

Stereo HCJ DA 38

109/6

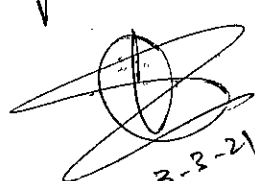
**JUDGMENT SHEET**  
**IN THE LAHORE HIGH COURT, BAHAWALPUR BENCH**  
**BAHAWALPUR**  
**JUDICIAL DEPARTMENT**

**Writ Petition No.7263 of 2020/BWP**

*Chenab Flour & General Mills      VIS      Federation of Pakistan and others*

**JUDGMENT**

<b>Date of hearing</b>	<b>08.02.2021</b>
<b>Petitioner(s) by</b>	Mr. Muhammad Naveed Farhan, ASC in this petition alongwith connected W.P.No.7798 of 2020/BWP, W.P.No.8004 of 2020/BWP, W.P.No.7650 of 2020/BWP, W.P.No.7335 of 2020/BWP Mr. Muhammad Siddiq Chohan, Advocate in connected W.P.No.8281 of 2020/BWP, W.P.No.7432 of 2020/BWP. Sardar Abdul Basit Khan Balouch, ASC Rai Muzaffar Hussain Kharal, Advocate
<b>Respondent(s) by</b>	M/s Muhammad Tariq Mehmood and Irfan Majeed Rehmani, Advocates/Legal Advisor of FBR alongwith Syed Maroof Gilani, Chief Commissioner, Regional Tax Office (RTO), Bahawalpur and Ms. Attiya Rehman, Additional Commissioner, Inland Revenue Service (FBR). Mehr Khalil-ur-Rehman, Deputy Attorney General Pakistan. Ch. Muhammad Ramzan Shama, Assistant Attorney General alongwith Muhammad Shahid Akhtar, Assistant Attorney General and Jam Muhammad Afazl Gasoora, Assistant Advocate General

POE.  
  
3-2-21  
Sajid UDC (LHC)

**JAWAD HASSAN, J.** Through this single judgment, this Court will decide this petition filed under Article 199 of the Constitution of

Islamic Republic of Pakistan, 1973 (the "**Constitution**") as well as connected Writ Petitions Nos.7335, 7432, 7650, 7798, 8004 and 8281 of 2020/BWP as these are the outcome of same impugned Notification dated 12.10.2020 and involve same question of law and facts. The Court framed constitutional moot points whether the FBR is the Regulator of entire tax regime and whether the jurisdiction of transfer exercised under Section 209 of the Income Tax Ordinance, 2001 (the "**Ordinance**") is ultra-vires or intra-vires. This judgment will also discuss in detail that the FBR is the Regulator of fiscal laws in Pakistan, its nexus with the Revenue Division, legal anthropology, basic object and purpose and its regulatory regime besides interpretation of Section 209 of the Ordinance.

**A. CONTEXT**

2. The Petitioner of this petition and the Petitioners of connected petitions (the "**Petitioners**") are tax payers with the Federal Board of Revenue (the "**FBR**") and have sought judicial review of the administrative action through Notification No.F.No.1 (48)Jurisdiction/2014-177049-R dated 12.10.2020 (the "**Impugned Notification**") according to which their taxing jurisdiction have been changed mainly from the Regional Tax Office (the "**RTO**") Bahawalpur to the Large Taxpayer Office (the "**LTO**"), Multan by the Federal Board of Revenue (the "**FBR**") under Section 209 of the Ordinance.

**B. PETITIONERS' ARGUMENTS AND LEGAL SUBMISSIONS**

3. Mr. Naveed Farhan, ASC/counsel for the Petitioner argued that the change of taxing jurisdiction through the Impugned Notification from the RTO to the LTO has been done in clear violation of the Section 209 of the Ordinance as it is not practicable and possible for the Petitioners to visit the LTO in order to manage and handle fiscal affairs of their business. He further argued that the impugned Notification has been issued without affording an opportunity of being

1094

heard and as such it is against the spirit of Article 10-A of the Constitution. While advancing arguments, he has referred to Article 37(i) of the Constitution by stating that it is the duty of the State to decentralise the Government administration so as to facilitate expeditious disposal of its business to meet the convenience and requirements of the public and change of taxing jurisdiction from the RTO to the LTO is in conflict with the referred Article. Mr. Naveed Farhan, ASC further argued that Section 209(1) of the Ordinance gives general powers of transfer and proviso to aforesaid Section is only meant for change of transfer from one Commissioner to another. He maintained that the Impugned Notification was issued under Section 209 of the Ordinance and the proviso to aforesaid Section deals with transfer jurisdiction because as per Table-A, Sr.No.3 of the Notification such powers cannot be conferred to the LTO as it conflicts with proviso of the Ordinance. He strenuously argued that the taxing jurisdiction of the Petitioners have been transferred from the RTO to the LTO while the whole Ordinance is silent about pecuniary jurisdiction as such the Impugned Notification has been issued without following the basic principle of the Ordinance. In order to strengthen the arguments, learned counsel has relied on "CHAIRMAN, REGIONAL TRANSPORT AUTHORITY, RAWALPINDI Versus PAKISTAN MUTUAL INSURANCE COMPANY LIMITED, RAWALPINDI" (PLD 1991 SC 14), "GOVERNMENT OF PAKISTAN through Director-General, Ministry of Interior, Islamabad and others Versus FARHEEN RASHID" (2011 SCMR 1), "Qazi ABDUL JALIL Versus N.W.F.P. FOREST DEVELOPMENT CORPORATION through Chairman and others" (2010 SCMR 1933) and "Messrs HAQ BAHU SUGAR MILLS (PVT.) LTD. Versus FEDERATION OF PAKISTAN and others" (2016 PTD 955).

4. Mr. Muhammad Saddiq Chouhan, Advocate argued that transfer of jurisdiction from the RTO to the LTO is not specifically provided under Section 209 of the Ordinance as it only states about the powers of the Chief Commissioner who may transfer jurisdiction in

respect of cases or persons from one Commissioner to another but this does not include transfer to another office of the LTO away from the RTO. He strenuously argued that the LTO is not defined under the Ordinance or even under the Federal Board of Revenue Act, 2007 (the "Act") rather the power to transfer is provided only under the proviso to Section 209(i) of the Ordinance. He next argued that the Respondents have violated the principle of "*Audi Alteram Partem*" as it is applicable to judicial as well as non-judicial proceedings and it would be read into every statute as its part if right of hearing has not been expressly provided therein. Further argued that shifting of taxing jurisdiction from the RTO to the LTO must be based on well-based and reasoned consideration but the Respondents have not taken into consideration the peculiar circumstances coupled with facilitation of the taxpayers before issuing the Impugned Notification. Mr. Muhammad Saddiq Chouhan, Advocate added that the Federal Government has recently announced to issue the pending refunds of the industry but instead of issuing the said refunds the Respondents have issued the Impugned Notification by changing the jurisdiction for refunds when the refunds process are not at final stage which showed malafide on their part. Further argued that the Petitioners registered offices as well as their units, factories etc. are existing and operational in the vicinity of Bahawalpur where they are dealing their tax related issues, filling their tax returns etc. regularly in a convenient course with the Regional Tax Office Bahawalpur but the Respondents instead of facilitating the taxpayers have created obstacles in the smooth running of their business activities. Although, Mr. Muhammad Siddiq Chouhan, Advocate has also put his reliance on the judgments referred by Mr. Muhammad Naveed Farhan, Advocate, however, in addition to that he further relied on "Mrs. ANISA REHMAN Versus P.I.A.C. and another" (1994 SCMR 2232), "Messrs DEWAN SALMAN FIBER LTD. and others Versus (GOVERNMENT OF N.W.F.P., through Secretary, Revenue Department, Peshawar and others" (PLD 2004 SC 441) and "LIAQAT ALI CHUGTAI Versus FEDERATION OF

10/2

PAKISTAN through Secretary Railways and 6 others" (PLD 2013  
Lahore 413).

C. RESPONDENTS ARGUMENTS AND LEGAL SUBMISSIONS

5. Report and parawise comments have been filed on behalf of the Respondents. Mr. Tariq Mehmood, Advocate of the FBR vehemently opposed the arguments advanced by learned counsel for the Petitioners and stated that the Impugned Notification has been issued strictly in accordance with law. He argued that change of jurisdiction has been done on the basis of cogent reasons backed by a clear-cut rationale to facilitate the large taxpayers through automated system which would enable the taxpayers to resolve their tax related issues in more effective way. He argued that the filing of return and other documents before the FBR has now become automated therefore, the Petitioners/taxpayers can file their returns, statements, applications, documents etc through online electronic manner from their places and all type of communication and processing can easily be carried out electronically and all this exercise has been done to cater with the needs of taxpayers as such they do not need to visit the tax offices. Mr. Tariq Mehmood, Advocate specifically mentioned that the taxpayers of the Bahawalpur whose cases have been transferred from the RTO to the LTO are not required to visit the LTO for any related proceedings. He candidly stated that change of taxing jurisdiction has been done on the basis of turnover basis of the taxpayers which is strictly in accordance with Section 209 of the Ordinance, Section 30 of the Sales Tax Act, 1990 and Section 29 of the Federal Excise Act 2005 which provide legal justification to FBR to transfer jurisdiction of any case. Mr. Tariq Mahmood, Advocate frankly stated that the FBR is established to enhance the capacity of tax system to collect tax dues through application of modern techniques, providing assistance to taxpayers. He argued that Proviso of the Act also clearly states that the FBR must pursue its objective and vision to be a modern, progressive, effective,

autonomous and credible organization by providing quality services to the taxpayers and to achieve this purpose, the FBR has transferred the jurisdiction from the RTO to the LTO to be handled by four original Divisions made for their facilitation. While concluding arguments, learned counsel for the Respondents referred to judgment passed by this Court in case titled "Crescent Textile Mills Limited Versus Federation of Pakistan etc" W.P.No.52548 of 2020 dated 21.12.2020 whereby the issue of transfer of jurisdiction was held valid within the scope of FBR.

6. Ms. Attiya Rehman, Additional Commissioner, Inland Revenue Service (FBR) present in Court, while highlighting historical context of Tax Administration Reform Project ("**TARP**") explained that Large Tax Unites ("**LTUs**") for providing high quality services to big taxpayers of the country have already been constituted and in this respect, LTUs, in major cities of Pakistan like Islamabad, Karachi and Lahore, have already been established and functional. She further explained that only cases of those taxpayers whose turnover is Rs.1.0 billion or more and have a revenue contribution of Rs.20.00 million or more have been assigned to LTOs and best human resource and physical/technological infrastructure has been provided therein with the object to provide maximum ease of doing business. For this purpose, taxpayers can file their returns, statements, applications and documents online from their places to the LTOs concerned without visiting the tax office with the view to eliminate contact between the taxpayers and tax collector. While addressing to the Court, she emphasized the purpose of establishment of LTO, Multan by stating that it has been established to cater for the needs of growing industry on a vast geographic area which is in line with the efforts of Federal as well as Provincial Government to establish new South Punjab Province.

7. I have heard the arguments of learned counsel for the parties at length and perused the record.

1090

8. From the arguments advanced by learned counsel for the parties, following constitutional moot point were framed by this Court on 04.02.2021.

- i. *Whether FBR is the Regulator to regulate the entire tax regime authorities and tax laws in Pakistan and has jurisdiction to pass impugned Notification?*
- ii. *Whether the jurisdiction of transfer exercised under Section 209 of the Ordinance is ultra-vires or intra vires?*

**D. FBR BEING A REGULATOR OF FISCAL LAWS IN PAKISTAN.**

9. Learned counsel for the Petitioners has mainly attacked on the Impugned Notification on the ground that the FBR has no authority to change the jurisdiction of taxpayers from RTO to LTO. Before moving ahead, it is imperative to reproduce the relevant part of impugned Notification which reads as under:

**“(To be Published in the Gazette of Pakistan – Part II)”**

**Government of Pakistan  
Revenue Division  
Federal Board of Revenue  
Inland Revenue  
\*\*\*\*\***

F.No.1(48)Jurisdiction/2014-177049-R      Islamabad, the 12<sup>th</sup> October,  
2020

**Order**

**Subject: Jurisdiction of the Chief Commissioner and Commissioners Inland Revenue, Large Taxpayers’ Office, Multan.**

In exercise of the powers conferred under section 209 of the Income Tax Ordinance, 2001, sub-section (1) of section 30 and section 31 of the Sales Tax Act, 1990, sub-section (1) of section 29 of the Federal Excise Act, 2005, read with the Islamabad Capital Territory (Tax on Services) Ordinance, 2001, the Federal Board of Revenue is pleased to:

- (i) Direct that the Chief Commissioner Inland Revenue, Large Taxpayers’ Office Multan shall exercise the powers and perform functions under the Income Tax Ordinance, 2001, the Sales Tax Act, 1990, and the Federal Excise Act, 2005 in respect of persons mentioned in Table-B and Table-C.
- (ii) Assign to the Commissioner Inland Revenue as mentioned in column 2 of the following Table A jurisdiction, powers and functions as specified in column 3 of the said Table A in respect of persons and cases as mentioned in column 4 of the said Table A.

2. This order shall take effect from 15<sup>th</sup> of October, 2020”.

**i. FBR nexus with the Revenue Division, Ministry of Finance, Revenue, Economic Affairs, Statistics and Privatization, Government of Pakistan.**

10. Admittedly, the Impugned Notification has been issued by the FBR Inland Revenue, Revenue Division, Government of Pakistan according to which the powers conferred to the FBR under the fiscal statutes in terms of Section 2(g) of the Act have been exercised by the FBR directing the Chief Commissioner Inland Revenue, LTO, Multan to exercise powers and perform functions under the fiscal laws in respect of persons mentioned in Table-B and Table C. While the Commissioners Inland Revenue, mentioned in column 2 of the Table A, were assigned the jurisdiction, powers and functions in respect of persons and cases as specified in Column 4 of the Table A. Under the Constitution, the Federal Government is established under Article 90 of the Constitution and functions under Article 97 read with Article 99 according to which the Federal Government or executive action of the Federal Government shall make rules for the allocation and transaction of its business. Under the Federal Government Rules of Business, 1973, the affairs of the Federation lie with the Divisions created under Rule 3(1), Schedule-I. The FBR is the attached Department to Revenue Division as per Schedule-III, Column-I, Sr.No.68. The Revenue Division falls under the Ministry of Finance, Revenue, Economic Affairs, Statistics and Privatization and has the responsibilities/duties to look into the entire matters relating to fiscal laws in Pakistan. One of the key functions of Revenue Division is to deal with tax policy and tax administration in Pakistan. However, the FBR was established under Section 3 of the Act with the powers and functions provided under Section 4 of the Act including the powers and functions to implement tax administration reforms and to adopt modern effective tax administration methods, information technology systems and policies in order to consolidate tax assessments. More particularly, the Preamble of the Act plainly demonstrates to enhance the capacity of the tax system to collect due taxes through application of modern



techniques, providing assistance to taxpayers and creating a motivated, satisfied, dedicated and competent professional workforce that is required to perform at an enhanced efficiency level. The Preamble of the Act laid strong emphasis to regulate the matters relating to the fiscal and economic policies; administration management; imposition, levy and collection of duties and taxes which includes administration of tax.

ii. **Legal anthropology of the FBR.**

11. In order to regulate tax regime in Pakistan, the reasons for enacting the Act and the establishment of FBR being the Regulator, has to be seen from its legal anthropology. The FBR which was formerly called the Central Board of Revenue (CBR) was created through enactment of Central Board of Revenue Act, 1924 on 01.04.1924 and later on a Revenue Division under the Ministry of Finance was created. This arrangement continued after Independence and up to 31<sup>st</sup> August 1960 when on the recommendations of the Administrative Reorganisation Committee, CBR was made an attached department of the Ministry of Finance. In 1974, further changes to the organisation and its functions included a new a post of Chairman CBR with status of ex-officio Additional Secretary were introduced. However, the Secretary Finance was relieved of his duties as ex-officio Chairman of CBR. The status of CBR as Revenue Division was restored under the Ministry of Finance on October 22, 1991 but was abolished in January 1995, and CBR reverted to its pre-1991 position. In 1998, the Revenue Division was revived and it continues to exist since then. By the enactment of the FBR Act, 2007 in July 2007, the name Central Board of Revenue was changed and it was renamed as Federal Board of Revenue. This legal anthropology has the existence of CBR and now the FBR being the Regulator from time to time under the various statutes in order to achieve the main goal of tax collection in Pakistan.

iii. **Basic object and purpose of FBR reflected in the Preamble**

12. The basic emphasis was focused on its preamble of the FBR Act where it has been clearly mentioned that it was created to enhance (i) capacity of the tax system; (ii) to collect due taxes through application of modern techniques; (iii) providing assistance to taxpayers; (iv) creating a motivated and competent professional work force. The preamble further strengthens the objective and creation of FBR in the following words:

***“It is expedient to regulate the matters relating to the fiscal and economic policies; administration, management; imposition, levy and collection of taxes and duties”***

13. Preamble of a statute though not a substantive and enforceable part of the enactment yet it provides primary guidelines about the object and scope of the legislation being its usher. As per the Treatise Practical Legislation by Lord Thring J, [Page92], *“The proper function of a preamble is to explain certain facts which are necessary to be explained before the enactments contained in the Act can be understood”*. In well acclaimed book, Understanding Statutes-Cannons of Construction by S.M. Zafar, [Fourth Edition page 53] the significance of a preamble is highlighted as follows:- *“Edward S. Corwins in his classic work (The Constitution and What it Means by Edward S. Corwins P.1) has employed a rather descriptive phraseology when he says ‘the preamble strictly speaking, is not a part of the constitution, but it walks before’. The preamble undoubtedly throws light on the intent and design of the legislature and the scope and purpose of legislation itself, it cannot be read as an embedded part of an particular section of act but it permeates the entire enactment.”* The August Supreme Court of Pakistan in **“DIRECTOR GENERAL, FIA AND OTHERS Versus KAMRAN IQBAL and others”** (2016 SCMR 447) laid down the significance of preamble in a statute by holding that :-*“indeed, preamble to a Statute is not an operative part*

1086

thereof, however, as is now well laid down that the same provides a useful guide for discovering the purpose and intention of the legislature. Reliance in this regard may be placed on, the case of *Murree Brewery Company Limited v. Pakistan through the Secretary of Government of Pakistan and others* (PLD 1972 SC 279). It is equally well-established principle that while interpreting a Statute a purposive approach should be adopted in accord with the objective of the Statute and not in derogation to the same." This Court in its recent Judgment titled "ABWA KNOWLEDGE PVT. LTD AND ANOTHER Versus FEDERATION OF PAKISTAN and another" (2020 LHC 3491) [Writ Petition No. 54112 of 2020 decided on 21-12-2020] also highlighted the importance of preamble in order to unearth the object and true intent behind the particular enactment while holding "The preamble to a statute is though not an operational part of the enactment but it is a gateway, which opens before us the purpose and intent of the legislature, which necessitated the legislation on the subject and also shed clear light on the goals which the legislator aimed to secure through the introduction of such law. The preamble of a statute, is therefore, holds a pivotal role for the purposes of interpretation in order to dissect the true purpose and intent of the law."

**iv. Regulatory Regime of the FBR**

14. In view of the above, the FBR being regulator has powers and functions under Section 4 of the Act which corresponds with the preamble of the Act and in furtherance of the object provided therein. The preamble mentioned above further emphasis the purpose of creating the Authority of FBR i.e. to:- **(i) regulate; (ii) administer; (iii) manage; (iv) impose; (v) levy and collection of taxes and duties.** The preamble if read with powers and functions of FBR empowers it to perform functions that are necessary to achieve the objectives and purposes of the Act. So far as the transfer of taxing jurisdiction, Section 4(1)(a) of the Act, the FBR can implement the tax administration reforms. Section 4(1)(h) of the Act empowers the FBR

to re-designate existing posts within its jurisdiction, prepare job description of any post and create posts in accordance with the rules. The FBR functions under the Act and the Federal Board of Revenue Rules, 2007 (the "**Rules**"). Rule 3 of the Rules clearly states that Board may under Section 8 of the Act delegate its powers and functions to the Chairman or the line member, functional member and support member who shall transact such business and exercise such powers and functions singly as Board, as may be allocated to him.

15. The role of the FBR is of a regulator and literal interpretation of the term '*Regulator*' and '*Regulate*' is of utmost significance in order to clearly understand the scope, extent and functionality of a Regulator. "*Regulator*" is essentially a bridge spanning the waterway, to be regulated in the openings of which shutters are installed, capable of adjustment, so as to regulate the amount of waterway, left free for passage of water, and this is sometimes called '*Shuice*'. [**Advanced Law Lexicon, 4<sup>th</sup> Edition, Volume-4, Page-4130**]. "To "*regulate*," in sense intended in commerce clause, is to foster, protect, control, and restrain, with appropriate regard for welfare of those who are immediately concerned and of public at large." [**Words and Phrases, Permanent Edition, Volume 36B, Page-249**]. "The word '*regulate*' has different shades of meaning and must take its colour from the context in which it is used having regard to the purpose and object of the relevant provisions." [**K J Aiyar Judicial Dictionary 16<sup>th</sup> Edition, Volume 2-L to Z, Page-1488**].

**Regulate:**

*"To control sth by means of rules: The activities of credit companies are regulated by law. It is up to the regulating authority to put the measures into effect."*

**Regulator:**

*"A person or an organization that officially controls an area of business or industry and makes sure that it is operating fairly"*  
[**Oxford Advanced Learner's Dictionary, International Student's Edition, Page-1259**]

1084

16. Considering the literal interpretation of the term, the significance of the FBR being the Regulator of all fiscal laws enforced in Pakistan is crystal clear from the reading of Section 2(a) of the Act and Section 2 (8) of the Ordinance, Section 2(4) of the Sales Tax Act, 1990 and Section 2(4) of the Federal Excise Act, 2005 wherein the FBR is defined as Board which means the Federal Board of Revenue established under Section 3 of the Act. According to Section 4(1)(r) of the Act, the FBR can create field formations of Board for greater efficiency in implementation of fiscal laws and refer to them with appropriate titles. As Board is defined under Section 2(4) of the Act which primarily was Central Board of Revenue and now Federal Board of Revenue and it can determine the fiscal laws and its jurisdiction through the Board. The fiscal laws are defined under Section 2(g) of the Act which means the laws relating to tax matters including the Customs Act, 1969, Sales Tax Act 1990, Income Tax Ordinance 2001, Federal Excise Act 2005, and any other law imposing any tax, levy or duty having nexus with taxation. Section 4 of the Act deals with the powers and functions of the Board i.e. FBR while sub-section (2) of Section 4 of the Act emphasis about issuance of statutory rules, (SROs), orders, circulars and instructions for the enforcement of any of the provisions of fiscal law. From the perusal of the Impugned Notification, it reveals that the Chief Commissioner Inland Revenue, LTO, Multan has been given powers to perform functions under the fiscal laws, which is proper, valid and within the permissive ambit of law. This Court in its recent judgment "ABWA KNOWLEDGE PVT. LTD, mentioned supra, has elaborately discussed and laid down the functions of a Regulator and held that if a Regulator is restrained from performance of its function it will negate the very purpose of law, which chalk out the functionality of such Regulator by observing that *"The functions of a Regulator are comprehensive and exhaustive ranging from formulation of policies, regulations etc. in furtherance of the cause of legislation to administratively govern and oversee the implementation of those policies/rules/regulations to ensure that the*

same are observed in the very spirit in which the law intended it. If a Regulator is barred from exercising any of such functions, the purpose of law will not only be compromised but the intent behind making of such law will also be jeopardized.”

17. There is another dimension of the *lis* in hand, which is also to be dilated upon. The impugned notification in its nature and essence is an expression of subordinate or delegated legislation and so it derives its authority from the primary law and cannot go beyond its scope. However, it is always aimed to further the object and purpose of the law and is deemed as an effective measure to keep the law well abreast with the changes of time and embrace modernism in functional efficiency by exercising mandate provided under the law. The status of a notification being in the nature of subordinate legislation is expressed by the August Supreme Court in *MUSTAFA IMPEX, KARACHI Versus The GOVERNMENT OF PAKISTAN through Secretary Finance, Islamabad*” (2016 P T D 2269) by holding that “*the regulation and issuance of fiscal notifications is in the nature of subordinate legislation.*” In *“IMTIAZ AHMED and others Versus PUNJAB PUBLIC SERVICE COMMISSION through Secretary, Lahore and others”* (PLD 2006 SC 472), the Hon’ble Supreme Court held that “*a Notification issued in the exercise of executive powers or in the shape of subordinate legislation is not retrospective in operation.* Similar opinion was expressed by Sindh High Court in *“MUHAMMAD IBRAHIM Versus PROVINCE OF SINDH through Secretary Irrigation and Power Department and 3 others”* (2017 PLC (C.S.) Note 7) by holding “*a 'Notification' is outcome of a 'subordinate legislation'.*” Whereas Peshawar Highs Court in *“COMMISSIONER INLAND REVENUE, REGIONAL TAX OFFICE, PESHAWAR Versus Messrs SHERAZ ARENA DEANS TRADE CENTER, PESHAWAR and another”* (2018 PTD 2212) also expressed same opinion by observing that “*It is settled law that rules/notification being a subordinate legislation is subservient to the parent statute and issuance of any instrument/notification under delegated authority is*

*aimed to fulfill and advance the aim of the parent statute and cannot nullify the express provision of the Act."*

18. The purpose, object, scope and limitation of delegated legislation was highlighted by Honorable Supreme Court in "MUHAMMAD AMIN MUHAMMAD BASHIR LIMITED Versus GOVERNMENT OF PAKISTAN THROUGH SECRETARY MINISTRY OF FINANCE, CENTRAL SECRETARIAT, ISLAMABAD and others" (2015 SCMR 630) while holding that *"the principles of delegated legislation are very clear and hardly require any reiteration by us at this late stage. In brief, they entitle the delegate to carry out the mandate of the legislature, either by framing rules, or regulations, which translate and apply the substantive principles of law set out in the parent legislation or by recourse to detailed administrative directions and instructions for the implementation of the law. They are intended to enforce the law, not override it. They can fill in details but not vary the underlying statutory principles. In case of conflict they must yield to the legislative will. They are below and not above the law. The minutiae can be filled in but the basic law can neither be added to nor subtracted from."*

19. The Impugned Notification, which is an expression of policy decision and issued within the ambit of delegated functions of the FBR within the bound and competence of its parent law and enabling fiscal legislation and well within the object and scope of the Act and Ordinance and thus carries a strong presumption of legality and competence and presumption of intra vires is also attached with the same. It was held by the August Supreme Court in SUO MOTU CASE NO.11 OF 2011 (PLD 2014 Supreme Court 389) while referring the case of "UMMAT ULLAH Versus PROVINCE OF SINDH" (PLD 2010 Kar. 236) that a strong presumption of constitutionality, legislative competence, legality, reasonableness and intra vires is attached with full force to subordinate legislation and to strike down such delegated legislation, challenger is required to show that the same impinges upon fundamental rights; conflict with any Constitutional

provision, lack of legislative competence of the delegatee making it or its being beyond the scope of parent statute. “*Strong presumption as to constitutionality, legislative competence, legality, reasonableness and intra vires attached to a statute is also attached with full force to subordinate legislative instruments as well, such presumption though refutable, onerous burden is cast on person challenging validity or vires of legislative instrument, on any count. In order to strike down a subordinate legislative instrument, challenger has to show that any of the disqualification exist namely (a) it impinges upon fundamental rights guaranteed under the Constitution (b) it is in conflict with any Constitutional provision (c) it is beyond the legislative competence of the delegatee making it and or (d) it is violative or beyond the scope of the parent or enabling statute.*”

**E. WHETHER THE JURISDICTION OF TRANSFER EXERCISED UNDER SECTION 209 OF THE ORDINANCE IS ULTRA-VIRES OR INTRA VIRES?**

20. It was thus obligatory upon the Petitioner to rebut this presumption not by mere stating that the impugned notification is ultra vires of Section 209 of the Ordinance but by establishing that how this conclusion can be drawn, not merely alleging that it breached Petitioner’s fundamental right guaranteed by the Constitution but by putting forth the substantial grounds, which could lead to that result as mere ‘*probable inconvenience*’ that the Impugned Notification might have caused to the Petitioners cannot be equated with infringement of any vested right and violation of fundamental rights. Even otherwise, the Honorable Supreme Court in “DOSSANI TRAVELS PVT. LTD and others Versus Messrs TRAVELS SHOP (PVT) LTD. and others” (PLD 2014 Supreme Court 1) has laid down the principle of deference in the policy making functions of the Executive institutions if there was no violation of law. “*A comparative analysis of the constitutional law from various jurisdictions would indicate that the Courts have deferred to the decisions of the administrative bodies and those entrusted with*



1080

*the policy making functions of the Executive if there was no violation of law."*

21. One of the primary ground on which the Impugned Notification was agitated and challenged by the Petitioner was the assertion that Section 209(1) of the Ordinance gives general powers of transfer and proviso to aforesaid Section is only meant for change of case or cases and transfer thereof from one Commissioner to another and this by no stretch of imagination can be construed for establishment of a new Tax Establishment with a clear mandate of dealing with categorized taxpayers, which falls within the criteria devised for it as a yardstick of its jurisdiction and equated it to be taken for as a 'Commissioner' because LTO cannot be termed as a Commissioner within the meaning of the Ordinance. The ground strongly agitated by learned counsel for the Petitioners is the violation of Section 209 of the Ordinance. As per their stance, power to transfer is only provided under the proviso to Section 209(1) of the Ordinance while Section 209 of the Ordinance only gives general powers to transfer from one Commissioner to another. The grounds raised and insisted for posing challenge to the establishment of the LTO through impugned notification by the Petitioner is far-fetched, unconvincing and does not hold water in the light of substantive provision of the Ordinance. The said section is reproduced for ready reference:

**"209. Jurisdiction of income tax authorities.—**[(1) Subject to this Ordinance, the [Chief Commissioners], the Commissioners and the Commissioners (Appeals) shall perform all or such functions and exercise all or such powers under this Ordinance as may be assigned to them in respect of such persons or classes of persons or such areas as the [Board] may direct.

*Provided that the Board or the Chief Commissioner, as the case may be, may transfer jurisdiction in respect of cases or persons from one Commissioner to another.]*

22. From plain reading of aforesaid section, it quite clear that this Section specifically deals with the jurisdiction of the income tax authorities. The income tax authorities are defined under Section 207

of the Ordinance while their appointments are made in terms of Section 208 of the Ordinance by the Board. According to Section 209(1), the Chief Commissioners, the Commissioners and the Commissioners (Appeals) perform and exercise powers as assigned to them in respect of persons or classes or areas on the directions of the Board (FBR). While Proviso to Section 209 of the Ordinance empowers both to the FBR and the Chief Commissioner to transfer jurisdiction in respect of **cases or persons** from one Commissioner to another. The definition of the term 'Commissioner' as provided under Section 2 (13) of the Ordinance, postulates that Commissioner" means *a person appointed as Commissioner Inland Revenue under section 208 and **includes any other authority** vested with all or any of the powers and functions of the Commissioner.* This leads to the unambiguous conclusion that Commissioner also includes any authority, which is vested with all or any of the power and functions of the Commissioner. Perusal of Impugned Notification clearly unveils that the same was competently issued under enabling provisions of the law and validly conferred jurisdiction of the Commissioner under the Ordinance pertaining to particular class of taxpayers as envisages under Section 209, sub-section (8A) of which also provides that '*the power to confer jurisdiction under this section shall include the power to transfer jurisdiction from one income tax authority to another*'. Section 211 (3) of the Ordinance further laid down the same that '*The Board or, with the approval of the Board, an authority appointed under this Ordinance, shall be competent to exercise all powers conferred upon any authority subordinate to it.*'

23. Even otherwise, as a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment and ordinarily a proviso is not interpreted as stating a general rule. A proviso which is inserted to remedy unintended consequences and to make the provision workable, a proviso which supplies an obvious omission in the Section and is required to be read into the Section to give the Section a reasonable interpretation, requires to be treated as

1078

retrospective in operation, so that a reasonable interpretation can be given to the Section as a whole. The Hon'ble Supreme Court of Pakistan in "PAKISTAN MATCH INDUSTRIES (PVT.) LTD. and others Versus ASSISTANT COLLECTOR, SALES TAX AND CENTRAL EXCISE MARDAN and others"(2019 SCMR 906) has explained the meaning and scope of a proviso by holding that "provisos were intended to qualify the main part of the provision and carve out an exception from the same, taking out (as it were) something that but for the proviso would be included therein. Such provisos were generally referred to as "true" provisos. Sometimes a proviso was construed to be a substantive clause that operated in its own right, however, such instances were rare, and for a proviso to be so construed the language of the provision must be clear". Similarly, in "COLLECTOR OF CUSTOMS APPRAISEMENT, COLLECTORATE, CUSTOMS HOUSE, KARACHI Versus Messrs GUL REHMAN, PROPRIETOR MESSRS G. KIN ENTERPRISES, GHAZALI STREET, NASIR ROAD, SIALKOT"(2017 SCMR 339), the scope and purpose of proviso to a provision was elaborated by holding that "generally a proviso was an exception to or qualified the main provision of law to which it was attached. Proviso was to be strictly construed and it applied only to the particular provision to which it was appended. Proviso was limited to the provision which immediately precedes it. Purpose of a proviso was to qualify or modify the scope or ambit of the matter dealt with in the main provision, and its effect was restricted to the particular situation specified in the proviso itself. Before a proviso could have any application, the section or provision itself must apply". In the Impugned Notification, the FBR, while exercising the powers being the regulator of fiscal laws, at the one hand, has directed the Chief Commissioner Inland Revenue, LTO, Multan to exercise powers and perform functions under the fiscal laws in respect of persons mentioned in Table-B and Table-C while on the other hand, further assigned the jurisdiction, power and functions as specified in column 3 of Table-A in respect of persons and cases as mentioned in column 4

of Table-A. Furthermore, the power to confer jurisdiction and transfer jurisdiction has specifically been defined in clear words under Section 209(8A) of the Ordinance which states that *"the power to confer jurisdiction under this section shall include the power to transfer jurisdiction from one income tax authority to another"*. It is also settled principle of interpretation that where the intention of the legislature is clear and the object for which law has been enacted Courts are not allowed to interpret such a law in a manner which could impede or defeat the object for which such law has been enacted. The Hon'ble Supreme Court of Pakistan in "BANK OF PUNJAB and another Versus HARIS STEEL INDUSTRIES (PVT.) LTD. and others"(PLD 2010 Supreme Court 1109) observed in para 64 of judgment that *"in view of the fact that no interpretation was permissible which could have effect of defeating the clear intention and object of legislature and finally in view of, the, fact that what could not be achieved directly could not be allowed to be accomplished indirectly."*

24. It is well established principle of law that Statute in general and sub sections of Section are to be read together to understand the true purpose and meaning of particular provision. In "SAUDI PAK INDUSTRIAL AND AGRICULTURAL INVESTMENT COMPANY (PVT.) LTD., ISLAMABAD Versus Messrs ALLIED BANK OF PAKISTAN and another"(2003 CLD 596) the Hon'ble Supreme Court of Pakistan held that *"it is a fundamental principle of interpretation of documents and statutes that they are to be interpreted in, their entire context following a full consideration of all provisions of the document or statute, as the case may be, that every attempt shall be made to save the document and for this purpose a difference between general statements and particular statements of the document be differentiated properly, to save the document rather to nullify it, that no provision of the document be read in isolation or in bits and pieces, but the entire document is to be read as a whole to gather the intention of the parties, that the Court for this purpose can resort to the correspondence*

exchanged between the parties, that the Court shall lean to an interpretation, which will effectuate rather than one, which will invalidate an instrument. In the case reported as "R V. Venkataswami Naidu v Narasram" (AIR 1966 SC 361) Supreme Court of India observed "A section has only one interpretation and one scope; a process resulting in more than one interpretation and scope is clearly erroneous." In another case reported as Tehsildar Singh v State of U P. (AIR 1959 SC 1012, 1022) Supreme Court of India held "Every section must be considered as a whole and self-contained." Moreover, in case reported as Gurmej Singh v Partab Singh (AIR 1960 SC 122,124) Supreme Court of India explained about the interpretation of subsections of section and observed "it is an elementary rule that construction of a section is made of all parts together." Lastly the case reported as State of Bihar v Hiralal (AIR 1960 SC 47,50) Supreme Court of India explained the principle of interpretation of subsections of section and observed "it is not permissible to omit any part of it."

25. Moreover, this Court in the case of "Crescent Textile Mills Limited, mentioned supra while dismissing similar petition has that "the change in jurisdiction or transfer of jurisdiction is well within the scope of the powers of the Respondents. In this regard, by virtue of the report submitted before this Court, it is stated that there are total 350 cases transferred to different LTOs in Multan and Lahore as well as the change in jurisdiction of different RTOs. 122 persons have challenged their transfer whereas the rest have accepted the transfer of jurisdiction orders. In this regard, it is also noted that a criteria has been provided for LTOs, catchment area have been defined and the Petitioners all meet the criteria, as there is no dispute on the criteria and the Petitioners applicability to the same. In this regard the Petitioners are not required to be issued any notice nor are they required to be consulted on the same. The taxpayers are obligated to be processed at the relevant LTO or RTO on the basis of the criteria set out and the defined catchment area. Furthermore no right of the

*Petitioners is infringed as at best they have pleaded hardship and inconveniences, which does not violate any fundamental right”.*

26: This Court is custodian of individual liberties and guardian of fundamental rights of citizens but at the same time it is duty of the Court not to unnecessary halt, hamper or pace down equilibrium of progress, modernity and efficiency initiated, installed or introduced in the system of economic governance in order to enhance its utility and to make it more efficient. The concept of functional specialization has always been an inspiration for human kind since the days of eminent philosopher Plato, who in his book Republic, proposed a system of division of labor and functional specialization to enhance productivity and to ensure that the job must be done in a more perfect manner. The endeavor of the FBR for classifying and establishing the LTO to deal matters pertaining to taxation of a particular category of taxpayer is neither arbitrary nor adverse to the rights of the Petitioner as one of his objection against the Impugned Notification was that after this Notification, Petitioners would have to travel from Bahawalpur to Multan for submission of its tax returns and for other ancillary matters but this apprehension was validly addressed on behalf of the Respondents that the Petitioners will not be required to visit the LTO physically and they will be able to file their return or other tax documents/communications with the LTO through electronic means. Courts always jealously guard rights of individuals against the arbitrariness of the state institutions, however, at the same time Courts never turn a blind eye on the progress and development happening around the world and always look positively towards any attempt to reformulate the tax governing mechanism so initiated by the FBR, in an attempt to contribute in the goal of ease of doing business and taxpayer facilitation. At the same time, though, the Court never shy away from striking down any notification, which is contrary to law, beyond the scope of parent legislation or abridged or take away any of the fundamental right granted and guaranteed under the Constitution yet if the right of taxpayer is not abridged and his only objection rests

1074

upon the parameters of inconvenience then the Court must look objectively towards the collective good of the people, which ultimately includes the petitioner as well. The revamping and restructuring of the FBR tax administration in the form of establishing the LTO to deal only with specified category of cases, including of Petitioners, is in no way detrimental to the Petitioners' rights recognized under the law and the Constitution and therefore the Impugned Notification cannot be done away with in the Constitutional Jurisdiction being unfounded on any of the grounds provided as a test to do so in this regard.

27. In view of above discussion and interpreting the relevant Sections of the Act, Ordinance and Rules and the law laid down by the Hon'ble Supreme Court of Pakistan, it is held that the Impugned Notification issued by the FBR under Section 209 of the Ordinance empowers the FBR to transfer the jurisdiction pertaining to particular class of taxpayers of any RTO to the LTO to improve tax governing mechanism. These petitions being without merit are accordingly **dismissed.**

A copy of this judgment be sent to the Chairman FBR who shall circulate it to all the concerned quarter.

**(JAWAD HASSAN)  
JUDGE**

*Approved for Reporting*

**JUDGE**