JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

WRIT PETITION NO. 3901/2023

JADEED FEEDS INDUSTRIES (Private) Limited

Vs

COMMISSIONER INLAND REVENUE ISLAMABAD ETC

Petitioner by	**:**	**Hafiz Muhammad Idris, Advocate.**
Respondents by	**:**	**Mr. Osama Shahid, Advocate for the Respondents No.1 to 3.**
Date of hearing	**:**	**27.02.2025**

MUHAMMAD AZAM KHAN, J.

1. The Petitioner [Jadeed Feeds Industries (Private) Limited], has filed the instant Writ Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 **("Constitution")** challenging therein the Notices dated 26.10.2023 and 15.11.2023 **("Impugned Notices")** issued by the Commissioner Inland Revenue, Zone-I, Large Taxpayers' Office **("LTO")** Islamabad **("Respondent No. 1")** and the Additional Commissioner Inland Revenue, Zone-I, Range-II, LTO, Islamabad **("Respondent No. 2")**.

2. The brief facts giving rise to the filing of the instant Writ Petition are that the Petitioner in this case is a Limited Company engaged in manufacturing of Poultry Feeds. The Respondent No. 1 selected the case of the Petitioner under Section 177(1) of the Income Tax Ordinance, 2001 **("Ordinance of 2001")** vide the Impugned Notice dated 26.10.2023 whereas, vide the Impugned Notice dated 15.11.2023, the Petitioner was intimated regarding audit proceedings under Section 177(1) of the Ordinance of 2001 fixed for 24.11.2023. Being aggrieved of the Impugned Notices the Petitioner has filed the instant Writ Petition.

3. The learned counsel for the Petitioner argued that the Impugned Notices issued by the Respondents Nos. 1 & 2 and proceedings initiated by the Respondent No. 2, are illegal and against the provisions of law; that the selection of case for audit and initiation of proceedings is illegal, without lawful authority, without jurisdiction, discriminatory, *ultra vires* of the law and the Constitution and also against the principles of natural justice; that the selection of case for audit and

initiation of proceedings are against Articles 4, 8, 10A, 18, 23, 25 and 77 of the Constitution; that the audit selection under Section 177(1) of Ordinance of 2001 by Respondent No. 1 is in clear violation of Clause 105A, Part IV of Second Schedule to Ordinance of 2001; that the provisions of Section 177 and 214C of the Ordinance of 2001are not applicable on the Petitioner in the light of Clause 105A of Part IV of Second Schedule to Ordinance, 2001 since the business affairs for the tax year 2018 of the Petitioner has already been audited under Section 177(1) of the Ordinance of 2001; that the audit selection by Respondent No. 1 for the tax year 2022 under Section 177 of the Ordinance of 2001 without prior approval of Board is in clear violation of Clause 105A, Part IV of Second Schedule to the Ordinance of 2001 and void *ab-initio*; that the selection of the Petitioner's case under Section 177(1) of the Ordinance of 2001 by Respondent No. 1 on 26.10.2023 is illegal, without lawful jurisdiction and void *ab-initio*. Lastly, the learned counsel prayed for declaring the selection of audit under Section 177(1) of Ordinance of 2001 for the tax year 2022 by Respondent No. 1 as illegal and without lawful jurisdiction, against the provisions of law, in violation of Clause 105A, Part IV of Second Schedule to the Ordinance of 2001, and audit proceedings initiated by Respondent No.2 have no legal footing.

4. On the other hand, the learned counsel on behalf of the Respondents Nos. 1 to 3 strongly resisted the version of the Petitioner; that the Petitioner's audit was for the tax year 2018 and no matter that the same audit completed in the year 2022 is immaterial and the newly added provision under Section 105A in the Ordinance will not be beneficial to the Petitioner; 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 Notices are not violative of law and are based on sound legal reasoning, which was earlier furnished to the Petitioner prior to their audit selection; that the impugned notices have 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 Tax Year 2023; that the Petitioner's audit selection for the Tax Year 2022 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 Tax Year 2022.

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 2022, 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 2018, which culminated in the tax year 2022. Thus, according to the version of the Petitioner, given the new amendment, the audit of the tax year 2022 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 case of the Petitioner is selected for audit under Section 177 of the Ordinance of 2001 for the tax year 2018 through the Impugned Notice. The Petitioner responded to the Impugned Notice vide its response dated 01.02.2022 and Respondent No. 2 vide its Letter dated 10.02.2022 rejected the contentions of the Petitioner vis-à-vis maintainability of the Impugned Notice and directed the Petitioner to participate in the audit proceedings. Subsequently, vide Notice dated 03.03.2022, the Assistant Commissioner Inland Revenue called for the record of the Petitioner pursuant to the Impugned Notice. Subsequently, the National Assembly passed the Finance Act, 2022 wherein Clause 105A was inserted in the Schedule, Part-IV.

9. 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."*

10. The Petitioner's case is governed by the recent amendment to the Ordinance of 2001, which introduced Section 105A. This section stipulates that if a taxpayer's audit has been conducted for the preceding four years, any subsequent audit within that period requires specific permission from the Board. In the present case, no such permission was sought from the Board, and the Petitioner's audit for the year 2018 has already been completed. Furthermore, the Impugned Notices were issued to the Petitioner after 01.07.2022, which is after the amendment of Section 105A in the Ordinance of 2001, hence, he is entitled to the benefit/concession provided under this amended Section.

11. For what has been discussed above, the instant Writ Petition is **allowed** and the Impugned Notices dated 26.10.2023 and 15.11.2023 issued to the Petitioner by Respondents No.1 & 2 are hereby set aside as being illegal and without any lawful authority.

(MUHAMMAD AZAM KHAN)
JUDGE

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

JUDGE

Sajid/--