IN THE HIGH COURT OF SINDH AT KARACHI

Constitution Petition No.D-6280 of 2024

Date	Order with signature of Judge

PRESENT:
Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Mohammad Abdur Rahman

FRESH CASE:
1. For order on CMA No.1021/2025 (Urgent).
2. For order on CMA No.27995/2024 (Stay).
3. For hearing of main case.

Dated; 20th January 2025

Mr. Taimoor Ahmed Qureshi, Advocate for Petitioner.

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O R D E R

Muhammad Junaid Ghaffar, J: Through this Petition the Petitioner has prayed as follows:-

> *"Declare under Article 199(1)(a)(ii) of the Constitution of Pakistan, 1973 that the Income Tax audit proceeding for Tax Year 2023 initiated through impugned audit selection notice dated 11.10.2024 issued u/s 177(1) of the Income Tax Ordinance, 2001 as without lawful authority and is of no legal effect."*

2. Learned counsel submits that the impugned notice for conducting audit for Tax Year 2023 is illegal and without lawful authority as the Petitioner is entitled to the benefit conferred vide clause (105A) of the Second Schedule – (Part IV) of the Income Tax Ordinance, 2001, whereby it is provided that the provisions of Section 177 shall not apply to a person whose income tax affairs have been audited in any of the preceding four tax years. According to him, it is not in dispute that the Petitioner's audit for Tax Year 2018 has been completed on 28.06.2024, hence the Petitioner can only be audited for future tax year(s) after 28.06.2028. In support he has also placed reliance upon Circular No. 4(21) IT-Budget/2022 dated 21.7.2022. whereby FBR has explained changes in Finance Act, 2022, vide clause (g) regarding frequent audit proceedings.

3. Heard learned counsel for the Petitioner and perused the record. As to the above submissions, with respect we beg to differ for several reasons. However, before proceeding further, it would be advantageous to refer to Clause (105A) of the Second Schedule – (Part IV) of the Income Tax Ordinance, 2001, which reads as under:-

> *"**(105A**) The provisions of section 177 and 214C 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."*

4. From perusal of the aforesaid provision, which is provided under the chapter of exemptions from applicability of certain provisions, it reflects that it is a kind of concession or benefit and provides that section 177 and 214C shall not apply to a person whose income tax affairs have been audited in any of the *"preceding four tax years"*. It is clearly provided that this exemption or concession is only available, if the taxpayer has been audited in any of the preceding four tax years. The use of the word "tax year" is of pivotal importance. It does not refer to a date on which audit has been completed as contended by the Petitioner's Counsel. In the instant matter, the Petitioner was selected for audit for tax year 2018 and such audit has been completed on 28.06.2024; and this would not mean that the period of preceding *four tax years* must be calculated from this date. It is the audit of a particular *tax year* and not the date or year in which the audit is completed. This could not never be the intention of this provision because otherwise use of the words "tax year" would become redundant. Per settled law, redundancy cannot be attributed to the legislature[1]. If the Petitioner's contention is accepted as correct, then there

[1] Collector of Customs v Mega Tech Pvt Ltd (2005 SCMR 1166); Pakistan Telecommunication Employees Trust v Federation of Pakistan (PLD 2017 SC 718)

was no requirement to mention the words "*preceding four tax years*" and instead use of the words "*preceding four years*" would have sufficed. It is also of relevance to note that tax-year has been defined in section 2(68) read with Section 74 of the Income Tax Ordinance, 2001, that it shall be a period of twelve months ending on the 30th day of June and shall, subject to sub-section (3) be denoted by the calendar year in which the said date falls. Therefore, Petitioners selection of audit for tax year 2018 (notwithstanding its completion in 2024) would be of tax year 2018 and not of tax year 2024 to claim any benefit of clause 105A ibid. It is immaterial as to 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, i.e. next audit can be done in respect of tax-year 2023 which is exactly what the Respondents have done by issuing the impugned notice. The reference to a tax year in clause 105A is not without any rationale; rather it specifies it. Otherwise, use of the word 'calendar year' would have sufficed. Therefore, this difference has an important bearing on as to when the next audit is to be done. The concession is that audit is to be done once in four years, whereas Petitioners Counsel contends that it can only be done in 2028, meaning thereby it can only be done after 10 years. This contention is bereft of any valid or justifiable logic and if accepted, would defeat the intent of the legislature. Resultantly, by this interpretation an audit can first be prolonged by the taxpayer (as is the case in hand as selection of audit for 2018 was made in 2022, and the petitioner never responded and finally in 2024 the amended assessment order was passed) and then once it is done belatedly, a protection can be claimed in terms of clause 105A ibid. This approach would in fact defeat the very

purpose of audit, notwithstanding the exemption so provided under clause 105A.

5. As to placing reliance on Circular dated 21.07.2022 issued by FBR, whereby, an example is given that if an audit of a taxpayer for tax-year 2017 has been finalized in tax year 2022, then the said taxpayer can only be audited again after four tax years i.e. in tax year 2027" is concerned, the same is devoid of any rationale or logic and is in conflict with the main provision of law; hence, liable to be discarded. The finalization of the audit in a particular tax year is not at all relevant nor it is provided in clause 105A. The completion of the audit of a previous tax year is in a calendar year and that has no relevance insofar as the selection for audit for the next tax years is concerned. Per settled law, any interpretation BY CBR / FBR is not binding even otherwise on adjudicating officers and are certainly not binding on this court in any manner[2]. It is only when they are in conformity with the law, that Courts may accept such an interpretation.

6. Accordingly, in view of the above, this Petition, being misconceived and not maintainable, is hereby ***dismissed*** in *limine* along with listed application.

JUDGE

JUDGE

Farhan/PS

[2] CBR v Sheikh Spinning Mills Ltd (1999 SCMR 1442); Central Insurance Co v CBR (1993 SCMR 1232)