JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

WRIT PETITION NO. 369 of 2025

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 Nos.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 Notice dated 21.10.2021 issued by the Commissioner (Audit-I) Inland Revenue, Large Taxpayer Office **("LTO")**, Islamabad **("Respondent No. 1")** and 01.11.2021 issued by the Assistant/Deputy Commissioner Inland Revenue (Audit-I), Unit III, Range-I, Large Taxpayers 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 bearing Document No.100000111050115 dated 21.10.2021. Vide Impugned Notice bearing No.100000112081677 dated 01.11.2021, the Petitioner was intimated regarding audit proceedings under Section 177(1) of the Ordinance of 2001 fixed for 15.11.2021 ("collectively referred to as **"Impugned Notices"**). Being aggrieved of the Impugned Notices the Petitioner has filed the instant Writ Petition.

3. The learned counsel for the Petitioner argued that after insertion of Clause 105A, Part IV of Second Schedule of the Income Tax Ordinance **("Clause 105A")** vide Finance Act, 2022, provisions of Sections 177 and 214C of the Ordinance of 2001 shall not apply to any person whose income tax affairs have been audited in

any of the four preceding tax years; that the Commissioner can only conduct audit proceedings under Section 177 of the Ordinance of 2001 after approval from the Board; that the Board issued Circular C.NO.4(21) IT-Budget/2022 on 21.7.2022 in which it elaborated that if tax affairs of taxpayers for the tax year 2017 have been finalized in the tax year 2022 then taxpayer can only be audited again after four tax years i.e. in tax year 2027; that this clarification of Board has been struck down by High Court of Sindh at Karachi in a recent judgment passed in Constitution Petition No.D-6280 of 2024 wherein the Honorable Court held that concession provided in Clause 105A pertains to tax year and it will apply to subsequent tax year in which audit proceedings are finalized (i.e. if audit of tax year 2017 is concluded in tax year 2022 then taxpayer's affairs cannot be audited for tax years 2018, 2019, 2020 & 2021) as contrary to the clarification of Board; that the Petitioner's business affairs for the tax year 2018 have already been audited under Section 177 of the Ordinance of 2001 and culminated into order under Section 122(4) of the Ordinance of 2001 hence, taxpayer's audit cannot be conducted for the tax years 2019, 2020, 2021 & 2022 in light of judgment of the Sindh High Court and provisions of Clause 105A, therefore, the selection for audit for the tax year 2020 is in violation to the provisions of Clause 105A, hence, the Impugned Notices must be struck down; that at the time of selection of case for audit under Section 177 of the Ordinance of 2001 by Respondent No. 1, Clause 105A, was not part of the Ordinance of 2001; that after insertion of Clause 105A vide Finance Act, 2022 and conclusion of audit of the tax year 2018 on 19.06.2023 as well as judgment of the Sindh High Court dated 20.01.2025, the provisions of Clause 105A became operative and audit selection for the tax year 2020 became illegal, void *ab-initio* and against the provisions of Clause 105A; 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 Clause 105A ; 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 audit 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 for the tax year 2020 is in clear violation of Clause 105A; that the provisions of Sections 177 and 214C of the Ordinance of 2001 are not applicable on the Petitioner in the light of Clause 105A 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 and the Petitioner is eligible to concession provided in Clause 105A; that the audit selection by Respondent No. 1 for the tax year 2020 under Section 177 of the Ordinance of 2001 without prior approval of Board is in clear violation of Clause 105A 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 submitted that the provisions of Clause 105A will have a retrospective effect due to its beneficiary nature. The learned counsel prayed for the declaration to the effect that:-

- Selection of audit under Section 177(1) of the Ordinance of 2001 for the tax year 2020 by Respondent No. 1 is illegal and without lawful jurisdiction, against the provisions of law, in violation of Clause 105A;
- Audit proceedings initiated by Respondent No. 2 have no legal footing;
- The concession provided in Clause 105A pertains to the four subsequent tax years from the tax year that has been audited; and
- The provisions of Clause 105A will be applicable retrospectively and will be operative for the tax years 2018 and 2020.

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 2023 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 2020 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 2020.

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 2020, 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 2023. Thus, according to the version of the Petitioner, given the new amendment, the audit of the tax year 2020 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 2020 (notwithstanding its completion in the year 2023) would be of the tax year 2020 and not of the tax year 2023 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 (2018 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.

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**. The Impugned Notices were issued to the Petitioner on 21.10.2021 & 01.11.2021, while the amendment of Section 105A in the Ordinance of 2001 was enacted with effect from 01.07.2022, hence, the Petitioner cannot benefit from the new

amendment. 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/--