

**IN THE HIGH COURT OF SINDH,  
AT KARACHI**

**C. P. No. D-1532 of 2021**

**Present:**

Yousuf Ali Sayeed &  
Mohammad Osman Ali Hadi, JJ

Petitioner : M/s. Mujahid Oil Refinery (Pvt.)  
Limited through Yousuf Ali,  
Advocate.

Respondent No.1 : Federation of Pakistan, through  
Mehreen Ibrahim, DAG

Respondents Nos.6&7 : The Director & Additional  
Director, Directorate General of  
Intelligence & Investigation IR,  
Karachi through Mukesh  
Kumar Khatri and Mohsin  
Imam, Advocates.

Date of hearing : 08.04.2026.

**ORDER**

**YOUSUF ALI SAYEED, J.** - The Petitioner impugns a notice dated 15.01.2021 issued by the Respondent No.3 under section 177 of the Income Tax Ordinance, 2001 (hereinafter referred to as the “**Ordinance**”) selecting its case for audit of its income tax affairs for the tax year 2013 in view of tax credits availed during that period, as well as a notice dated 18.01.2021 subsequently issued by the Respondent No.4 asking the Petitioner to submit its books of accounts and other records for the purpose of such audit pursuant to the impugned selection, both of which proceed on the basis of a letter dated 31.12.2020 issued under Section 214A of the Ordinance, condoning the time limit in that regard.

2. The preceding facts, as stated, are that on 31.12.2013 the Petitioner had furnished its return for the tax year 2013 claiming tax credit to the extent of its entire tax liability for that year on the basis of a Certificate dated 19.06.2013, whereby it had been allowed tax credit for a period of five years, from 01.03.2013 to 28.02.2018. Thereafter, its case was selected for audit under Section 177 of the Ordinance by the Directorate of Intelligence & Investigation, Inland Revenue, Peshawar vide a notice dated 10.03.2015 in respect of the tax years 2012 and 2013, to verify its entitlement to tax credit under section 65D. As it transpired, during the course of the proceedings, jurisdiction over the case was transferred from Chief Commissioner IR, RTO Abbottabad to the Chief Commissioner IR, RTO Karachi, where the matter was concluded in its favour in terms of a letter dated 18.04.2017 in light of an audit report finding that the tax credit/exemption had been rightly allowed to the Petitioner, and it being recommended that the proceedings be dropped.
  
3. In that backdrop, learned counsel for the Petitioner argued that the impugned Notices were bad in law as audit proceedings had already been conducted against the Petitioner for the same tax year on the same issue, and in terms of Section 177(1) of the Ordinance, records/books of accounts could even otherwise not be called for from taxpayers after expiry of six years from the end of the tax year to which they related, whereas such period in the case of the Petitioner for the tax year 2013 had expired as far back as 30.06.2019.

4. The comments submitted in the matter by the departmental functionaries did not controvert the course of events charted by the Petitioner, with it merely being contended that the impugned selection was justified as the taxpayer had been issued huge provisions of refunds on the basis of section 65D of the Ordinance, which needed to be examined through a detailed audit.
  
5. Under the given circumstances, it merits consideration that Sections 174 and 177 of the Ordinance, dealing with the subjects of Records and Audit respectively, provide as follows:

**174. Records.** (1) Unless otherwise authorised by the Commissioner, every taxpayer shall maintain in Pakistan such accounts, documents and records as may be prescribed.

(2) The Commissioner may disallow [or reduce] a taxpayer's claim for a deduction if the taxpayer is unable, without reasonable [cause], to provide a receipt, or other record or evidence of the transaction or circumstances giving rise to the claim for the deduction.

(3) The accounts and documents required to be maintained under this section shall be maintained for six years after the end of the tax year to which they relate:

Provided that where any proceeding is pending before any authority or court the taxpayer shall maintain the record till final decision of the proceedings.

Explanation. Pending proceedings include proceedings for assessment or amendment of assessment, appeal, revision, reference, petition or prosecution and any proceedings before an Alternative Dispute Resolution Committee”

Provided that limitation prescribed under this sub-section shall not apply to the records pertaining to income, assets, expenses or transactions to which clause (ii) of sub-section (2) of section 111 applies.

(4) For the purpose of this section, the expression “deduction” means any amount debited to trading account, manufacturing account, receipts and expenses account or profit and loss account.

(5) The Commissioner may require any person to install and use an Electronic Tax Register of such type and description as may be prescribed for the purpose of storing and accessing information regarding any transaction that has a bearing on the tax liability of such person.

**177. Audit.** (1) The Commissioner may call for any record or documents including books of accounts maintained under this Ordinance or any there law for the time being in force for conducting audit of the income tax affairs of the person and where such record or documents have been kept on electronic data, the person shall allow access to the Commissioner or the officer authorized by the Commissioner for use of machine and software on which such data is kept and the Commissioner or the officer may have access to the required information and data and duly attested hard copies of such information or data for the purpose of investigation and proceedings under this Ordinance in respect of such person or any other person:

Provided that:

- (a) the Commissioner may, after recording reasons in writing call for record or documents including books of accounts of the taxpayer; and
- (b) the reasons shall be communicated to the taxpayer while calling record or documents including books of accounts of the taxpayer:

Provided further that the Commissioner shall not call for record or documents of the taxpayer after expiry of six years from the end of the tax year to which they relate.

6. As things stand, the statutory scheme of audit and record keeping under the Ordinance came up for consideration before this Court in the case reported as Shahnawaz (Pvt.) Ltd. through Director Finance vs. Pakistan through the Secretary Ministry of Finance, Government of Pakistan, Islamabad and another 2011 PTD 1558, as well as before the Supreme Court in the case reported as Commissioner Inland Revenue, Zone-IV, Lahore vs. Messrs. Panther Sports and Rubber Industries (Pvt.) Ltd. and others 2022 SCMR 1135.
  
7. In Shahnawaz's case (Supra), in the context of the audit of a tax year under Section 177, the questions of (a) up to how many years after a tax year could an audit be called, and (b) the basis on which a taxpayer could be selected, were considered by a learned Division Bench, with it being held that:

“13. The first question is whether section 177 involves any rights at all of the taxpayer. In one sense, section 177 imposes an obligation on the taxpayer: if an audit is properly and lawfully called, he must allow the Department to examine his income tax affairs for the tax year in question. However, as noted above, section 177 serves as a counterpoise to section 120, balancing the acceptance of whatever the taxpayer says about his income tax affairs (in the shape of his income tax return) against the power of the State to examine those affairs to ensure that the tax is paid in full. Section 120 confers a clear right on the taxpayer, one that is central to the structure of the 2001 Ordinance. Section 177 imposes a statutory limit or check on this right. It is therefore the right of the taxpayer to know with certainty the extent and scope of this check and limit. It is for this, reason that we are of the view that section 177 does confer rights on the taxpayer, specifically with reference to (i) the maximum number of years after the tax year in question within which the audit can be called, and (ii) the basis on which the taxpayer can be selected for audit. Furthermore, we are also of the view that when the first two general principles of

income tax law, noted in para 7 supra, are kept in mind, it is clear that these rights cannot be stated in general terms, but exist, and must therefore be determined, separately and specifically in relation to each tax year. Each tax year is a separate unit of assessment, and the 2001 Ordinance applies in relation to each such year in a specific manner, i.e., as it stands on the day next succeeding the last day of the tax year. Income tax law can, in a sense, be regarded as 'compartmentalized' in relation to each tax year, and the rights inhering in the taxpayer in relation to section 177 must therefore also be so regarded and ascertained. (The fact that these rights may be the same for two or more successive years does not, of course, detract from this conclusion, since that could simply be because section 177 has not been amended over the years in question.) With these observations in mind, we turn to a consideration of the two rights noted in this para that, in our view, inhere in the taxpayer in relation to section 177.

14. The first of these rights is the maximum number of years up to which the audit can be called in relation to a tax year. In our view, this right should be regarded as a past and closed transaction. The reason is that the 2001 Ordinance, in section 174(3), provides for the number of years for which a taxpayer is required to maintain books and accounts in relation to a tax year. The audit of the income tax affairs cannot be conducted without the records that the taxpayer is statutorily required to maintain. This period must be regarded as becoming fixed for each tax year for the term specified in section 174(3), as this provision stands and applies in relation to the tax year in question, i.e., on the first day next succeeding the last day of the tax year. Since the period becomes 'crystallized' as soon as becomes applicable, it should be regarded as a past and closed transaction."

...

"22. In our view, the answer to this question lies in that central feature of the 2001 Ordinance that has already been noted: the close nexus between sections 120 and 177, and the inherent tension that exists between these two provisions. To recapitulate: the legislative intent is clearly to accept what the taxpayer says, but it is equally clear that the State is entitled to ensure that the tax is paid in full. In our view, the correct interpretation and application of sections 120 and 177, and one which properly maintains the balance between the competing claims of the two, is that while a taxpayer

can be selected for an audit (subject to, and in terms of, the vested rights noted above) in respect of a given tax year, such selection can be made only once. Once an audit has been called in relation to a taxpayer, and is being or has been conducted, or having been called is abandoned by the Department of its own volition (and a prolonged and excessive delay in conducting and/or concluding the audit, which is not materially attributable to the taxpayer, may amount in law to such abandonment), then the taxpayer cannot be vexed again by being selected a second time for an audit of the same tax year. The Department cannot, as it were, have two bites at the proverbial (audit) cherry. In other words, in such a situation, the vested right of the taxpayer to be selected for audit has become a past and closed transaction. In our view therefore, the express retrospective effect given to section 214C must be regarded as having affected the vested rights of the taxpayers in relation to each tax year that has passed, with the result that on and from 1-7-2010 onwards, FBR has the power to select persons or classes of persons for audit by computer ballot in relation to a given tax year (subject to the maximum number of years not having elapsed). This is of course, in addition to the power to select a person for audit in terms of section 177 as it stood as a vested right in relation to the tax year in question. However, if in relation to any such tax year, a taxpayer selected by computer ballot has already been selected for audit in terms of section 177 as it stood as a vested right in relation to that tax year, then the taxpayer cannot be selected a second time by way of the computer ballot for the reason that this matter has become a past and closed transaction, and section 214C only affects vested rights and not past and closed transactions.

8. In the case of Panther Sports (Supra), the department had petitioned the Supreme Court for leave to appeal against a judgment of the Lahore High Court, setting aside notices issued to the taxpayer in the year 2017 regarding the tax years 2007 and 2009, seeking statements under section 165 of the Ordinance, reconciliation statements under Rule 44(4) of the Income Tax Rules, 2002 and recovery under section 161(1A) of the Ordinance, on the ground that a taxpayer cannot be asked to furnish records beyond the

period of six years after the end of the tax year to which it relates, as provided under section 174(3) of the Ordinance, relying on an earlier decision in the case of *Maple Leaf Cement Factory Ltd v. FBR* 2016 PTD 2074. Dismissing the Petition, the Supreme Court observed and held as follows:

“3... A taxpayer, under the law, is to retain tax records under section 174(3) of the Ordinance read with Rule 29(4) of the Rules for a period of six years after the end of the tax year to which they relate.

4. Section 174(1) binds a taxpayer to maintain such accounts, documents and records as may be prescribed. Rule 29(1) of the Rules provides a list of such records. Subsection (3) of section 174 makes the duty of the taxpayer to maintain the records for a period of six years. Rule 29(4) reiterates the same timeline. Time based obligation of maintaining records contemplated under the Ordinance and the Rules is a legislative mandate that promotes efficient and smart fiscal administration and governance. It is underlined that the Ordinance is largely structured around time-framed provisions in order to make the taxing mechanism certain and transparent and the tax administration and tax governance smarter and efficient. Reference, with advantage, can be conveniently made to sections 120 (assessment), 122 (amendment of assessment) and 221 (rectification of mistakes) of the Ordinance in this regard.

5. Reading of the Ordinance and the Rules envisages that any proceedings against a taxpayer that is based on the tax records maintained by the taxpayer should be initiated within a fixed timeframe. Section 174 creates an obligation on the taxpayer to maintain such accounts, documents and records as prescribed for a period of six years, except in case of pending proceedings, where the obligation of a taxpayer to maintain the record is till the final decision of the proceedings (exception is not attracted in the present case), while the same provision protects the taxpayer from being asked to produce the record beyond the said period. As notices under sections 161, 165 and Rule 44(4) can only be replied to on the basis of the record maintained by the taxpayer, joint reading of sections 161, 165 and Rule 44(4) and section 174(3) and Rule 29 establishes that the tax department is under an

obligation to be vigilant and efficient enough so as to proceed against a taxpayer within the statutory timeframe provided under section 174(3). Even though there is no specific limitation for issuance of notices under section 161(1A) or 165(2B) or Rule 44(4) but these provisions cannot be actualized or given effect to unless the record, available with the taxpayer, is examined and verified by the tax authorities. Since the aforesaid provisions of law require taxpayer to maintain record for a period of six years, hence notices beyond a period of six years cannot be given effect to. As the taxpayer is under no legal obligation to maintain tax records after the said statutory period, any such notices demanding the taxpayer to furnish such information are inconsistent with the clear provisions of the Ordinance and hence unlawful. Harmonized reading of the statute requires that section 174(3) and sections 161, 165 and Rule 44(4) must complement each other so as to promote the purposes of the Ordinance and equally protect and safeguard the rights of both the tax manager and the taxpayer as envisaged under the Ordinance. Therefore, even though notices under sections 161(1A), 165(2B) and Rule 44(4) have no prescribed period of limitation, the statutory timeframe kicks in the minute the time period under section 174(3) is exhausted rendering such notices ineffective and unenforceable, attracting no penal consequences for the taxpayer. It is clarified that the department is only restricted where it seeks record beyond the statutory period under section 174(3) from the taxpayer but is otherwise free to proceed if the action or proceedings under the Ordinance are based on the record already in possession of the department.

6. We, therefore, endorse the view expressed in *Maple Leaf* by the Lahore High Court, where a similar question had come up before the court. We have also examined *Habib Bank* which holds that the department can override the timeframe under section 174(3) by justifying the delay in initiating the matter against the taxpayer. Section 174(3) of the Ordinance read with Rule 29(4) of the Rules is clear and leaves no room for any such departmental justification, which in any case cannot deprive the taxpayer of the statutory protection under section 174(3) of the Ordinance. We, therefore, do not support the view expressed in *Habib Bank* as we have not been able to find any statutory support for the conclusion arrived at in the said case.

7. It is also useful to draw attention to section 214A of the Ordinance which specifically deals

with “condonation of time limit”. Perusal of the said provision shows that it applies where there is a time limit provided in the provision, which is not so in the case of sections 161 and 165 of the Ordinance. Further section 214A deals with “any act or thing to be done” within a timeframe. Section 174(3) on the other hand does not require any act or thing to be done in a particular timeframe but quite on the contrary provides that after a lapse of a period of six years, the taxpayer shall not be obligated to maintain its tax records. Therefore, section 214A has no application to the present case and cannot be invoked to deprive the taxpayer of the statutory protection under section 174(3) of the Ordinance.

8. For the above reasons we hold that a taxpayer is obliged to maintain the record under section 174(3) of the Ordinance for a period of six years and the taxpayer cannot be compelled to produce the record for a tax year beyond the period of six years as stipulated in section 174(3) of the Ordinance. Hence notices issued under section 165(2B) or 161(1A) of the Ordinance being ineffective and unenforceable are set aside.”

9. In the same vein, while considering the analogous provisions of the Sales Tax Act 1990 under similar circumstances, the Supreme Court observed in the case of Federal Board of Revenue through Chairman, Islamabad and others vs. Abdul Ghani and another 2021 SCMR 1154, that:

“The matter in issue is that the petitioner-department served the Respondent with a show cause notice dated 29.02.2016, alleging default in payment of sales tax from 07/2001 to 06/2005. Section 11(5) of the Act prescribes a limitation period of five years from the relevant date for commencing action through a show cause notice against the person in default. To overcome the delay of nearly 15 years in the issuance of the said notice the petitioner obtained permission dated 25.01.2016 from the Federal Board of Revenue (“FBR”) under section 74 of the Act for condoning such delay.

2. The afore-noted show cause notice was challenged by the Respondent in the writ jurisdiction of the High Court but that effort failed. Thereafter, the matter was taken before a

learned Division Bench of the Lahore High Court where the Respondent's appeal has succeeded. It has been held that the provisions of Section 74 of the Act do not expressly or impliedly envisage the supersession of statutory limitation periods protecting assesseees against the initiation of action against them by the petitioner authorities. This is because the expiry of the limitation period accrues a vested right in favour of the assessee. The learned counsel for the petitioner has explained that the controversy in the matter involves tax fraud; and fraud vitiates the most solemn proceedings. He is not in a position to cite any authority concerning tax law where the limitation period has been waived or ignored in the case of tax fraud.

3. More importantly, the order passed under section 74 of the Act by the FBR fails to state any reason for extending the limitation period for issuance of a show cause notice against the Respondent. The said requirement is meant to ensure fairness and transparency in the exercise of statutory discretion by the FBR which suffers from opacity and therefore unreasonableness. It is also noted that section 74 of the Act neither specifically envisages nor provides guidance, criteria or parameters for overriding any limitation period prescribed by the Act for initiating action against a taxpayer. Consequently, on the facts of the present case we are not inclined to interpret the said provision as authorizing the unchecked reversal of a statutory limitation period and consequential legal rights created by it. In the circumstances, the show cause notice issued by the petitioner department suffers from fatal defects that float on the face of the record. Accordingly, we are not inclined to interfere with the impugned judgment.

10. As is apparent, the notices impugned by the Petitioner in the matter at hand are not in consonance with the scheme of Sections 174 and 177 of the Ordinance and the principles laid down through the aforementioned judicial precedents considering the scope of those provisions. That being so, the Petition is allowed, with the impugned notices being set aside accordingly.

JUDGE

MUBASHIR

JUDGE

