JUDGMENT SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Writ Petition No.3538 of 2024

M/s Syntronics Limited
Vs.
The Federation of Pakistan, through Secretary Finance & Economic Affairs, Islamabad and others

Date of hearing : 03.09.2026
Petitioner by : Mr. Qazi Isaac Ali, Advocate.
Respondent No.1 & 2 by : Ms. Azra Batool Kazmi, AAG.
Respondents No.3 to 5 by : Chudhary Imtiaz Ahmed, Advocate.

MUHAMMAD ASIF, J.- Through the instant writ petition, the petitioner has invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 ("**the Constitution**"), seeking the following relief:

> *"Considering the above submission, it is, therefore, respectfully prayed that on acceptance of this Petition, this Honorable Court may please to:*
>
> *i. DECLARE that Impugned Notices issued by Respondent-3 are mala fide and abuse of process of law, thus without lawful cause and authority, hence, of no legal effect.*
>
> *ii. DECLARE that impugned Notices are mala fide, to upset and suppress the pending refund claim without lawful authority, thus, of no legal effect;*
>
> *iii. DIRECT the Respondent to proceed with Refund claim of the Petitioner without any further delay.*
>
> *Interim Relief:*
>
> *iv. In view of all the ingredients requisite for interim relief, it is further prayed that during the pendency of the main Petition, the operation of the Impugned Notice, inter alia, and any other if issued thereafter in pursuance thereof any order pass please be suspended and the Respondents be*

For Read Only

restrained to proceed further in the matter in any manner whatsoever.

v. Any other relief appropriate in the circumstances but not specifically asked for may please also be granted to the Petitioner."

2. The brief facts giving rise to the instant petition are that the petitioner is a public limited company registered with the Large Taxpayers Office (**LTO**), Islamabad under the Income Tax Ordinance, 2001 ("**Ordinance, 2001**") and the Sales Tax Act, 1990 ("**Act, 1990**"), and derives income from its manufacturing unit of environmentally friendly, degradable and recyclable polypropylene woven sacks situated at Industrial Estate, Hattar, Haripur. The petitioner filed its income tax return for Tax Year 2022 within the prescribed period and contends that, in the absence of any notice under Section 120(2A) or (3) of the Ordinance, 2001 within the period prescribed under Section 120(6), the return stood deemed to be an assessment order under Section 120(1)(b). It is further contended that the petitioner has regularly complied with its tax obligations, maintained audited accounts and filed its returns in accordance with law. The petitioner claims to have outstanding refund claims pertaining to various tax years and alleges that, instead of processing the same, the respondents issued the impugned audit notice bearing Bar Code No.100000213814284 dated 11.10.2024 under Section 177(1) of the Ordinance, 2001, whereby its case was selected for audit for Tax Year 2022. According to the petitioner, the grounds stated in the notice are vague and amount to a fishing and roving exercise intended to create an artificial tax liability and frustrate its pending refund claims. The petitioner further alleges that the respondents have previously raised demands and issued notices in respect of earlier tax years, many of which were ultimately decided in its favour by the appellate authorities, and that despite repeated representations and directions of the Federal Tax Ombudsman, substantial refund amounts remain outstanding. It is, therefore, contended that the impugned audit proceedings are mala fide, arbitrary and contrary to the scheme of self-assessment embodied

For Read Only

in Section 120 of the Ordinance, 2001. The petitioner further contends that the respondents could not have selected its case for audit under Section 177 without first confronting it with specific and tangible reasons and affording an opportunity of hearing. Reliance has been placed upon the judgment reported as 2012 PTD 693 to contend that the power of audit cannot be exercised mechanically or arbitrarily. According to the petitioner, the impugned audit notice undermines the statutory scheme of self-assessment and has been issued with the ulterior object of creating a demand and delaying legitimate refund claims. It is consequently asserted that the respondents have acted beyond the scope of their statutory authority and in violation of the principles of fairness and due process, leaving the petitioner with no adequate and efficacious remedy except to invoke the constitutional jurisdiction of this Court.

3. Learned counsel for the petitioner contended that the impugned audit notice issued under Section 177(1) of the Income Tax Ordinance, 2001 is mala fide, arbitrary and without lawful justification, as the reasons recorded therein do not satisfy the statutory requirements for selection of a taxpayer for audit. According to him, the notice merely seeks verification of entries and alleged discrepancies already examined by the department, which amounts to a roving and fishing inquiry and is contrary to the self-assessment scheme embodied in Section 120 of the Ordinance. He submitted that the petitioner's return for Tax Year 2022 had attained the status of a deemed assessment and that the matters now sought to be examined had already been considered in proceedings under Section 122(5A), which culminated without any adverse finding. Learned counsel further contended that the exercise of power under Section 177 must be founded upon reasonable, definite and tangible grounds and cannot be based upon mere suspicion, conjecture or an unguided discretion of the Commissioner. He relied upon the judgments reported as 2016 PTD 1484, 2018 PTD 821, 2018 PTD 208 and W.P. No.272 of 2021 (IHC), besides other authorities, to contend that the power of audit is required

For Read Only

to be exercised fairly, transparently and for the purpose for which it has been conferred. He submitted that the impugned notice does not disclose any concrete basis warranting audit and, therefore, fails the test of reasonableness. It was further argued that the timing of the audit proceedings, coupled with the petitioner's long-standing refund claims and its complaints before the Federal Tax Ombudsman, demonstrates that the impugned action was retaliatory and intended to delay or frustrate payment of legitimate refunds. Learned counsel submitted that the petitioner had previously challenged similar departmental actions, obtained favorable orders from the appellate authorities and the Federal Tax Ombudsman, yet the respondents continued to delay the refunds and subsequently initiated the impugned audit proceedings. Such conduct, according to him, establishes mala fide and abuse of statutory power. Learned counsel also contended that the respondents had already confronted the petitioner with alleged discrepancies relating to imports, plant and machinery, depreciation and business expenses in earlier proceedings and the petitioner had furnished the requisite explanations and reconciliations. Reopening the same matters through audit proceedings, without disclosing any fresh or definite material, was argued to be legally impermissible and contrary to the principle that what cannot be done directly cannot be done indirectly. It was further submitted that the Commissioner was required to record and disclose proper reasons for calling the petitioner's record and to afford it a meaningful opportunity of hearing. Reliance was placed upon Kohinoor Sugar Mills v. Federation of Pakistan (2018 PTD 821) and 2018 PTD 208, besides 2010 SCMR 511 and 2016 PTD 832, to contend that public authorities are bound to act fairly and pass speaking orders based on cogent reasons. According to learned counsel, the impugned proceedings lack the requisite reasons and procedural safeguards and are, therefore, liable to be struck down. Finally, learned counsel submitted that the impugned audit notice has caused an actionable injury to the petitioner by exposing it to the possibility of unnecessary tax demands and further delaying its substantial refund claims. He maintained that the respondents have acted beyond the scope of Section

For Read Only

177, in disregard of the statutory scheme of self-assessment and in an arbitrary and oppressive manner. He, therefore, prayed that the impugned notice and consequential proceedings be declared without lawful authority and set aside.

4. Conversely, learned Assistant Attorney General appearing on behalf of the respondents No.1 and 2 and learned counsel for respondents No.3 to 5 strongly opposed the petition and submitted that the impugned notice dated 11.10.2024 was lawfully issued under Section 177(1) read with Section 177(2) of the Income Tax Ordinance, 2001, requiring production of the record, documents and books of accounts for Tax Year 2022 on the basis of specific discrepancies noticed in the petitioner's return. It was contended that the notice contains ten distinct grounds relating, inter alia, to purchases, withholding tax, imported raw material, salaries, expenses, markup, plant and machinery, trade payables, investments and exchange loss, which provide sufficient basis for selection of the petitioner's case for audit. Learned counsel further submitted that the petitioner's earlier proceedings under Sections 122(5A) and 122(9) of the Ordinance concerned different issues and culminated in an order dated 21.05.2024, wherein no adverse inference was drawn on certain aspects. The impugned audit proceedings, except for the issue of imports, relate to distinct matters and cannot, therefore, be termed mala fide or an abuse of authority. Reliance was placed upon the judgments in Fairdeal Exchange Company (Pvt.) Ltd. v. Federation of Pakistan (W.P. No.35 of 2022), Pakistan Tobacco Company Limited v. Federation of Pakistan (W.P. No.272 of 2021) and Sadiq Poultry Farms (Pvt.) Ltd. v. Commissioner Inland Revenue (W.P. No.2454 of 2021), to contend that where the audit-selection notice contains reasons in terms of Section 177(1), no separate opportunity of hearing or second speaking order is required before commencement of audit. It was argued that the principle laid down in 2016 PTD 1484 has subsequently been explained and distinguished by the later judgments of this Court. It was further contended that the constitutional petition is not maintainable against a

For Read Only

mere audit-selection notice, as no actionable injury or demand has yet been caused to the petitioner. Reliance was placed upon Commissioner of Income Tax, Sialkot v. Allah Din Steel and Rolling Mills (2018 SCMR 1328), wherein selection for audit was held not to constitute an actionable injury. Learned counsel submitted that the petitioner would have full opportunity to substantiate its declarations during audit and, in case of any adverse assessment, the statutory remedies of appeal and reference would remain available. It was also pointed out that the petitioner's refund claims are being dealt with independently under the relevant provisions of the Ordinance and that some claims have already been paid, while the remaining disputed claims are subject to the appropriate appellate remedies. Learned counsel denied the allegation of mala fide and submitted that no specific facts, motive or material had been pleaded to establish such allegation. According to him, the impugned notice was issued bona fide in the course of official duties, on the basis of discrepancies appearing from the available tax record, and had no nexus with the petitioner's refund claims or proceedings before the Federal Tax Ombudsman. The allegation that the audit was initiated as a counterblast or to frustrate refunds was described as hypothetical and unsupported by the record. It was further argued that the self-assessment scheme under Section 120 does not exclude the independent statutory power of audit under Section 177. Rather, both provisions form part of the same statutory scheme, whereby self-declarations are subject to verification and corrective measures where discrepancies are noticed. The respondents maintained that the audit-selection notice contains sufficient and reasonable grounds and that the Commissioner is empowered under Section 177(1)(a) to call for the complete books of accounts for purposes of audit. The mere fact that the petitioner had furnished explanations or reconciliations in earlier proceedings does not preclude examination of other matters during audit, particularly where additional documents are required to verify claims such as initial allowance, depreciation and additions to plant and machinery. Finally, learned counsel submitted that no prejudice would be caused to the petitioner by the audit proceedings, as it would be

For Read Only

afforded an opportunity to substantiate its declarations with documentary evidence. In the event of any adverse finding or amendment of assessment, the petitioner would have an adequate statutory right of appeal before the competent forums. The impugned notice, therefore, neither suffers from lack of jurisdiction nor arbitrariness or mala fide and the petitioner has prematurely invoked the constitutional jurisdiction of this Court to frustrate a lawful audit process. Reliance was also placed upon 2022 SCMR 92, 2013 PTD 1552, 2018 PTD 821, 2018 SCMR 1328, 1999 SCMR 1881, PLD 1993 SC 343, PLD 1992 SC 847 and 2025 SCMR 952. It was consequently prayed that the petition, being devoid of merit, be dismissed.

5. I have heard the learned counsel for the parties at considerable length and have gone through the available record with their able assistance. The controversy essentially revolves around the legality of the notice dated 11.10.2024 issued under Section 177(1) of the Income Tax Ordinance, 2001 ("**the Ordinance**"), whereby the petitioner was selected for audit for Tax Year 2022. The principal grievance of the petitioner is that the impugned notice has been issued without lawful justification, despite the fact that its return had attained the status of a deemed assessment under Section 120 of the Ordinance, and that the audit proceedings have been initiated with the ulterior motive of delaying or frustrating its refund claims. Conversely, the respondents maintain that the notice contains specific reasons arising from discrepancies noticed in the petitioner's return and that the power of audit under Section 177 is independent of the proceedings under Sections 120 and 122 of the Ordinance.

6. Before examining the rival submissions, it would be appropriate to appreciate the statutory scheme. The Ordinance proceeds on the basis of a self-assessment regime under which a return furnished by a taxpayer, subject to the conditions prescribed by law, is treated as an assessment order. This, however, does not render the return immune from scrutiny or verification. The same statutory framework confers upon the Commissioner powers to examine the

For Read Only

correctness of the declarations made by a taxpayer and, where the law so permits, to undertake audit and consequential proceedings. Thus, the provisions relating to self-assessment, amendment of assessment and audit operate in their respective fields and cannot be construed in isolation.

7. The petitioner's contention that the return for Tax Year 2022 became a deemed assessment under Section 120 is, therefore, not sufficient by itself to invalidate the subsequent exercise of power under Section 177. The Supreme Court in case titled *Commissioner of Inland Revenue, Sialkot and others v. Messrs Allah Din Steel and Rolling Mills and others* (**2018 SCMR 1328**) has recognized the statutory scheme of audit and observed that mere selection of a taxpayer for audit does not, by itself, constitute an actionable injury. The rationale is apparent: selection for audit is only the commencement of a process in which the taxpayer is provided opportunities to explain and substantiate the declarations made in the return, and an adverse consequence does not automatically follow from the mere fact of selection.

8. At the same time, the power conferred by Section 177 is undoubtedly a statutory power and, like every discretionary power, must be exercised within the parameters prescribed by law. The Commissioner cannot act arbitrarily, for extraneous considerations or on the basis of mere conjecture. The requirement of recording and communicating reasons for selection is itself a statutory safeguard against arbitrary exercise of discretion. The Islamabad High Court in a case titled *Fairdeal Exchange Company (Pvt.) Ltd. v. Federation of Pakistan through Ministry of Finance and 3 others* (**2023 PTD 919**), after examining the earlier judgments including *Pakistan Telecommunication Company Limited versus Federation of Pakistna (**2016 PTD 1484**), Kohinoor Sugar Mills versus Federation of Pakistan and others (**2018 PTD 821**), the Federal Board of Revenue and others versus Messrs ChenOne Stores Ltd (**2018 PTD 208**) and Pakistan Tobacco Company Limited versus Federation of Pakistan through Secretary, Ministry of Finance, Islamabad and 3 others (**2022 PTD 1574**)*, held that where an

For Read Only

audit-selection notice under Section 177 contains proper reasons, the law does not invariably require a further intermediate hearing and a second speaking order before commencement of audit. The Court nevertheless emphasized that the reasons communicated to the taxpayer must disclose the basis of selection and must arise from the relevant record.

9. In the present case, the impugned notice does not merely call upon the petitioner to produce its record in the abstract. It identifies specific areas requiring examination. The notice refers, inter alia, to purchases amounting to Rs.704,503,200/-, withholding tax relating to domestic purchases of raw material, stores and spares amounting to Rs.610,850,410/-, a discrepancy between the declared value of imported raw material and the figures available in the ITMS, salary expenditure of Rs.324,067,860/-, other direct and indirect expenses, markup on long-term and short-term finances, initial allowance and depreciation on additions to plant and machinery amounting to Rs.281,639,875/-, trade and other payables amounting to Rs.987,390,452/-, investments and profits relating to Chashma Sugar Mills Limited and an exchange loss of Rs.57,788,228/-. These are not vague or generalized grounds; rather, they identify particular heads of the return and corresponding amounts which the Department considers necessary to examine.

10. The argument of learned counsel for the petitioner that the impugned notice amounts to a fishing and roving inquiry, therefore, cannot be accepted in its broad form. An audit, by its very nature, involves examination of books of account, supporting documents, transactions, expenses, assets, liabilities and other relevant financial particulars to ascertain whether the declarations made in the return correctly represent the taxpayer's tax affairs. Where the Commissioner identifies particular discrepancies or areas requiring verification from the record, requiring production of books and supporting documents cannot, without more, be characterized as a fishing expedition.

For Read Only

11. The petitioner has also placed considerable reliance upon the earlier proceedings initiated under Sections 122(5A) and 122(9) of the Ordinance. The record shows that a notice dated 05.04.2023 was issued to the petitioner on certain grounds, including alleged suppression of imports, inflated closing stock, inflated opening stock, land purchase and super tax. The petitioner submitted its response and an order dated 21.05.2024 was thereafter passed, wherein, in respect of certain issues, no adverse inference was drawn against the taxpayer.

12. The mere fact that some matters had previously come under examination, however, does not mean that every subsequent statutory audit is rendered without jurisdiction. What is material is whether the issues sought to be examined in the audit are the same as those finally determined earlier and whether the Department seeks to reopen a concluded matter without any lawful basis. In the present case, except for the aspect concerning imported raw material, the respondents have demonstrated that the grounds mentioned in the impugned notice relate to distinct matters, including withholding obligations, expenses, markup, depreciation, trade payables, investments and exchange loss. The petitioner has not been able to demonstrate from the record that all ten grounds contained in the impugned notice had already been finally adjudicated in the earlier proceedings.

13. Even with regard to the discrepancy concerning imported raw material, the mere reference to a subject which had earlier been examined does not, in the circumstances of the present case, justify quashing the entire audit notice. If an issue has already been conclusively determined and the Department seeks to re-adjudicate precisely the same issue without any fresh material or lawful basis, the taxpayer may raise an appropriate objection before the competent authority. But such possibility does not render the entire audit selection invalid, particularly when the impugned notice contains several independent grounds which remain to be examined.

For Read Only

14. The contention that the petitioner was entitled to a separate opportunity of hearing before commencement of audit also does not find support from the prevailing jurisprudence of this Court. In *Fairdeal Exchange Company (Pvt.) Ltd. v. Federation of Pakistan through Ministry of Finance and 3 others* (**2023 PTD 919**), this Court considered the very controversy concerning the alleged requirement of a two-step process under Section 177 and held that where the audit-selection order is properly reasoned, a second step comprising a separate hearing and speaking order is not invariably required. Similar view was taken in *Sadiq Poultry Farms (Pvt.) Ltd. v. Commissioner Inland Revenue*, **W.P. No.2454 of 2021**, decided on 24.01.2024, wherein the Court considered the effect of the earlier judgment reported as *Pakistan Telecommunication Company Limited versus Federation of Pakistan (**2016 PTD 1484**)* and explained that the requirement of reasons is satisfied where the audit-selection notice itself communicates the grounds forming the basis of selection.

15. The judgment reported as *Pakistan Telecommunication Company Limited versus Federation of Pakistna (**2016 PTD 1484**)*, relied upon by learned counsel for the petitioner, therefore, does not advance the petitioner's case to the extent suggested. The subsequent judgments have considered the legal position and clarified that the essential safeguard is that the taxpayer must be informed of the reasons for selection and such reasons must bear nexus with the record. In the present case, the impugned notice sets out ten specific areas of examination and identifies the relevant amounts. It cannot, therefore, be said that the petitioner was kept unaware of the basis upon which its case was selected for audit.

16. The allegation of mala fide also requires careful consideration. It is settled that mala fide is a serious allegation which cannot be established merely by making an assertion. The person alleging mala fide must place before the Court material from which the improper motive or ulterior purpose can reasonably be inferred. In the present case, the petitioner principally relies upon the existence of its

For Read Only

refund claims and the timing of the impugned audit notice to infer that the audit was initiated to frustrate or delay those claims. Such circumstances, by themselves, are insufficient to establish mala fide, particularly when the notice independently records specific discrepancies requiring examination. Reliance in this regard is placed on case titled *Meera Shafi and others versus Federation of Pakistan and others* (**2022 PLD Lahore 773**).

17. The respondents have specifically denied any nexus between the audit proceedings and the petitioner's refund claims. They have further stated that the refund claims are governed by separate provisions and that, out of the refund applications referred to by the petitioner, several have already been processed, whereas the remaining claims have either been rejected or are subject to the statutory appellate process. The record placed before the Court, therefore, does not establish that the audit proceedings were instituted as a counterblast to the petitioner's refund claims. The allegation remains essentially inferential and unsupported by any direct material.

18. It is also significant that the petitioner seeks, through the present petition, not merely to challenge an adverse assessment but to prevent the audit from commencing. No demand has yet been raised against the petitioner pursuant to the impugned notice. The notice calls upon the petitioner to produce the relevant record so that the declarations made in its return may be examined. If the petitioner's declarations are found to be correct and adequately supported by documentary evidence, the audit may conclude without any adverse consequence. Conversely, if any discrepancy is established, the petitioner would have the opportunity, at the appropriate stage, to explain and substantiate its position in accordance with law.

19. The principle laid down by the Supreme Court in case titled *Commissioner of Inland Revenue, Sialkot and others v. Messrs Allah Din Steel and Rolling Mills and others* (**2018 SCMR 1328**) is particularly relevant in this regard. The Supreme Court recognized that the audit

For Read Only

process affords the taxpayer opportunities at different stages to support the return, explain discrepancies and defend its position before any adverse assessment is made. Consequently, the mere initiation of audit cannot ordinarily be equated with the determination of a tax liability.

20. The petitioner's argument that the impugned audit is likely to result in an artificial tax demand is, therefore, premature. Courts exercising constitutional jurisdiction do not ordinarily interfere at every intermediate stage of a statutory process merely because the ultimate outcome may potentially be adverse to a party. Interference may certainly be warranted where the authority acts without jurisdiction, exercises power for an extraneous purpose, violates an express statutory safeguard or proceeds on a basis which is ex facie unlawful. No such defect has been established in the present case.

21. The contention regarding the petitioner's refund claims also cannot furnish a ground for restraining a lawful audit. The two matters arise under distinct statutory provisions and involve different exercises of jurisdiction. The pendency or rejection of a refund claim does not, in itself, confer immunity upon a taxpayer from audit under Section 177. Likewise, the initiation of audit cannot by itself be treated as lawful justification for withholding a refund where the taxpayer is otherwise entitled to it. The Department is required to deal with each matter in accordance with the relevant statutory provisions. Thus, the audit proceedings and refund proceedings cannot be made interdependent merely on the basis of apprehension expressed by either side.

22. Learned counsel for the petitioner has further argued that the exercise of audit power interferes with the finality attached to the deemed assessment under Section 120. This contention also cannot be accepted in the manner advanced. The self-assessment mechanism facilitates filing and processing of returns; it does not dispense with the statutory power of the Revenue to verify the correctness of declarations through the mechanisms expressly provided by the Ordinance. The provisions of Section 120 and Section 177 must, therefore, be

For Read Only

harmoniously construed so that neither provision is rendered redundant. The existence of a deemed assessment does not, by itself, extinguish the independent statutory power of audit.

23. In the present case, the notice under Section 177 is not founded merely upon the petitioner's status as a taxpayer or upon an indiscriminate demand for production of the entire record. The notice identifies specific entries, amounts and areas of concern. Some of the matters require examination of supporting documents, books of account and reconciliations, which cannot reasonably be undertaken without access to the underlying record. For instance, the respondents have explained that the claim of initial allowance and depreciation in respect of additions to plant and machinery can only be verified after examining the relevant documents and determining whether the statutory conditions for such allowance have been fulfilled.

24. The objection that the Department has already examined certain explanations furnished by the petitioner also does not, by itself, defeat the audit. Audit is an exercise of verification and scrutiny, and the production of documents enables the competent authority to determine whether the declarations made in the return are supported by the underlying record. If the petitioner is able to substantiate the entries and satisfy the audit officer regarding the discrepancies identified in the notice, there would be no justification for drawing an adverse inference merely because an audit was undertaken.

25. As regards the maintainability of the petition, the respondents have relied upon case titled *Commissioner of Inland Revenue, Sialkot and others v. Messrs Allah Din Steel and Rolling Mills and others* (**2018 SCMR 1328**), wherein the Supreme Court held that mere selection for audit does not constitute an actionable injury. The present case, however, does not involve a challenge to an abstract or unexplained selection. The petitioner has challenged a notice which contains stated reasons. Nevertheless, the principle remains relevant because no demand or adverse assessment has yet been created against

For Read Only

the petitioner. The statutory process is still at the audit stage, and the petitioner has the opportunity to participate in the proceedings and defend its declarations.

26. It is equally important that the extraordinary jurisdiction of this Court is not intended to substitute itself for the statutory mechanism created under the fiscal law. Where the statute provides a complete mechanism for examination of the taxpayer's record, issuance of audit findings, opportunity of explanation, amendment of assessment, appeal before the competent appellate authority and further reference in accordance with law, constitutional intervention at an interlocutory stage requires a clear case of jurisdictional defect, mala fide or violation of a fundamental legal safeguard. The petitioner has not established any such exceptional circumstance.

27. The reliance placed by the petitioner upon the principle of an alternative remedy is also of no assistance. It is true that availability of an alternative remedy is not an absolute bar to the exercise of constitutional jurisdiction. However, where the impugned action is an initial step in a statutory process, where no final demand has been raised and where the taxpayer is afforded opportunities to defend its position during the proceedings, the Court must exercise restraint unless the action complained of is shown to be without jurisdiction or patently arbitrary. The present case does not fall within such an exceptional category.

28. The Court is also mindful that taxation authorities are entrusted with the statutory duty to ensure that tax liability is correctly determined and that declarations made under the self-assessment regime are not accepted as immune from lawful scrutiny. At the same time, such powers must be exercised fairly and strictly in accordance with law. The impugned notice, viewed in its entirety, satisfies this requirement. It identifies the areas requiring verification and the corresponding amounts; it does not disclose any extraneous

For Read Only

consideration; and the petitioner has not been deprived of any statutory opportunity to explain or substantiate its position.

29. The allegation that the impugned notice is intended to harass the petitioner is likewise not borne out from the record. The fact that the audit may require production of voluminous financial records does not, without more, amount to harassment. A taxpayer engaged in substantial commercial activity and claiming significant deductions, allowances, expenses and other financial adjustments is necessarily required to maintain and produce supporting documentation when lawfully called upon to do so. The extent of documentation required would depend upon the nature and scope of the audit.

30. The petitioner has also not demonstrated that the respondents acted under any personal, extraneous or collateral consideration. The notice appears to have been issued in the course of official functions and identifies discrepancies apparently emerging from the tax record. The allegation of mala fide, therefore, remains unsubstantiated. The mere fact that the petitioner has previously succeeded in certain tax proceedings or has pending refund-related grievances cannot, in the absence of further material, establish that the subsequent audit was actuated by an improper motive.

31. The reliance placed by the respondents upon the later jurisprudence of this Court is thus well-founded to the extent that it recognizes the independent nature of the Commissioner's power under Section 177 and the sufficiency of a properly reasoned audit-selection notice. The judgment in case titled *Fairdeal Exchange Company (Pvt.) Ltd. v. Federation of Pakistan through Ministry of Finance and 3 others* (**2023 PTD 919**) specifically recognized that the law does not invariably require a separate hearing between the audit-selection notice and the commencement of audit where the reasons for selection have already been properly recorded and communicated.

32. For the foregoing reasons, I am of the considered view that the impugned notice dated 11.10.2024 cannot be held to be without

For Read Only

lawful authority merely because the petitioner's return had attained the status of a deemed assessment under Section 120, nor can the audit be restrained merely on the basis of the petitioner's pending or previously entertained refund claims. The notice contains specific reasons which provide a rational basis for requiring examination of the petitioner's record. The allegation of mala fide has not been substantiated by any cogent material, while the apprehension of an eventual adverse demand is premature.

33. It is, however, clarified that nothing observed herein shall prejudice the petitioner's right to place before the audit authorities all relevant documents, reconciliations and explanations in respect of the issues identified in the impugned notice. Equally, the audit authorities shall confine the proceedings to the scope permissible under the Ordinance, consider the petitioner's explanations objectively and proceed strictly in accordance with law. Any adverse finding or consequential amendment of assessment shall be made only after observance of the procedural safeguards available to the petitioner under the Ordinance.

34. In view of the above discussion, the petitioner has failed to establish that the impugned notice dated 11.10.2024 is tainted with mala fide, issued without jurisdiction, or otherwise suffers from any legal infirmity warranting interference under Article 199 of the Constitution. The writ petition No.3538 of 2024 is, accordingly, found to be without merit and is **dismissed**.

35. Before parting with the matter, it is observed that dismissal of the present petition shall not be construed as an expression of opinion on the correctness or otherwise of any particular tax entry, refund claim, deduction, allowance or liability of the petitioner. All such matters shall be examined by the competent authorities strictly in accordance with the provisions of the Ordinance and after affording the petitioner the opportunity available to it under law. The interim relief, if

For Read Only

any, stands vacated. All the pending applications also stand disposed of accordingly. There shall, however, be no order as to costs.

(MUHAMMAD ASIF)
JUDGE

/MALIK KAKAR/

Approved for Reporting

For Read Only