JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

W.P. NO.2744 OF 2025

ZUBAIR FEEDS INDUSTRIES (PRIVATE) LIMITED

VS

FEDERATION OF PAKISTAN, ETC

Petitioner by : Hafiz Muhammad Idris, Advocate.

Respondents by: Hafiz Ahsan Khokhar, Advocate on behalf of FBR.
Dr. Khalid Malik, Director Law FBR.
Mr. Khaleeq Ullah Khan, Deputy Director Law.
Ms. Reema Masud, Commissioner Inland.

Date of hearing : 30.07.2025

MUHAMMAD AZAM KHAN, J.

1. Through the instant Writ Petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter referred to as the **"Constitution"**), Zubair Feeds Industries (Private) Limited ("**Petitioner**") has prayed as under:-

(i) To declare that the act of Respondent No. 4 of invoking Section 175C of the Income Tax Ordinance, 2001 is illegal, without lawful authority and without lawful jurisdiction.

(ii) To declare that the Department cannot invoke provisions of Section 175C of the Income Tax Ordinance, 2001 without confronting the Petitioner with the reasoning of tax fraud & tax evasion.

(iii) To declare that the provisions of Section 175C of the Income Tax Ordinance, 2001 cannot be invoked for such a long period of time i.e., ninety days.

2. The brief facts of the case, as stated in the memorandum of petition, are that the Petitioner is a private limited company engaged in the manufacturing and sale of poultry feed. The Additional Commissioner, Inland Revenue **("Respondent No. 4")**, issued Office Orders No. CCIR/LTO/2025/2322 dated 03.05.2025, and No. CCIR/LTO/2025/2366 dated 13.05.2025, pursuant to the instructions of the Commissioner Inland Revenue **("Respondent No. 3")**issued videletters No. CIR/Z1/2025/734 dated 03.05.2025, and No.

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CIR/ZoneI/2025/751 dated 12.05.2025, respectively. Through these orders, the provisions of Section 175C of the Income Tax Ordinance, 2001 (hereinafter referred to as the "**ITO, 2001**") were invoked, and officials were posted at the business premises of the Petitioner for a period of thirty (30) days.

3. The learned counsel for the Petitioner contends that the invocation of Section 175C of the ITO, 2001 by Respondent No. 4 is unlawful, without jurisdiction, and violative of Articles 4, 8, 10A, 18, 23, 25, and 77 of the Constitution of the Islamic Republic of Pakistan, 1973. It is argued that no reasons, grounds, or lawful objectives were provided, nor was the Petitioner confronted with any data or given an opportunity of being heard. As per Section 175C, only the Board or Respondent No. 2 is competent to invoke such power, making Respondent No. 4's action without lawful authority. The posting of personnel for ninety days is excessive and arbitrary, especially as prior monitoring was already conducted for sixty days. This extension, lacking justification, is contrary to settled law, including judgments reported as 2018 PTD 1559, 2007 PTD 2356, and 2004 PTD 1731, which emphasize that such discretionary powers must be exercised judiciously and only for a lawful, specific purpose. Counsel submits that failure to set aside the Impugned Office Orders will cause irreparable harm to the Petitioner's business and reputation.

4. The learned counsel for Respondents No. 1 to 4 contends that the writ petition is not maintainable under Article 199 of the Constitution, as the Petitioner has an adequate and efficacious alternate remedy under the ITO, 2001. It is well-settled that constitutional jurisdiction cannot be invoked where statutory remedies exist, as held in PLD 2018 SC 595 and 1999 SCMR 1279. The petition is also premature, as no final or adverse order has been passed, merely the posting of Inland Revenue Officers for monitoring under Section 175C, which neither authorizes coercive action nor infringes fundamental rights. Section 175C allows for non-intrusive observation of business activity without prior notice or hearing, as no adverse civil consequence arises from such monitoring. The provision is constitutional, narrowly tailored to prevent tax evasion, and does not violate Articles 18 or 25. The Petitioner's resistance to limited monitoring raises doubts about the *bona fides* of the petition. Reliance on 2018 PTD 1559 (regarding Section 40B) is misplaced, as Section 175C has been

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lawfully invoked by the Chief Commissioner, not by an unauthorized officer. Monitoring was for a specified, limited duration, as evidenced by the orders dated May 3, 2025, and subsequent extensions. No inquiry, investigation, or punitive action has been initiated. The purpose is simply to collect supply data to ensure accurate tax enforcement, particularly in light of the recent levy of FED on day-old chicks under the Finance Act, 2025. In view of the above, the petition is misconceived, premature, and liable to be dismissed.

5. I have heard learned counsel for the parties and perused the available record.

6. The Petitioner has called into question the validity of consecutive orders issued under Section 175C of the ITO, 2001 whereby officers of Inland Revenue have been posted at various business premises of the Petitioner in order to monitor for successive periods of thirty days, i.e., in consecutive 30-day blocks, extended back-to-back without reasons. The Petitioner states that this rolling regime amounts to open-ended surveillance, is arbitrary, and violates Articles 4, 10-A, 18, 23 and 24 of the Constitution. The Respondents, on the other hand, contend that the action is within the lawful competence of the tax authorities. Reliance has been placed upon the judgment "*Kamalia Sugar Mills Ltd. v. Federation of Pakistan*"**(2015 PTD 221)**, wherein the Lahore High Court upheld the posting of officers under Section 40B of the Sales Tax Act, 1990, holding that no prior notice or hearing is necessary, since the act of monitoring is not adverse in nature. It is argued that Section 175C of the ITO, 2001 is *pari materia* with Section 40B of the Sales Tax Act, 1990, therefore, the principle enunciated in *Kamalia Sugar Mills* (*Supra*) governs the present case. The Petitioner, on the other hand, has relied upon "*Commissioner Inland Revenue v. Pakistan Beverages Ltd.*"**(2018 SCMR 1544)** to urge that discretionary powers such as those conferred under Section 175C of the ITO, 2001 cannot be exercised arbitrarily or indefinitely, and that monitoring under such provision must necessarily be time-bound and justified by cogent reasons.

7. The first office order was issued on 03.05.2025, whereby officers were deputed at five hatcheries of the Petitioner for a period of thirty days. On 13.05.2025, another office order was issued for posting of officers at two mills of the Petitioner for thirty days. Subsequently, vide order dated 02.06.2025, the

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period of posting at the hatcheries was extended by a further thirty days. Once again, the same was extended for another thirty days vide office order dated 29.06.2025. The grievance of the Petitioner is that these back-to-back extensions have been made without affording any justification or reason, thereby, subjecting it to perpetual surveillance, which is neither contemplated by law nor sanctioned by constitutional guarantees.

8. Before delving into the legal intricacies, it is pertinent to mention herein that since Section 175C of the ITO, 2001 has been recently inserted and remains to be judicially interpreted, guidance may legitimately be drawn from Section 40B of the Sales Tax Act, 1990, which is *pari materia* in both language and purpose. For ready reference, Section 175C of the ITO, 2001 and Section 40B of the Sales Tax Act, 1990, are reproduced hereunder:-

> *"175C. Posting of officer of Inland Revenue. –Subject to such conditions and restrictions, as deemed fit to be imposed, the Board or the Chief Commissioner may post an officer of Inland Revenue or such other officials with any designation working under the control of the Board or the Chief Commissioner, to the business premises of any person or class of such persons, to monitor production, supply of goods or rendering of services and the stock of goods not sold at any time for determining tax payable under this Ordinance."*
>
> ***Amended Version:*** ***[40B. Posting of 6 [Inland Revenue] Officer.****– Subject to such conditions and restrictions, as deemed fit to impose, the [Board], may post Officer of [Inland Revenue] to the premises of registered person or class of such persons to monitor production, sale of taxable goods and the stock position.*
>
> ***Previous Version****: **40B.** Posting of Inland **Revenue Officer.---** Subject to such conditions and restrictions as deemed fit to impose, the Board, or Chief Commissioner may post Officer of Inland Revenue to the premises of registered person or class of such persons to monitor production, sale of taxable goods and the stock position.*

The doctrine of *pari materia* permits courts to interpret two provisions in harmony where they are couched in substantially similar terms, address the same issue, and seek to achieve a common object. Section 175C of the ITO, 2001, in essence, replicates the scheme of Section 40B by empowering the Board or Chief Commissioner to post officers of Inland Revenue at the business premises

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of a taxpayer to monitor production, supply of goods, rendering of services, and stock position. Given this substantive similarity, the judicial exposition rendered on Section 40B by the Superior Courts, particularly with regard to the scope of monitoring, the limitations on duration, the necessity of reasons, and the safeguards against arbitrariness, provides an authoritative framework for construing Section 175C properly. To disregard the interpretative principles settled in relation to Section 40B would risk conferring upon Section 175C an unchecked scope that the legislature itself may not have intended.

9. The question that arises is not whether the initial posting of officers under Section 175C of the ITO, 2001 was lawful, but whether the repeated extensions of thirty days each, without assigning reasons or disclosing material, can be sustained in law. It is true that Section 175C of the ITO, 2001 does not, in express terms, prescribe a limitation of time for such postings, however, it is equally well-settled that the law does not recognize unfettered and unbridled discretion. In *Pakistan Beverages* (*Supra*), the august Supreme Court of Pakistan has held that monitoring under Section 40B of the Sales Tax Act, 1990 cannot be indefinite; it must rather be for a defined period and for a lawful purpose contemplated by the statute. Once that purpose is achieved or exhausted, the monitoring must come to an end, and the authority cannot be left at large to extend the period in its unfettered discretion. The relevant portion is reproduced hereunder: -

> *"4. We have considered the matter. Section 40B confers a discretionary power on the authorities named therein, being the Board or the Chief Commissioner or (in terms of the specific situations of sales tax evasion or tax fraud) a Commissioner of Inland Revenue.* ***We begin by noting that it is well settled that the law recognizes no such thing as an unfettered discretion****.* ***All discretionary powers, especially that as conferred by statute, must be exercised in terms of well established principles of administrative law, which are of longstanding authority and have been developed, enunciated and articulated in many judgments of this Court****. There is no need to rehearse those principles here save only to note one aspect.* ***This is that a discretionary statutory power can only be exercised on a ground or to achieve an object or purpose that is lawfully within the contemplation of the statute****.* ***Now, as correctly noted by the High Court, the power under section 40B has been granted to "monitor" the "production, sale***

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> ***of taxable goods and stock positions" of a registered person or class of such persons, by posting Inland Revenue officers at the relevant premises.But the monitoring can only be for some object, ground or purpose that is legitimately and lawfully within the contemplation of the 1990 Act.*** *The proviso to the section itself identifies two such situations, namely sales tax evasion and tax fraud. Undoubtedly, there are others.* ***But the monitoring is not intended to be indefinite****.* ***Indeed, this is clear from the very fact that power conferred is discretionary; the monitoring has not been made mandatory****.* ***Once the purpose has been served or object achieved or the ground stands exhausted, the monitoring must come to an end****.* ***However, it cannot be left to the unfettered discretion of the Board, the Chief Commissioner or the Commissioner (as the case may be) to determine when the purpose has been served or object achieved****.* ***Any such conclusion would run against the grain of the core principles that regulate the exercise of discretionary power****.* ***It is for this reason that the High Court concluded, again correctly, that the exercise of the power conferred by section 40B is time bound in the sense that some timeframe or period must be given in any order made under the section****.* ***Of course, it will always be open to the authority exercising the power to reassess the situation at or near the conclusion of the period.If there are legitimate grounds for extension, then a further period may be granted****. And equally, it will be open to the concerned person to challenge any exercise of the statutory power or any extension in the period, in accordance with law. However, to contend, as was in effect done by learned counsel before us, that the period or timeframe is entirely at the discretion and will of the concerned authority, and that therefore any order made under the section need not contain any provision in this regard, is beyond the contemplation of law." (Emphasis added)*

10. Similarly, in "*Agha Steel Industries v. Federation of Pakistan*"**(2019 PTD 2119)**, the Sindh High Court whilst relying on *Pakistan Beverages* (*Supra*) upheld that monitoring of business premises cannot be perpetual or indefinite, as the law recognizes no concept of unfettered discretion. All statutory powers must be exercised within lawful limits, guided by established principles of administrative law. Accordingly, the Court affirmed that discretion under Section 40B must be exercised for a reasonable and time-bound period to achieve the legitimate object of the statute. The Sindh High Court stated the following:-

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"26. An objection was raised by the learned Counsel appearing on behalf of Commissioner Inland Revenue and the learned Assistant Attorney General that exercise of such powers is discretionary and is not circumscribed with any fetters or conditions; hence, no question of any illegality can come in their way. Though, there cannot be any cavil to this proposition; but again there is an exception to it as well. It appears admittedly to be a case of exercising discretionary powers as contended. ***Now it is settled law that while exercising discretionary powers, it is not that an officer or even the Board is conferred with unfettered discretion.It has to be guided by objective and workable standards with some level-headedness****. It must not be based on short-sightedness or carelessness.* ***It is always to be exercised in a judicious manner and keeping in mind the attending circumstances thereto****.* ***If this is not, then the Officer or the Board, as the case may be, would be permitted to pick and choose a tax-payer and resultantly could lead to harassment as well****.* ***It is settled law that while exercising discretion the authority should not act arbitrarily, unreasonably and in complete disregard to the rules and regulations.*** *The discretion to be exercised has to be judged and considered in the background of the facts and circumstances of each case.* ***It must not be exercised on whims, caprices and mood of authorities****.* ***It is circumscribed by principles of justice and fairness and while exercising such discretion, the authority must take into consideration and advance aim and object of the enactment, rule or regulation under which it was authorized to act****. It should not act in complete negation of the object of such law, whereas, preconditions imposed for exercise of discretion should be honored and respected as well. (See Walayat Ali Amir v. Pakistan International Airlines Corporation 1995 SCMR 650).* ***It is not conceivable that the intent of the Legislature specially in tax matters would be that a taxpayer is left to whims and desire of the tax collecting authority****. It has been the consistent view of the Courts that in such matters, no discretion is left with the tax collecting agency, whereas, at the same time the tax payer is also required to be a compliant tax person. These two go together; however,* ***this does entail that if any officer without any basis, material and examination of record, has come to a conclusion that some tax is short levied or not paid, he without any recourse to assigning any justifiable reasons, would be permitted to monitor the production and sales of a tax-payer****.* ***This amounts to a fishing and roving expedition which was deprecated by the Hon'ble Supreme Court way back in the year 1992 in the famous case reported as Assistant Director Intelligence and Investigation v. B.R.Herman (PLD 1992 SC 485) while interpreting section 26 of the Customs Act, 1969, which in more or less similar terms,***

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empowered the officer to call for and examine the record*...."(Emphasis added)*

11. Even the case law cited by the Respondents, i.e., *Kamalia Sugar Mills* (*Supra*) does not advance their case beyond the initial posting of officers. This judgment expressly observed that in order to prevent arbitrary exercise, the posting order must stipulate a reasonable timeframe, and that any extension should be made known to the taxpayer. Although it is correct that the Board or the Chief Commissioner is not under a statutory obligation to issue a show-cause notice or to record detailed reasons while appointing officers at the business premises for monitoring, this cannot be construed as a license to grant successive extensions in a mechanical or indefinite manner. Every extension of monitoring must be supported by cogent justification, demonstrating the necessity for continued oversight. Even where the orders are time-bound, such as thirty days consecutively in the present case, the power to extend cannot be exercised in such a way that it results in perpetual monitoring under the guise of renewal. The law requires that such exercise of discretion must be reasonable, proportionate, and must culminate at a definite point in time. Therefore, to treat *Kamalia Sugar Mills* (*Supra*) as an authority for approving back-to-back extensions without reasons would be to stretch the judgment beyond its ratio and to undermine its own cautionary observations.

12. In the present case, while the initial orders of 03.05.2025 and 13.05.2025 may be regarded as valid exercises of power under Section 175C of the ITO, 2001, the subsequent orders dated 02.06.2025 and 29.06.2025 extending the posting of officers at the Petitioner's hatcheries suffer from a conspicuous absence of reasons. No material has been disclosed as to why continued monitoring was necessary, what object remained unachieved, or what irregularity justified prolongation. The extensions, being unreasoned and indefinite in effect, are arbitrary and fall foul of Section 24A of the General Clauses Act, 1897, which obliges every public authority to act reasonably, fairly and in accordance with the purpose of law. Such action also fails the test of proportionality embodied in the constitutional guarantees of due process and freedom of trade.

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13. Furthermore, the Petitioner has raised an objection that the orders have not been issued by the Competent Authority prescribed under Section 175C of the ITO, 2001. The said provision vests the power expressly and exclusively in the Board or the Chief Commissioner. However, the Office Orders have been signed and issued by the Additional Commissioner, Inland Revenue. It is, therefore, contended that the orders are without jurisdiction, void *ab initio*, and liable to be struck down.

14. It is a settled principle of law that when a statute vests power in a particular authority, such power must be exercised by that authority alone, unless there exists an express provision of delegation duly notified in accordance with law. Section 175C of the ITO, 2001 confers authority upon the Board or the Chief Commissioner only to order the posting of officers of Inland Revenue to the business premises of a person or class of persons for the purpose of monitoring. The wording of the provision leaves no room for ambiguity that the discretion has been consciously restricted to the Board or the Chief Commissioner. Therefore, the Additional Commissioner, Inland Revenue does not find mention in the statutory scheme, nor is there any enabling provision authorizing him to issue such orders independently or on behalf of the Chief Commissioner. It is a well-settled principle that when the law requires a thing to be done in a particular manner, then the same is to be done in that manner only.

15. In the instant case, although the Office Orders recite that "approval" has been obtained from the Chief Commissioner and that the Chief Commissioner is "pleased to appoint", the operative parts in the orders are issued under the signature and seal of the Additional Commissioner, Inland Revenue. The act of signing and issuing an order is not a mere ministerial formality; it is the very exercise of statutory discretion. Unless the record demonstrates that the Chief Commissioner himself passed the order and consciously exercised his statutory discretion, an order issued by any other officer lacking jurisdiction is legally unsustainable. Approval or acquiescence, without direct exercise of power by the designated authority, does not cure the defect. Moreover, Section 175C of the ITO, 2001 does not contemplate or authorize delegation of power to any officer other than the Board or the Chief Commissioner. The legislative intent is explicit in confining the power to these authorities alone, thereby excluding the

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possibility of delegation and or sub-delegation. Any attempt to vest such power in an Additional Commissioner or an officer subordinate would be contrary to the express mandate of the statute. Consequently, the issuance of such orders by the Respondent No. 4, without any valid delegation under the law, renders them *ultra vires* and *void ab initio*. In *Agha Steel Industries* (*Supra*), the Sindh High Court has delved into a similar matter, though under Section 40B of the Sales Tax Act, 1990. For ready reference, the relevant portion is reproduced hereunder:-

> *"25. Adverting back, firstly, it needs to be appreciated that any action under Section 40B, now after amended provisions can only be taken by the Board. The Board is defined under Section 2(a) of the Federal Board of Revenue Act, 2007, whereas, in terms of Section 3 of the said Act, the establishment of Federal Board of Revenue has been provided and states that it is hereby established a Board to be called the Federal Board of Revenue, which shall consist of not less than seven members to be appointed by the Federal Government. Similarly under Section 8 of the said Act, delegation of functions and powers by the Board has been provided, which states that the Board may, subject to such conditions as deemed necessary, delegate any of its functions and powers to any Government Agency, Chairman or any Member or employee duly appointed under this Act. Now, the action, which can be initiated under Section 40B (ibid) has to be by the Board and not otherwise. Admittedly, nothing has been placed on record to the effect that any decision was taken by the Board to initiate such proceedings. What has been placed on record is a Letter issued by one Second Secretary, STM-IR (Operations), addressed to the Chief Commissioner Inland Revenue, Large Tax Payer Unit-II, Karachi having subject, "extraordinary report in respect of the Plaintiff and goes on further stating that, I am directed to refer to the subject and to say that in exercise of powers conferred under Section 40B of the Sales Tax Act, 1990, the following officers are posted to the business premises of the Plaintiff to monitor production, sales and stock positions till further orders. On a plain reading this appears to be only a communication by a Second Secretary to the Chief Commissioner, Inland Revenue, and it has not referred to any decision of the Board so taken under Section 40B (ibid). He has only been directed to refer to the subject (as above) without any express delegation or otherwise grant of approval by the Board in terms of section 40B. In fact the literal interpretation of the language employed leads to the conclusion that such powers have been exercised by the Second Secretary himself, without any approval or delegation of the same. Even after filing of this Suit, nothing has been placed on record through comments or otherwise to substantiate that whether any such meeting of the Members of the Board was conducted or for that matter any powers were delegated for taking and initiating action under Section 40B (ibid). The entire record is silent and apparently it does not seem to be a case, whereby,*

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the Board had in fact actually exercised any such powers. Therefore, on this premise alone the action initiated under Section 40B of the Act can be termed as unlawful and without jurisdiction."

16. Section 175C of the ITO, 2001, much like Section 40B of the Sales Tax Act, 1990 vests the authority to order posting of officers exclusively in the Board or the Chief Commissioner. In the instant matter, however, the Office Ordershave admittedly been issued under the signature of the Additional Commissioner, notwithstanding the recital that approval of the Chief Commissioner was obtained. While the orders attempt to hide behind the approval of the Chief Commissioner, they are in factissued and authenticated by an officer not vested with the statutory power under Section 175C of the ITO, 2001. Unless there is a formal delegation of power, which Section 175C does not provide for, the mere mention of "approval" does not amount to the order being issued by the Chief Commissioner, especially when such approval is neither written nor apparent from the record available. As held in the judgment in *Agha Steel Industries* (*Supra*)cited *Supra*, such approval cannot cure the defect if the competent authority itself has not passed the order or properly delegated the power in accordance with law. The statutory scheme does not contemplate delegation of this function to subordinate officers, nor has any express authorization by the Board or the Chief Commissioner been placed on record. Consequently, the issuance of such orders by the Additional Commissioner, Inland Revenue amounts to an exercise of jurisdiction not vested in him by statute, thereby rendering the impugned actions unlawful and without legal sanction.

17. For the foregoing reasons, this Petition is hereby **partly allowed**. TheOffice Orders dated 02.06.2025 and 29.06.2025 are declared to be without lawful authority and are hereby **set aside**. The initial posting orders stand spent by efflux of time. It is clarified that nothing in this judgment shall prevent the Respondents from exercising powers under Section 175C of the ITO, 2001 in future, provided that any such order is time-bound, for a lawful purpose, and supported by cogent reasons recorded in writing and communicated to the taxpayer, especially when extensions are required for further monitoring.

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(MUHAMMAD AZAM KHAN)
JUDGE

Announced in the open Court on this _____day of September, 2025.

JUDGE

APPROVED FOR REPORTING
Blue Slip Added

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