

Judgment Sheet
IN THE LAHORE HIGH COURT AT LAHORE
JUDICIAL DEPARTMENT

WP No.14138 of 2019

Khurram Shahzad
Versus
Federation of Pakistan, etc.

J U D G M E N T

Date of Hearing	23.04.2019
Petitioner By:	Mr. Muhammad Shahid Baig and Mr. Muhammad Bilal Pervaiz, Advocates.
Respondents By:	Ms. Ambreen Moeen, DAG. Syed Zain-ul-Abadien Bokhari, Advocate

Ayesha A. Malik J: Through this Petition, the Petitioner, Proprietor Yasir Broast has challenged the action of the Respondents initiated under Section 175 of the Income Tax Ordinance, 2001 ("**Ordinance**") in terms of authorization letter dated 21.02.2019 and subsequent proceedings thereto including the seizure of the record, computer and accounts of the Petitioner business.

2. The basic grievance of the Petitioner is that the Respondents on the basis of authorization order dated 21.02.2019 issued under Section 175 of the Ordinance by Commissioner Inland Revenue, Zone V, RTO-II, Lahore entered into the business premises of the Petitioner and seized the accounts, documents, computer and related material available at the business premises and continue to confiscate such material without due process of law. Learned counsel argued that the Petitioner is not under any inquiry or investigation nor has the business been selected for audit nor there are any proceedings for evasion of income tax pending against the Petitioner. The Petitioner is registered on the Restaurants Invoice Monitoring System ("**RIMS**") and consequently is monitored by the Punjab Revenue Authority

under the Punjab Sales Tax on Services Act, 2012 ("Act"). Despite the same, the Respondents raided the business premises of the Petitioner on 21.02.2019 and forcibly seized computers, accounts and record of the Petitioner without any lawful authority or justification. Since then the Petitioner has been seeking reasons for the raid, however has found no plausible answer from the Respondents. Learned counsel argued that in the very least the Respondents must issue a speaking order providing for the reasons and there must be some proceedings pending under the Ordinance which culminates into the requirement to access the business premises of the taxpayer. Therefore, he seeks a declaration that the action of the Respondents on 21.02.2019 was illegal and that the confiscated items be returned to the Petitioner immediately. Reliance is placed on "K.K Oil and Ghee Mills (Pvt.) Ltd v. Federal Board of Revenue and others" (2016 PTD 2601).

3. Report and parawise comments have been filed by Respondents No.4 to 6, in terms of which action was taken on the basis of definite information for which the Petitioner was confronted through notice under Section 122(9) read with Section 122(5) of the Ordinance. Learned counsel argued that Section 175 of the Ordinance has an overriding effect over all rules under the law and provides free access to premises, place, accounts, documents or computer impounded to the Respondents where it deemed necessary. Learned counsel further submitted that the proceedings are underway against the Petitioner for the tax year 2015 for nonpayment of sales tax and consequently it is likely that there has been evasion of income tax by the Petitioner. He has placed on record details of sales tax evasion by the Petitioner, a copy of notice under Section 176(1) (B) of the Ordinance for personal hearing dated 15.3.2019 and the reply filed by the Petitioner dated 22.3.2019. Learned counsel has placed reliance on "Messrs vincraft

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(Pvt.) Ltd, through Authorised Representatives v. Federal Board of Revenue through Chairman and 4 others" (2017 PTD 2114).

4. In rebuttal learned counsel for the Petitioner has again reiterated that there are no proceedings against the Petitioner. The contention of definite information of notice under Section 122(9) read with Section 122(5) of the Ordinance is false as earlier a notice was issued under Section 129(9) dated 17.10.2018 with respect to the declaration of property bearing No.210-E-2, MA Johar Town, Lahore, which was duly complied with and the Respondents were shown that the property has been declared in the wealth tax return of the Petitioner for the tax year 2015. Hence all proceedings were dropped. Therefore, he states the Respondents illegally entered into his premises.

5. The basic issue before the Court is the manner in which Section 175 of the Ordinance being the power to enter and search premises is to be invoked. In terms of this Section in order to *enforce any provision of the Ordinance* including for the purpose of making an audit for a taxpayer or a survey of a person liable to tax, the Commissioner or any officer authorized by the Commissioner in writing can, without prior notice have full and free access to any premises, place, accounts, documents or computer. The Section essentially authorizes the Commissioner to ensure compliance of the Ordinance by the taxpayer and if required to enter into the premises of a taxpayer. This means that the Commissioner can authorize entry and search of the premises of a taxpayer in order to enforce any provision of the Ordinance. Hence the emphasis is on *enforce provisions of the Ordinance*. The meaning of *to enforce any provision of the Ordinance* is that there must be an infringement or noncompliance of some provision of the Ordinance which the Respondents seek to enforce. Meaning that there must be some default by the taxpayer under the Ordinance, or in audit proceeding or some inquiry or investigation for evasion of income tax which the taxpayer is avoiding on the basis of

which the power under Section 175 of the Ordinance is called into use. The objective of the Section is to ensure that taxpayers are compliant with the law and where there is non-compliance in order to prevent evasion of income tax, Section 175 of the Ordinance can be invoked for compliance.

6. Section 175 of the Ordinance while granting power to Commissioner or any authorized officer by the Commissioner to enter and search premises without notice has to be seen in conjunction with the rights enjoyed by a taxpayer with reference to its premises and property and with the right of due process. The purpose of this Section is to enable enforcement of any provision of the Ordinance, hence there must be a clear statement before the Commissioner of which provision of the Ordinance is to be enforced and the reasons for it without such an explicit statement, in writing this power under this Section can be abused. Therefore, in order to exercise the power under Section 175 of the Ordinance, the Respondents must record the reasons for initiating action under Section 175 of the Ordinance. The Commissioner has to justify with sufficient reasons for exercising this power and while prior notice is not required under this Section, the Commissioner can if deemed necessary issue notice to the taxpayer. Where prior notice is dispensed with as the statute allows it under Section 175(1) (a) of the Ordinance, the Commissioner must justify invoking Section 175 of the Ordinance in the order of authorization issued prior to entering and searching or confiscating documents or computers or files from the premises of a taxpayer. While interpreting Section 175 (1) (a) of the Ordinance it can be seen that the provisions of Section 175(1)(a) to (e) of the Ordinance not only provide power to enter and search premises giving free access to the Commissioner to any premises, place, accounts, documents or computer but also gives the power to impound any account or document and retain them for as long as may be necessary for its examination or for the purposes of

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prosecution or to retain information required. This by itself suggests that information required is necessary for some proceedings or prosecution or inquiry which is under way. Hence the meaning given to Subsection (7) of Section 175 of the Ordinance which provides that the Section shall have effect notwithstanding any rule of law relating to privilege or the public interest in relation to access to premises or places or the production of accounts, documents or computer-stored information is not without due process. Hence this power can only be exercised if the Commissioner is satisfied and has justified in writing that it is necessary to enter and search the premises, place, accounts, documents or computer of the taxpayer.

7. In this case the Respondents have not been able to justify action under Section 175 of the Ordinance. The authorization order does not provide for any reason and simply suggests that its for carrying out the objects of the said Section. This creates suspicion not only the intent but also the reasons for which entry and seizure has taken place. The Respondents have repeatedly referred to default in paying sales tax which for the purpose of Section 175 of the Ordinance is irrelevant and it cannot be used as a reason to enter into the premises of a taxpayer. Furthermore, the Respondents reliance on notice issued under Section 122(9) read with Section 122(5) of the Ordinance is also misleading as the said notice do not explain the reason for carrying out entry and search of the Petitioner's business premises as in both the notices the allegations is with respect to some property which was not disclosed in the wealth tax return for the tax year 2015 for which the Petitioner has provided relevant information and for which proceedings were dropped. Therefore in this case, the Respondents have not been able to justify the action taken under Section 175 of the Ordinance. Learned counsel for the Respondents has not been able to satisfy the Court as to the compelling reasons to initiate proceedings under Section 175 of the Ordinance.

8. Under the circumstances, this petition is allowed and the proceedings initiated by the Respondents in terms of authorization letter dated 21.02.2019 are set aside. The Respondents are directed to hand over all the material seized from the business premises of the Petitioner i.e record, accounts, documents, computer etc to the Petitioner immediately.

Sd/- *[Signature]*
(AYESHA A.MALIK)
JUDGE

Approved for reporting

Sd/- AYESHA A. MALIK *[Signature]*
JUDGE

Blue Slip Added.

Anwaar *

[Signature]
30/4/18

TRUE COPY
In Case No. *[Signature]*
Examiner J.C.B (Copy Branch)
Lahore High Court, Lahore

IN THE LAHORE HIGH COURT, LAHORE

Writ Petition No. 14138/2019

Khurram Shahzad, Proprietor, Yasir Broast
MM Alam Raod, Near to Hussain Chowk, Lahore.

.....Petitioner

Versus

1. **The Federation of Islamic Republic of Pakistan**
Through the Secretary, Law, Justice and Human Rights Division,
Islamabad.
2. **The Federal Board of Revenue,**
Government of Pakistan, Constitution Avenue, Islamabad, through
Chairman, FBR.
3. **The Chief Commissioner Inland Revenue,**
Regional Tax Office-II, Lahore
4. **The Commissioner Inland Revenue,**
Zone V, RTO-II, Lahore.
5. **The Additional Commissioner Inland Revenue,**
Range-I, Zone V, RTO-II, Lahore.
6. **The Assistant Commissioner Inland Revenue,**
Unit-III, Range-I, Zone V, RTO-II, Lahore.

.....Respondents

7. **Syed Waqar Haider, Inspector Inland Revenue.**
Zone V, RTO-II, Lahore.
8. **Muhammad Ayub, Inspector Inland Revenue.**
Zone V, RTO-II, Lahore.
9. **Muhammad Irfan, Inspector Inland Revenue.**
Zone V, RTO-II, Lahore.
10. **Furqan Baig, Inspector Inland Revenue.**
Zone V, RTO-II, Lahore.

11. **Ali Salman, Supervisor Inland Revenue.**
Zone V, RTO-II Lahore.
12. **Shaukat Ali, UDC Inland Revenue**
Zone V, RTO-II Lahore.
13. **Mahboob Gondal UDC Inland Revenue**
Zone V, RTO-II Lahore

.....Proforma Respondents

WRIT PETITION UNDER ARTICLE 199 OF THE CONSTITUTION OF
THE ISLAMIC REPUBLIC OF PAKISTAN, 1973

Respectfully Sheweth,

PRELUDE

1. The power of taxation rests on necessity and it is an essential and inherent attribute of sovereignty belonging as a matter of right to every independent state or Government, however, Constitutional provisions with respect to taxation constitute a limitation on the legislative power.
2. The Parliament has promulgated the Income Tax Ordinance, 2001 ('the Ordinance') for levy of income tax under the universal self assessment scheme. As such, the complete return of income filed by a taxpayer is deemed to be an Assessment Order passed by the Commissioner under section 120(1)(b) of the Ordinance. However, as per the provisions of section 120(1A), the commissioner may conduct audit of the income tax affairs of the taxpayer under section 177, and only then the deemed assessment order comes under scrutiny with conscious application of mind.
3. The FBR is vested with the powers to select cases for audit of income tax affairs, independently and separately under section 214C of the Ordinance through computer ballot which may be random or