JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

WRIT PETITION NO. 3961 of 2023

SADIQ POULTRY (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 [Sadiq Poultry (Private) 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 16.11.2023 **("Impugned Notice")** issued by the Commissioner (Audit-II) Inland Revenue, Zone-I, Large Taxpayers Office, Islamabad **("Respondent No. 1")**.

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 business. The Respondent No. 1 selected the case of the Petitioner under Section 177(1) of the Income Tax Ordinance, 2001 **("Ordinance of 2001")** vide Notice bearing Document No.100000170659961 dated 16.11.2023. Vide notice bearing No.100000171025627 dated 17.11.2023, the Petitioner was intimated regarding audit proceedings under Section 177(1) of the Ordinance of 2001 fixed for 1.12.2023. 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 issued by the Respondent No.1 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 2001 are 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 2014 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 2018 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 16.11.2023 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 2018 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 argued that the instant Petition is liable to be dismissed, since the Petitioner's reliance on Clause 105A, Part IV of 2nd Schedule to the Ordinance of 2001 is entirely misconceived; that Clause 105A was introduced vide the Finance Act, 2022 in order to protect the taxpayer from frequent and excessive audit selection, whereas, in the instant case, the Petitioner currently has been selected for audit for the tax year 2018 vide the Impugned Notice (tax year 2024); that the Petitioner was selected for audit for the tax year 2014 on 12.04.2016 (tax year 2016); that it is evident that the Petitioner has not been selected for audit in the preceding four years and the exemption provided under Clause 105A is not applicable to the Petitioner; that bare perusal of Clause 105A makes it abundantly clear that the phrase *"...tax affairs have been audited in any of the preceding four tax years..."* contained in Clause 105A refers to 'selection' of taxpayer for audit, and not to the tax year subject to audit or the date of conclusion of audit; that keeping in view the intent and purpose of Clause 105A, reading the said phrase to mean anything other than 'selection' for audit would lead to absurd and anomalous outcomes which would defeat the very purpose of the provision; that by way of illustration, it may

be noted that if the exemption from audit proceedings is computed from the date of 'conclusion' of audit, it would lead to a scenario where the department would be free to simultaneously initiate separate audit proceedings for multiple tax years, and conclude all of them simultaneously to avoid being hit by the limitation of Clause 105A; that if exemption is computed based on the tax year subject to audit proceedings, it would lead to an outcome where the taxpayer would be exempted from audit for specified and identifiable tax years, resulting into a blanket exemption from accountability, which intent cannot be attributed to the legislature in the absence of express words to this effect and such an interpretation is certainly going to undermine the element of trust upon which the universal self-assessment scheme of the Ordinance of 2001 is based; that to construe Clause 105A in any manner other than referring to 'selection for audit' would result in the bizarre outcome that the tax department could *never* audit the petitioner's return for the tax year 2018; that the second proviso to Section 177(1) places a limitation of six years to conduct audit, if the construction proposed by the Petitioner is adopted, the tax department would *ipso facto* be time barred from auditing the Petitioner's returns for the tax year 2018; that Clause 105A was enacted to protect the taxpayers from frequent selection of audits, to interpret it in the proposed manner would defeat revenue machinery and allow the Petitioner an unprecedented and unjust accountability break, which would be an unreasonable expansion of the legislature's intentions; and that it is a fundamental rule of construction of fiscal statutes that provisions pertaining to the machinery of assessment and collection of tax ought not to be subjected to rigorous construction, but should be interpreted in a way that makes the machinery workable. The learned counsel has relied on the cases of Indian Jurisdiction cited as *United Provinces Electric Supply Company Limited (In liquidation) versus Commissioner of Income Tax,* 204 ITR 794; *Tity Thomas And Ors. versus Tax Recovery Officer and Anr*, 207 ITR 1072; *Kerala State Industrial Development Corporation Limited versus Commissioner of Income-Tax,* 246 ITR 330 and *Jorawar Singh Baid versus Assistant Commissioner of Income Tax,* 198 ITR 47. The learned counsel further submitted that in any event, the answering Respondents have initiated the present audit proceedings under Section 177 of the Ordinance of 2001 strictly in accordance with law and following the extensive precedents developed by the superior Courts of the country; that it is a settled principle of law that selection for audit is not an adverse order prejudicial to the assessment order under Section 120 of the Ordinance of

2001, however, tax authorities are required to provide notice of their intention to conduct audit, provide detailed reasons for their decision, and to define the scope of audit; that the Respondents have satisfied all requisite criteria and have conducted themselves strictly in accordance with law and vide the Impugned Notice the Petitioner was duly intimated about audit selection and was provided detailed reasons for such selection. Finally, 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 in the tax year 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 provisions related 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/--