anti-smuggling the jurisdiction rests with the Special Judge and not with the Sessions Judge. AMLA being the special law has overriding jurisdiction as defined under Section 39 of AMLA and Section 20 of AMLA under proviso (a) says that if the predicate offence is triable by any Court other than the Court of Session, the offence of money laundering and all matters connected therewith or incidental thereto shall be tried by the Court trying the predicate offence. Reliance has been placed upon ***2021 PCLJ 946 Lahore (Deputy Director Anti Money Laundering vs***

Special Judge) and ***2023 PCLJ 38 Islamabad (Muhammad Rafiq vs DG FIA, Islamabad)***.

28. After giving the opportunity to the assessee to give detailed explanation regarding the unaccounted and undeclared amount in his/her bank account and in the banking transaction, if the assessee couldn't dispense explanation and the I.O has reasonable apprehension that the money/amount is the proceeds of crime and has been generated from illicit means or from a criminal activity then the investigation under Section 9 AMLA 2010 will be commenced. An investigation mechanism has separately been settled in Section 9 of the Act, as to how and under what circumstances seizure of property could be made, and a prior notice is also required to be issued to the concerned person to indicate his source of income, earning or assets, out of which or by means of which he had acquired the property in question or any other relevant information required in such type of investigation.

29. As it has been clarified already that under AMLA 2010 the Special Court (Customs, Taxation and Anti-Smuggling) has the jurisdiction to try the matter of scheduled offences under Schedule-I of AMLA, 2010. By virtue of proviso (a) of Section 20 AMLA which says:-

> *Provided (a) where the predicate offence is tri-able by any court other than the Court of Session, the offence of money laundering and all matters connected therewith or incidental thereto shall be tried by the Court trying the predicate offence, and*

30. All the matters connected therewith or incidental thereto are exclusively tri-able by learned Special Judge (Customs, Taxation and Anti-

Smuggling). As per Section 20 (1) proviso (a) of the "AMLA" reproduced above, the learned Special Judge (Customs, Taxation and Anti-Smuggling) has exclusive jurisdiction to try the offences of the "AMLA" i.e. predicate offences (scheduled offences of the AMLA), relating to tax evasion, all matters connected therewith or incidental thereto as held in ***Deputy Director Anti Money Laundering case*** *Supra.*

31. There still exists a disconnect between Tax evasion and money laundering. There is no provision in ITO and AMLA that simultaneously declares any money, not accounted for or not considered by the assessee as taxable income, to be a laundered money. The accused has to prove first that the money is not proceeds of crime and they are not involved in any illicit criminal activity for making that money. As the money comes from a legitimate source but not on tax net and the assessee is not paying tax from that taxable income, it cannot be declared as laundered money. Unless the ingredients of money laundering are not fulfilled completely, the case of Section 3 of AMLA cannot be made out. As in ***2018 YLR 172 (Anwar Khan vs. State)*** Peshawar High Court has held that *simply possessing currency is not illegal unless it can be demonstrated that the money was obtained from illegal activities*. Moreover, in the case of ***2019 PCrLJ 1608 (Rafi Ullah vs. State)*** Lahore High Court held that the phrase ***"proceeds of crime"*** in Section 3 of the AMLA 2010 refers to money or property derived or obtained directly or indirectly as a result of criminal activity Therefore, to establish an offence under Section 3 of AMLA 2010, it must be shown that the money or property in question originates from the commission of a crime. If this cannot be proven, Section 3 does not apply.

32. In the recent judgment of the Apex Court ***PLD 2021 SC 1 (Justice Qazi Faez Isa vs The President of Pakistan and others)*** it is held that;

> *"It may be noticed from a reading of both Sections 2 and 3 that a necessary element of the offence of money laundering is the commission of a predicate offence. The execution of this offence gives birth to the proceeds of crime, the movement of which attracts the criminal conduct of money laundering. Therefore, without the commission of a predicate offence there can be no offence of money laundering. However, not every statutory violation is a predicate offence. AMLA recognizes this by setting out in its Schedule a list of statutory offences that constitute a predicate offence for the purposes of money laundering.*

33. If the properties/business etc. were acquired before inclusion of Sections 192 and 192A of the Income Tax Ordinance became predicate offences by virtue of their inclusion in Schedule-I of the Act then it does not come within the purview of the Directorate (I&I) for the reason that the Act has no retrospective operation. It is a generally accepted principle of constitutional law that there is no prohibition on the Parliament to make retrospective legislation particularly where such an intention is expressly or impliedly clear from the text of the statute. In legislation creating penal consequences in respect of actions that occurred in the past, however, an exception is created by Article 12 of the Constitution which deals with protection against retrospective punishment and states that no law shall authorize the punishment of a person for an act that was not punishable by law at the time of the act or for an offence by a penalty greater than, or of a kind different from. The penalty prescribed by law for that offence at the time the offence was committed. In case reported as ***PTD 2024 Lahore 517)***

(Abdul Saboor vs Federation of Pakistan etc.) it is held by the Lahore High Court that:-

> *It has already been stated that one of the purposes of the Act is to prevent money laundering and to attach/confiscate the properties generated from the proceeds of crime. The offence of money laundering, as noted above, is co-related with the proceeds of crime which has its genesis in the predicate offence. The commission of a predicate offence is a prerequisite for proceedings under the Act to commence before the court. In other words, the proceeds of crime can only materialize once a predicate offence is committed. The Act is a penal statute and, therefore, it can have no retrospective operation by virtue of Article 12 of the Constitution. Based on this, any proceedings commenced under the Act cannot sustain in respect of a transaction which crystallized prior to the introduction of Sections 192, 192A, 194 and 199 of the Income Tax Ordinance as predicate offences through amendment made in Schedule-I of the Act on 20.05.2016 the punishment prescribed for the offence under the Act does not relate to the commission of the predicate offence rather it is the offence of laundering that has been made punishable. As such, the date of the commission of the predicate offence is not material. The offence of money laundering that can be proceeded under the Act must be committed after the Act came into force or inclusion of the predicate offence in Schedule-I.*

Further asserted that transactions entered into prior to insertion of the offences under the Income Tax Ordinance in Schedule-I of the Act are protected by Article 12 of the Constitution has already been answered ***in affirmative by this Court***.

34. The scheme of law provided in I.T.O 2001 *viz-a-viz* Anti-Money Laundering Act, 2010 if placed in juxtaposition, it appears that the criminal prosecution under tax laws by virtue of part XI from Sections 191 to 200, the legislature has criminalized the tax evasion, making false or misleading

statements, non-compliance with notice of prosecution, offshore tax evasion, obstructing income tax authority for abatement and offences by companies and associations of persons. In order to prosecute any person under this Ordinance within the framework of I.T.O, 2001, I.T.O regime has to be activated at the first instance in order to find out the minimum threshold through assessment of tax. The role and character of an adjudicator in assessing the tax liability and of a special judge in convicting the tax evader are distinct and entail different sets of procedures and evidentiary standards. No doubt criminal and civil proceedings can co-exist and proceed side by side, in cases where the subject matter of both the proceedings is so closely interrelated, so that the outcome of the civil proceedings can have a material bearing on the criminal proceedings and in this regard, this Court has been guided with the principle settled in ***2014 PTD 1807 [Lahore High Court] (Taj International (Pvt.) Ltd. and others Vs. Federal Board of Revenue and others)***. *"A safer course to adopt is to stay the criminal proceedings till the finalization of the civil matter"*. Reliance is placed upon ***2010 SCMR 1835 (Akhlaq Hussain Kayani v. Zafar Iqbal Kiyani and others)***, ***PLD 1968 SC 281 (Muhammad Akbar v. The State and others.*** The judgment of *Taj International supra* has also discussed the criminalization concept in tax regime and rightly held that the prosecution should have been initiated on the basis of information and sufficient material, but on plain reading of the provisions of AMLA, 2006 read with I.T.O, 2001, whereby wide discretion has been extended to the inquiry/investigation Officer to proceed further after collection of certain record and material without waiting for decision

by the tax hierarchy without conclusion of assessment orders up to Income Tax Appellate Tribunal, which is the final adjudication authority to determine the factual aspect, therefore, the principle settled in Taj International supra, whereby Para-25, 26 and 27 of the said judgment are as under:-

> *25. As a conclusion, we once again reiterate that civil and criminal proceedings can run independently and simultaneously or otherwise. The purpose and objective of criminalizing tax fraud and tax evasion is retribution and deterrence which is achieved through punishment or fine or both. If the law, however, goes further and criminalizes recovery of tax in addition to retribution and deterrence, then tax assessment has to take place first under the provisions of the Act. In this background the term "shall be further liable" re-appearing several times in section 33 of the Act holds a chronological significance i.e., that criminal prosecution follows adjudication and assessment of tax under section 11 of the Act.*
>
> *26. Even if the criminal prosecution under the present scheme of the Act is initiated after assessment of tax under section 11 as discussed above, the constitutionality of hurriedly invoking section 37A on the basis of material evidence requires consideration. Material evidence must be credible and definite if it is to deprive a citizen of his constitutional protection and safeguards under Articles 4 (due process), 9 (human liberty), 10A (fair trial) and 14 (human dignity). Setting in motion of the criminal prosecution cannot be left in the hands of any officer of the Inland Revenue, especially when the said Officers are under an obligation to recover the tax and meet tax targets before the close of the financial year set by the FBR. The process of initiation of criminal prosecution must comply with the requirement of due process and fair trial. The material evidence collected under section 37A needs to be credible and can best pass the test of fair trial and due process if it is an outcome of an inquiry or investigation envisaged under the proviso to section 25(2) of the*

Act. The outcome of any such inquiry and investigation must be placed before an independent forum like the Directorate General (Intelligence and Investigation), Inland Revenue established under section 30A of the Act to first review the inquiry and investigation and the material evidence and then proceed under the law. Anything short of this process will not only lead to persecution of the tax payers, it will also make a mockery of the fundamental right of fair trial.

27. The other issue is the choice of opting for criminal proceedings against a particular taxpayer and letting go of the other. This poses a problem and amounts to vesting unstructured and unregulated power in the hands of the department, once again threatening the sanctity of fair trial. Any such unguided and uncontrolled exercise of power will not withstand the constitutional test of fairness and equality under Article 25 of the Constitution. A more wholesome, transparent and standardized system needs to be evolved by the FBR to avoid this unconstitutionality.

35. Conclusion for prosecuting tax evasion as money laundering:-

i. If person has not declared his taxable income fully or not on tax net and evading tax deliberately, firstly the Commissioner, under Section 176(1)(b) of ITO 2001, issues a notice requiring the person to explain the source of any unexplained or unaccounted money.

ii. The tax authority under tax regime provided in I.T.O, 2001 shall declare the accused *prima-facie* guilty of tax evasion or submission of false document, statement during the course of proceedings, charged for tax liability, which is the key requirement of Section 192 and 192A of ITO, 2001, where-after Inquiry/ Investigation under AMLA should be initiated on the recommendation of DG I&I-IR and subsequently the accused shall be prosecuted in accordance with law.

iii. The person/accused must provide satisfactory evidence that the money in question is not proceeds of crime but legitimate income that was not declared for taxation.

iv. If the accused fails to provide a satisfactory explanation, it leads to the suspicion of money laundering. The onus shifts on the accused to prove that the money is not laundered money or property involved is not proceeds of crime.

v. Upon failure to provide a satisfactory explanation, the investigation under Section 9 of AMLA is commenced. This involves determining if the unexplained funds are indeed proceeds of crime.

vi. A separate investigation has to be conducted by the investigating agency as defined in Section 2(xviii) of AMLA, 2010.

vii. Under AMLA, 2010, burden of proof relating to proceeds of crime involved in money laundering is on the accused, whereas the burden of proof in the scheduled offences is on the prosecution.

viii. Trials for offences of tax evasion and money laundering are conducted, with the Special Judge (Customs, Taxation, and Anti-Smuggling) having exclusive jurisdiction.

ix. If the accused is acquitted of the predicate offence, the money laundering charges may not hold, as established in various case laws.

36. I have gone through the impugned order passed by the trial court in terms of Section 265-K Cr.P.C. whereby respondents have been acquitted from the charge firstly on the ground that relevant amendment for inclusion of Section 192 & 192A was included/introduced through SRO

dated 20.05.2016 in the Schedule-I of the AMLA, 2010 as a predicate offence which is true and this court has already held that I.O under Investigation & Intelligence-IR is not authorized to proceed and submit any report for the purposes of prosecution on the basis of tax year 2014, 2015 and 2016 in Crl. Appeal No.21/2022, connected matter as there is no retrospective effect available to the tax authorities or investigation agency to proceed against any individual when an act was not an offence under the law and it was held in the above referred judgment that any act prior to 20.05.2016 or proceedings are nullity in the eyes of law and action taken in this regard is to be treated as violation of constitutional mandate.

37. The prosecution has alleged that accused have evaded the tax amounting to Rs.1,221,00,000/-, which is above the threshold u/s 192 & 192A of the ITO, 2001 but after the settlement of cut of date i.e. 20.05.2016 for inclusion of those offences under AMLA, 2010 the income tax calculated or considered by the I.O till 2016 is excluded out-rightly and threshold drops from required standard.

38. I have also gone through the testimony of I.O Muhammad Anwar/PW-18, who has provided the complete record to the trial court having 27 years long experience including the income tax department and I&I department who is well conversant with the income tax laws, rules and regulations including the legal aspect of Section 114, 120, 122 of the ITO, 2001 where self-assessment scheme was provided for income tax assesse. I.O acknowledges that the audit pertaining to tax year 2014 to 2017 has not been concluded and I.O has gathered the information from his personal sources, which were not explained in the report filed before the court. He

is also aware to the term with reference to the deemed assessment. I.O acknowledges that there are no conclusive findings or order passed in terms of Section 122 of the ITO, 2001 against the respondents/accused persons. I.O has not supported his case with any document where tax returns of the accused persons have been verified rather he based the information from his personal knowledge. The most astonishing factor acknowledged by the I.O/PW-18 is *"it is correct that in report u/s 173 Cr.P.C. I have not mentioned income tax evasion"*. PW-18 also confirmed that *"subject matter of instant case is pertaining to year 2014, 2015, 2016 and 2017"*, hence it has clearly been established that I.O/PW-18 has proceeded beyond the legal parameters settled under the law having no knowledge as to how and in which manner anti-money laundering offence has to be dealt.

39. I have also attended the proposition with reference to the evidence of PW-19 Suhail Abbas Deputy Director, I&I-IR Directorate Islamabad who acknowledges that I.O/PW-18 made a request for the tax record of respondents/accused for the tax years 2014 to 2017 Ex.PW-19/1 and all those documents were retrieved from the FBR online database IRIS by PW-19 from his official login, which were handed over to I.O/PW-18 but surprisingly PW-19 also acknowledged that he did not initiated the investigation against the accused persons nor written application was filed by PW-18 for provision of tax return and wealth statements of accused for the tax years 2014, 2015, 2016 and 2017. PW-19 admitted that *"it is correct that I have not appointed the I.O, nor delegated any power to I.O"*. Therefore, some new issues arise in this debate as to whether any person can obtain the tax record of any taxpayer under income tax law and what is the legal

position and powers of directorate of Intelligence & Investigation Inland Revenue in terms of Section 230 of ITO, 2001, which outline the working of Directorate General of I&I-IR consists of Director General, Additional Director General and many Directors, Additional Directors, Deputy Directors, Assistant Directors and such officers as the Board, may, by notification in the official Gazette appoint. In sub-section(2) of Section 230 of ITO, 2001 the Board may, by notification in the official Gazette, specify the functions, jurisdiction of the Directorate General and its officers and confer the powers of authorities specified in section 207 where Board has the authority to examine, supervise and oversee the functions and general administration under this law, therefore, at this stage, I have attended the SRO No.115(I)/2015 and SRO No.272(I)/2021 as to whether the legal requirement envisaged in the law has been satisfied or not?

40. By virtue of these two SROs, the powers have been delegated to different Officers of I&I Directorate, whereby in SRO 115(I)/2015 dated 09.02.2015, the powers and functions conferred in para-4 only refers the provisions other than Sections 192 and 192A of the I.T.O, 2001 and unless those specific powers have not been envisaged in SRO, no one is authorized to proceed further under those specific provisions or functions related to those provisions, especially in order to prosecute for false statement and verification or concealment of income or tax evasion.

41. I have attended the second SRO.272(1)/2021 dated 02.03.2021, whereby I&I-IR Directorate has been given wide powers with specific regional as well as complete jurisdiction in entire Pakistan, but this notification is also silent to the extent of powers contained in Sections 192

and 192A of the I.T.O, 2001, however, in para-1 of the said notification, Directorate General I&I Inland Revenue was given wide powers without referring to any specific provisions of law to identify, investigate and prosecute an accused of tax evasion provided in I.T.O 2001 and the rules made thereunder. Even he is authorized to prosecute the complaints of tax evasion or to prosecute on the basis of information shared by the other agencies. If this S.R.O is considered to be applicable in this case, even then D.G I&I Inland Revenue is not permitted to delegate its authority in any manner and as such the evidence of PW-18 and PW-19 is silent to that effect, therefore, in future if a case of tax evasion is required to be investigated in terms of Section 192 and 192A of the I.T.O, 2001. The following minimum requirement has to be demonstrated:-

i. *The tax authorities under I.T.O shall determine the tax evasion as well as false statement and verification on the basis of tax return or other documents furnished by any person in the proceedings besides the assessment of tax liabilities.*
ii. *Subject to the prima facie findings of I.T.O, Commissioner Appeals or ATIR with reference to tax evasion and false verification, matter shall further proceeded under AMLA if fulfills the other requirements.*
iii. *Director General I&I Inland Revenue shall initiate the prosecution under S.R.O himself otherwise, S.R.O would require amendment for delegation of powers to any other officer.*
iv. *Similarly, Sections 191 to 200 of ITO, 2001 are offences and Section 201 of the Ordinance, empowers the tax authorities to prosecute any person who has committed any offence under this Ordinance.*

42. At least this court is not in agreement with the mode and manner of initial order of attachment passed by the trial court without considering the details and application of law in this particular case rather the court has mechanically processed the case on the so called report of I.O without adverting to the facts that tax authorities have not yet concluded any of the question in this case, neither threshold of *prima-facie* rupees ten million unpaid tax is visibly seen. This aspect was further appreciated with reference to the respondent/Said Jan Afridi, the last order placed on record by respondents' counsel where Commissioner Appeal has annulled the amendment proceedings conducted by the assessing officer by declaring the same beyond his jurisdiction and all the additions made u/s 111(1)(b) of the Ordinance are also deleted, such aspect leave nothing in favour of investigation officer as well as the court to proceed and exercise its jurisdiction under AMLA, 2010.

43. The order impugned before this Court has been passed in terms of Section 265-K Cr.P.C. and as such there is no cavil to the proposition that powers u/s 265-K Cr.P.C. could be exercised at any stage of trial or proceedings in terms of judgments reported as ***1993 SCMR 523 (State vs. Ashiq Ali Bhutto), PLD 1997 SC 275 (Muhammad Khalid Mukhtar vs. The State)***. Even otherwise, when court comes to the conclusion at initial stage or middle stage of the proceedings or at the end of evidence that the charge is groundless or there is no probability of accused being convicted of any offence, even prior to the framing of charge in this eventuality the court has to pass the order by appreciating the concept of groundless charge in terms of ***1998 SCMR 1840 (Zahoor ud Din vs. Khushi***

Muhammad), PLD 2009 SC 102 (Ajmeel Khan vs. Abdur Rahim). Even *suo-moto* powers could be exercised. This provision has a special significance in the Cr.P.C. but it is subject to satisfaction of the court on the basis of available record or evidence that further proceedings in the trial may be a futile exercise and there is no probability of conviction visibly seen which is apparent in this case also where the primary requirement of charge was not fulfilled, even powers to investigate was not available neither I.O is competent to investigate the matter in accordance with the required standard and at last the income tax authorities have not yet declared the respondents guilty of any charge in terms of Section 192 & 192A of the ITO, 2001, therefore, entire superstructure made by the prosecution crumbles down and trial court has rightly acquitted the respondents. Hence, instant appeal is hereby ***dismissed***.

(MOHSIN AKHTAR KAYANI)
JUDGE

Announced in open Court on _____

JUDGE

Approved for Reporting

Zahid