



CHIEF COMMISSIONER INLAND REVENUE
CORPORATE TAX OFFICE, LAHORE.

No. 5011/4075

DATED: 05.01.2023

The Member IR (Legal),
Federal Board of Revenue,
Constitution Avenue, Islamabad.

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**SUBJECT: JUDGMENT OF HONORABLE LAHORE HIGH COURT, LAHORE
DATED 08.12.2022 IN W.P. NO.68823/2022 (M/S OUTFITTERS
STORES (PVT) LTD. VS FEDERATION OF PAKISTAN):**

Refer to the subject.

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2. Case of the taxpayer company for tax year 2021 was selected for audit u/s 177 of the Income Tax ordinance, 2001, by the Commissioner Inland Revenue, Audit-III, CTO, Lahore. Various notices were issued to the taxpayer for provision of record/documents for completion of audit in an effective and satisfactory manner. However, on account of persistent failure of the taxpayer to furnish the requisite record/documents, action under-section 175 of the Income Tax Ordinance, 2001 was undertaken by the Zone at the business premises of the taxpayer vide Authorization Order dated 27.09.2022 passed by the Commissioner Inland Revenue, Audit-III. Against the said Authorization Order, the taxpayer filed 03 Writ Petitions before the Hon'ble Lahore High Court, Lahore, which have finally been *dismissed* by the honorable High Court vide the instant judgment dated 08.12.2022 given in Writ Petition No.68823/2022. Vide the said judgment, the honorable High Court has laid down some important principles as far as assumption and exercise of jurisdiction/powers u/s 175 of the Income Tax Ordinance, 2001 is concerned.

3. The honorable High Court upheld the departmental action as "warrant of Authorization dated 27.09.2022 fulfills prescribed statutory requirements, contained reasoning, justification and requisite necessity of invoking section 175, ibid, in the wake of violation to comply with the directive under section 177 of the Ordinance, 2001 – in the context of audit proceedings conducted and apparent non-cooperation by failing to provide the documents requested for facilitating audit. No illegality is found qua the exercise of jurisdiction under section 175 of the Ordinance, 2001. No bias, mala-fide, or misuse of authority is established."

4. A few important *dicta* enunciated through the judgment are summarized below:

- The access (to the premises) sought during which process documents/materials were impounded – this exercise of power is within the ambit of section 175 of the Income Tax Ordinance, 2001.
- The expression "search" in the heading of section 175 of the Ordinance has to be construed in the company of expression "full and free access".

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- Legislature consciously avoided reference to the requirements prescribed for search in terms of section 103 of Criminal Procedure Code, 1898.
- The Court, under judicial review jurisdiction, will not embark upon an exercise to probe to ascertain whether the documents supplied by the petitioner were sufficient to satisfy officer conducting audit, which satisfaction is the prerogative of the Commissioner.
- As far as request for return of impounded record is concerned, it is not for the Court to pass any direction when remedy is available under sub-section (5) of section 175 of the Ordinance.
- To the extent the assertion of breach of section 175 of the Ordinance is concerned, it is reiterated that no irregularity or illegality is found qua assumption and exercise of powers under section 175 of the Ordinance.
- As regards applicability of the Circular dated 14.05.2019, the honorable Court held that *“in nutshell, circulars/instructions referred cannot, by any stretch of imagination, either dilute/obliterate or travel beyond the command contained in the provisions of the statute(s), framed by the Parliament in exercise of legislative powers.”*
- Initiation of multiple proceedings in the case of a taxpayer does not constitute mala fide.
- On account of textual clarity evident from perusal of section 175 of the Ordinance, there is no need to resort to statutory interpretation by invoking rule of *pari materia*. Provisions of law from different fiscal statutes (Sales Tax Act, 1990, FED Act, 2005 and Customs Act, 1969) cannot be read as part of section 175 of the Ordinance, which is *per se* offensive to the textual meaning of section 175.
- Section 175 of the Ordinance cannot be interpreted as a shadow provision of section 38 of the Sales Tax Act, 1990 or be treated as *pari materia* provision.

5. After giving the above findings, the honorable High Court **answered** the **questions of law** proposed by the petitioner for adjudication, and state response thereto, in the following manner:

I. *“Whether the Authorization Order dated 27.09.2022 issued by the Commissioner Inland Revenue under Section 175 of the Income Tax Ordinance, 2001 (“the Ordinance”) is without jurisdiction and unlawful in view of the instructions and directions issued by the Federal Board of Revenue (“FBR”) vide Circular dated 14.05.2019 read with Section 214 of the Ordinance? If so, to what effect?”*

Response: Authorization in question is neither without jurisdiction nor unlawful.

II. *Whether the raid, search and impounding of record and equipment of the petitioner in consequence of Authorization Order dated 27.09.2022 and*

subsequent proceedings are unlawful and shall not be used directly or indirectly in adjudication proceedings against the petitioner or any other proceedings based thereupon in any other manner?

Response: Documents / information obtained could be lawfully used for conduct of audit.

III. *Whether raid and search is an extreme action taken by the respondent officials against the petitioner/taxpayer and has infringed the rights guaranteed under the Constitution of Islamic Republic of Pakistan, 1973?*

Response: No fundamental right was violated.

IV. *Whether the Authorization Order, raid, search and subsequent proceedings are violative to the law settled by the Honourable High Courts of the country in cases reported as 2019PTD2119, 2019PTD1124 and 2016PTD2601?*

Response: Judgments referred are discussed in paragraphs above.

V. *Whether there was reasonable cause for taking action under Section 175 of the Income Tax Ordinance, 2001?*

Response: Based on facts no illegality is found in invocation of section 175 of the Ordinance, 2001.

VI. (a) *Whether the show cause notice dated 24.10.2022 under Section 11 of the Sales Tax Act, 1990 has been issued in violation of the order dated 19.10.2022 passed by this Honourable Court in W.P. No.64261/2022?*

Response: No apparent violation of order dated 19.10.2022 is found.

(b) *Whether the audit report under Section 177(6) of the Income Tax Ordinance, 2001 dated 21.10.2022 has been issued in violation of the order dated 19.10.2022 passed by this Honourable Court in W.P. No.64261/2022?*

Response: No violation of Order dated 19.10.2022 was committed.

5. As is evident from the findings and answers given by the honourable High Court as depicted in the preceding paragraphs, the instant judgment is of paramount importance as it removes many misconceptions about action u/s 175 of the Income Tax Ordinance, 2001. This judgment is a first one in favour of the department on the issue and has laid down quite a few dicta in favour of the revenue. It is, therefore, requested that, if deemed appropriate, this judgment may be circulated among field formations of FBR for information and guidance on the issue involved.

Encl: (Copy of judgment)


(SAADIA SADAF GILANI)
Chief Commissioner Inland Revenue,
Corporate Tax Office, Lahore.

Copy submitted to the Member-IR (Operations), Federal Board of Revenue,
Islamabad.

Form No: HCJD/C-121
ORDER SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

W.P. No.68823/2022

Outfitters Stores (Private)
Limited

Versus Federation of Pakistan, etc.

S.No. of order/ proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of parties of counsel, where necessary
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08.12.2022

M/s. Sarfaraz Ahmad Cheema and Anas Irtiza Awan, Advocates for petitioner.

Mr. Sheraz Zaka, Assistant Attorney General for Pakistan.

Ms. Humaira Bashir Chaudhary, Advocate for respondents No.2 and 3.

Mr. Yasir Islam Chaudhary, Advocate for respondent No.3.

Muhammad Nadeem Asad, Deputy Commissioner Audit (LTO), Lahore, in person.

Context of the petition

This is second constitutional petition, within a span of two months, wherein following reliefs are claimed,

“In view of above facts and circumstances, it is most respectfully prayed that audit report dated 21.10.2022 issued under 177(6) of the Income Tax Ordinance, 2001 and show cause notice dated 24.10.2022 issued under Section 11 of the Sales Tax Act, 1990 be declared illegal, unlawful, void ab initio and violative of the orders dated 19.10.2022 passed by this Honourable Court in W.P. No.64261/2022.

It is also prayed that Authorization Order dated 27.09.2022 issued under Section 175 of the Income Tax Ordinance, 2001 by respondent No.2 / CIR and coercive actions including raid, search and impounding of record, documents and equipment by the respondent No.3 / DCIR along with other two dozen officials of the FBR be declared unlawful, illegal, void ab initio, without jurisdiction and violative to the law settled on the subject by the Honourable High Courts of the Country.

It is also prayed that the respondents may graciously be directed to return all equipment, laptops, desktops, record and documents impounded from the premises of the petitioner in terms of Section 175 of the Ordinance”.

2. To contextualize the context of instant petition, it is expedient to reproduce reliefs earlier sought through W.P. No.64261/2022 (‘earlier petition’), which read as,

“In view of above facts and circumstances, it is most respectfully prayed that this Honourable Court may graciously declare and direct the following,

- i. Impugned order dated 27.09.2022 issued by the respondent No.2 / Commissioner IR may graciously be declared unlawful, illegal, without jurisdiction, void ab initio and be set aside.*
- ii. The assumption and exercise of power by the respondent No.3 / Deputy Commissioner IR along with 20 unauthorized persons against the petitioner, is without lawful authority, unconstitutional, wholly without jurisdiction, and the same are of no legal effect.*
- iii. Further proceedings on the basis of illegal orders and actions taken by the respondents may kindly be declared void, illegal, and impermissible under the law.*
- iv. The respondents may graciously be directed to return all equipment, laptops, desktops, record and documents impounded from the premises of the petitioner.*

It is also prayed that proceedings initiated for tax year 2021 i.e. under Section 161 of the ordinance, show cause notice under Section 122(5A) of the Ordinance, selection for audit under Section 177 of the Ordinance and selection for audit under Section 25 of the Sales Tax Act, 1990, be declared illegal, unlawful and in violation of the law settled by this Honourable Court”.

3. Earlier petition was disposed of by learned Single Judge in Chambers on 19.10.2022, operative part of the order reads as follows,

“3. In this Court’s opinion, the reasons noted above for invoking provisions of Section 175 and its denial by the petitioner constitute disputed facts, which cannot be looked into in constitutional jurisdiction.

Nevertheless, the petitioner has a right of being heard particularly on the points of jurisdiction, if there is any, and for resolution of disputed facts. Same would be the legal position for notice under Section 161 and 122 of the Ordinance of 2001, which are independent proceedings. An office/commissioner, having jurisdiction to invoke these provisions cannot be stopped from proceedings merely on the allegation of malafide.

Petitioner to raise these objections in writing before the concerned officers. If such objection is raised and any disputed facts or jurisdictional ground is required to be resolved the same be done through an independent order before proceeding further under the respective notices particularly notices dated 27.09.2022.

For availing the remedy, in pursuance of this order, the petitioner has to approach the respondents within two days without fail.

4. At this stage, learned counsel for the petitioner submits that whole record has been taken into possession by the respondents and is not being returned, causing hardship for the petitioner to run the business affairs. This request be also taken before the respondents. If so raised the issue be resolved within seven days without fail. If there is any delay in returning the record, the reasons be communicated”.

4. Record evidenced that thereafter, petitioner submitted series of written objections – copies whereof are available from pages 79 to 114 of this petition. Objections raised were apparently decided on 02.11.2022 by the respondent No.3.

Copy of the order of 02.11.2022 was brought on record, by the counsel for respondent No.2, through application bearing C.M. No.6 of 2022. Incidentally, this petition was also filed on 02.11.2022, wherein, lately, petitioner has sought amendment through application bearing C.M. No.9/2022, for amending the petition *inter alia* to include challenge to the order dated 02.11.2022.

Learned counsel for the respondent No.2 had objected to the application for amendment and emphasized that petition under reference is not maintainable in law, hence, no question of allowing any amendment arises. Since amendment sought, largely, has challenged legality of order of 02.11.2022, therefore request was allowed, and amended petition was accordingly taken on record.

Object of the challenge:

5. Overtly the legal challenges tossed through this petition, are directed against purported exercise of powers under section 175 of the Income Tax Ordinance, 2001 (**'Ordinance, 2001'**), wherein *inter alia* certain declarations were sought against the conduct of continuing audit proceedings, attributing illegality to those

proceedings in the wake of claim of illegal search, besides seeking declarations against show cause notice issued under section 11 of the Sales Tax Act 1990 ('Act, 1990').

Submissions on behalf of the Petitioner

6. Learned counsel primarily denounces alleged search carried out, purportedly in exercise of powers in terms of section 175 of the Ordinance, 2001. While elaborating submissions, learned counsel states that alleged raid-cum-search was conducted in the garb of authorization, allegedly granted by respondent No.2 - Commissioner Inland Revenue -, vide authorization letter dated 27.09.2022, which authorization was *per se* illegal and otherwise violates the mandate of the Circulars / directions, variously issued by the FBR, and no approval was solicited from the authorities, cited therein, before allegedly raiding petitioners' business premises. Adds that Circulars issued, and instructions conveyed are binding and have had to be adhered to, and any defiance qua terms thereof would denudes alleged action and all consequent proceedings of any legality. Reference is made to section 214 of the Ordinance, 2001, which is sought to be read in the context of Circular No. (24) Rev. Bud/2019 dated

14.05.2019 – where no premises could be raided without the permission of the Member (IR-Operations) and the Chairman. Learned counsel referred to sections 72 of Act, 1990 and section 233 of the Customs Act, 1969 (Act, 1969), calling these as *pari materia* provisions. Binding effect of circular / directions is emphasized by placing reliance on decisions in cases reported as Collector of Customs, Lahore V. Nestle Milk Pack Limited, Sheikhpura (2007 PTD 921), Muhammad Waheed through Attorney V. Customs Appellate Tribunal and another (2016 PTD 35) and (1) The Province of West Pakistan through the Secretary, Social Welfare and Local Government Department, and (2) The Registrar, Co-operative Societies, West Pakistan, Lahore V. Ch. Din Muhammad and others (PLD 1964 Supreme Court 21).

7. While explaining scope of section 175 of the Ordinance, 2001, learned counsel emphasized that instructions communicated through Circulars were essentially issued to guard against the highhandedness of the tax officers and to provide checks to control and regulate the powers / authority to search. Adds that such Circulars are intended to safeguard the taxpayers against

exploitation and misuse of authority. Adds that similar actions, purportedly taken in the garb of powers under section 175 of the Ordinance, 2001, were declared illegal by the constitutional courts, and reference is made to decisions reported as *Agha Steel Industries Ltd. through Authorized Company Secretary and another V. Directorate of Intelligence and Investigation through Director and 2 others (2019 PTD 2119)*, *Khurram Shahzad V. Federation of Pakistan and others (2019 PTD 1124)*, *K.K. Oil and Ghee Mills (Pvt.) Ltd. V. Federal Board of Revenue and others (2016 PTD 2601)*, *A.M.Z. Spinning & Weaving Mills (Pvt.) Ltd. through Manager Finance V. Federation of Pakistan through Secretary, Revenue Division/ Ex-Officio Chairman, C.B.R., Islamabad and 2 others (2009 PTD 1083)*.

Learned counsel submits that various other statutes in the family of fiscal laws, coming under the purview of FBR, contained and provided adequate limitations and restraints to control arbitrary and abrupt expeditions, which limitations and restraints were liberally construed and progressively reinforced by the constitutional courts, and such decisions are binding and have had to be followed by the authorities before

conducting searches. Adds that adherence to judicial precedents is conspicuously lacking in the circumstances of instant case, where no approvals were procured before raiding the premises. Learned counsel referred to section 40 of Act, 1990, section 25 of the Federal Excise Act, 2005 (Act, 2005) and section 162 of Act, 1969. Submits that limitations provided, and restraints defined in related statutes must be read and borrowed while construing section 175 of the Ordinance, 2001. Submits that discretion extended under section 175 *ibid*, calls for structuring and rationalization under constitutional dispensation. To support submissions, reference is made to the cases of Messrs Ihsan Yousaf Textile Mills (Pvt.) Ltd., Faisalabad V. Federation of Pakistan through Ministry of Finance, Islamabad and 4 others (2003 PTD 2037), Federation of Pakistan through Secretary, Ministry of Finance, Federal Secretariat, Islamabad and 4 others V. Messrs Master Enterprises (Pvt.) Ltd. through Managing Director (2003 PTD 1034) and Collector of Sales Tax and others V. Messrs Food Consults (Pvt.) Ltd. and another (2007 PTD 2356).

8. Elaborating submissions, learned counsel added that there was no occasion to take extreme

step of conducting raid, disguised as audit related search, when petitioner had extended full cooperation to the officials conducting audit and substantially provided all requisite documents, voluntarily. Submits that details of the information / documents provided are provided in paragraph 3 of the petition. And factum of provisioning of voluminous record was acknowledged. Agitating the grievance, learned counsel submits that department ambushed the premises and even took away irrelevant and unnecessary documents, comprising of cheque books, employees record, classified business / trade information, which documents are still retained and requests for providing copies fell on deaf ears. And such failure had rendered petitioner unable to facilitate conduct of audit. Learned counsel further submits that directions by this Court issued in W.P. No.64261/2022 were not followed. Submits that various objections were raised qua initiation and maintainability of multiple proceedings, involving notices under sections 161, 122 (5) of the Ordinance, 2001 and section 25 of Act, 1990. Objections were separately raised against each set of proceedings, wherein primarily the authority / jurisdiction of the officers were challenged, which

objections were rejected without appreciating jurisdictional questions. Adds that respondent No.3 has allegedly decided these objections, who is subordinate in rank to respondent No.2 – which had issued authorization letter -, and how it could be expected that respondent No.3 would act impartially and fairly, while adjudging the legality of authorization letter dated 27.09.2022. Adds that mere passing of composite order of 02.11.2022 is contrary to the directions issued, hence, the order is illegal and liable to be declared as ineffective.

Response of the Federation and Department

9. Conversely, Assistant Attorney General objects to the maintainability of the petition, in the context of order dated 19.10.2022 and audit proceedings. Submits that action taken under section 175 of the Ordinance, 2001 was opted for upon default of the petitioner to provide the documents demanded, despite reminders, which were essentially required for effective conduct of audit. Submits that judicial review jurisdiction cannot be invoked to obstruct or to ascertain the validity of audit proceedings, which proceedings accordingly progressed, and report was prepared in terms of sub-section (6) of section 177 of the Ordinance, 2001, copy whereof was provided to

the petitioner. Support is sought from the ratio settled in decisions of cases of Pakistan Petroleum Limited through authorized Officer V. Pakistan through Secretary Finance and 4 others (2016 PTD 2664) and Raza Motor Industries through Authorized Representative V. Federation of Pakistan through Secretary Finance, Revenue Division, Islamabad and 3 others (2022 PTD 19) and Commissioner of Inland Revenue, Sialkot and others V. Messrs Allah Din Steel and Rolling Mills and others (2018 SCMR 1328).

10. Learned counsels representing FBR and respondents No.2 & 3, supplemented the submissions of Assistant Attorney General by adding that despite repeatedly issued notices petitioner demonstrated reluctance to provide complete record. Learned counsel referred to and read the text of the notices / letters, wherein requisite record / documents were identified for the purposes of audit. Submits that authorization dated 27.09.2022 met the conditions required for invoking section 175 of the Ordinance, 2001, and officer authorized was competent to exercise the powers available, who acted accordingly and constituted a team to carry out inspection. Adds that resort to available jurisdiction was

indispensable when respondent No.2 being convinced that petitioner has avoided provisioning of documents and matter was being delayed upon seeking frequent adjournments. Adds that action under section 175 of the Ordinance, 2001 was initiated pursuant to the default of the petitioner, upon clear non-compliance of the provisions of the Ordinance, 2001. Further submits that order passed by this Court in W.P. No.64261/2022 stood duly complied with, and order dated 02.11.2022 was issued upon perusing objections submitted. Submits that various notices were issued, in wake of multiple violations, but then those proceedings were abandoned, once audit commenced, wherein complete scrutiny of tax affairs was undertaken qua the Tax Year(s) in question. Reiterates that audit report was prepared, and copy has been provided to the petitioner. Adds that respondent No.2 is entitled to proceed to amend the assessment, based on the audit report, subject to the fulfilment of requirements of sub-section (9) of section 122 of the Ordinance, 2001.

11. On query, learned counsel submits that inventory was prepared pursuant to the search conducted and details of the documents, secured,

were provided in the recovery memo prepared, which was signed by the representatives of the petitioner – copy thereof is available at page 72 of this petition.

Determination

12. Submissions heard. Record perused.

13. In essence, this court, through instant petition, is called upon to determine the scope, effect and legality or otherwise of the impugned Authorization letter dated 27.09.2022 (warrant of authorization), in the context of powers extended and exercised under section 175 of the Income Tax Ordinance, 2001, and effect thereof in the context of on-going audit proceedings.

It is expedient to reproduce the text of warrant of authorization, and relevant statutory provisions, often referred by the counsel for the petitioner. Text of warrant of authorization is reproduced hereunder as,

OFFICE OF THE
COMMISSIONER INLAND REVENUE
AUDIT-III, CORPORATE TAX OFFICE, 1st
FLOOR, TAX HOUSE, SYED MAUJ-E-DARYA
ROAD, LAHORE.

C No.CTO-Lhr/CIR Audit-III Authorization-175/01 Dated 27.09.2022

Authorization Order U/s 175 of the Income Tax Ordinance 2001 read with Rule 72 of Income Tax Rules, 2002.

The taxpayer is a Company existing at NTN 6425260. Return of Income for tax year 2021 has been filed by the taxpayer, which has been selected for audit of its income tax affairs us 177(1) of the Income Tax Ordinance 2001 by the under signed vide Bar Code 100000119742345 dated 24.03.2022 on account of several discrepancies IDR was issued to the taxpayer vide Bar Code 1000000123319171 dated 18.04.2022 requisitioning certain documents The taxpayer, through his reply dated 20.05.2022, furnished certain documents and requested for adjournment to furnish the remaining documents/information Thereafter, despite provision of several opportunities, the taxpayer failed to furnish the remaining record/documents. Thereupon, a notice was issued to the taxpayer dated 05 09.2022 requisitioning specific documents mentioned in the notice. However, the taxpayer has opted not to furnish the requisite record/documents.

From the above, it is clear that the taxpayer has been provided sufficient opportunities to submit the requisite record, however, the taxpayer appears unwilling to provide the record documents required for completion of audit in a satisfactory manner. Therefore, enforcement of provisions of Income Tax Ordinance, 2001 pertaining to provision of record/documents is necessary through entry and search of premises and impounding of record u/s 175 of the Income Tax Ordinance 2001 in the case of M's Outfitters Stores (Pvt.) Ltd, 1-KM Defence Raod, Off Bhubitan Chowk, Near Rarwind Road, Lahore, having NTN 6425260, so as to accurately audit tax affairs of the taxpayer. Therefore, Mr. Muhammad Nacem Asad, Deputy Commissioner Inland Revenue. Audit-III Corporate Tax Office, Lahore is hereby authorized u/s 175 of the Income Tax Ordinance 2001 to exercise the powers and functions given in the said section.

For the said purposes, a team comprising of following officer/officials is hereby constituted to assist the authorized officer for completion of all actions provided u/s 175 of the Income Tax Ordinance 2001 read with Rule 72 of the Income Tax Rules, 2002. A prescribed order form o authorization is enclosed.

Sr.#	Name of officer/officials
1	Mr. Tariq Saeed Ghumman, ACIR
2	Mr. Muhammad Azeem Raza, Senior Auditor
3	Mr. Jameel Ahmad, Senior Auditor
4	Mr. Ishaq Ahmad, Senior Auditor
5	Mr. Irfan Ashraf, Senior Auditor
6	Rana Shahbaz Hussain, Senior Auditor
7	Mr. Imtiaz Ahmad, IIR
8	Mr. Ghulam Sajid, IIR
9	Mr. Saleem Ullah, IIR
10	Mr. Muhammad Ijaz, IIR
11	Syed Naeem Abbas, IIR
12	Mr. Muhammad Shoaib, IIR

13	<i>OTHER SUPPORTING STAFF, CLERKS, HAWALDAR, SEPOYS AND N.Qs ETC.</i>
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(ZULQARNAIN ALI SHAHEEN HARAL)
Commissioner Inland Revenue

[Emphasis supplied]

.....

OFFICE OF THE
COMMISSIONER INLAND REVENUE
AUDIT-III, CORPORATE TAX OFFICE, 1st
FLOOR, TAX HOUSE, SYED MAUJ-E-DARYA
ROAD, LAHORE.

C No.CTO-Lhr/CIR-Audit-III/175/02

Dated 27.09.2022

Form of Authorization (See Rule 72 Section 175)

In pursuance of and as empowered under section 175 and to carry out the purpose and objects of the Section, Mr. Muhammad Naeem Asad, Deputy Commissioner Inland Revenue, Audit-III, Corporate Tax Office, Lahore is authorized with regard to the tax related matters of M/s Outfitters Stores (Pvt) Ltd., 1-KM Defence Rand, Off Bhubtian Chowk, Near University Raiwind Road, Lahore, having NTN 6425260, to enter any premises and to have full and free access to any place, accounts, documents or computer, and to impound or to take extracts or copy of such material and/or examine and prepare notes, details of inventory and its valuation, or computer disc of information or floppies from hard disc or inventory of any article found at the place. The officers authorized shall handover a copy of inventory of goods and material to the persons available on premises and/or put/affix on the conspicuous place in case of refusal of such person to receive or accept. In the later situation, may also send such copy through registered post/courier service as early as possible The Officer of Inland Revenue may keep in mind the enquiry/investigation, audit relating to tax issues only.

(ZULQARNAIN ALI SHAHEEN HARAL)
Commissioner Inland Revenue
Commissioner Inland Revenue

[Emphasis supplied]

Sections 175 and 214 of the Ordinance, 2001 read as,

“175. Power to enter and search premises. - (1) *In order to enforce any provision of this Ordinance (including for the purpose of making an audit of a taxpayer or a survey of persons liable to tax), the Commissioner or any officer authorised in writing by the Commissioner for the purposes of this section –*

(a) shall, at all times and without prior notice, have full and free access including real-time electronic access to any premises, place, accounts, documents or computer;

(b) may stamp, or make an extract or copy of any accounts, documents or computer-stored information to which access is obtained under clause (a);

(c) may impound any accounts or documents and retain them for so long as may be necessary for examination or for the purposes of prosecution;

(d) may, where a hard copy or computer disk of information stored on a computer is not made available, impound and retain the computer for as long as is necessary to copy the information required; and

(e) may make an inventory of any articles found in any premises or place to which access is obtained under clause (a).

(2) The Commissioner may authorize any valuer or expert to enter any premises and perform any task assigned to him by the Commissioner.

(3) The occupier of any premises or place to which access is sought under sub-section (1) shall provide all reasonable facilities and assistance for the effective exercise of the right of access.

(4) Any accounts, documents or computer impounded and retained under sub-section (1) shall be signed for by the Commissioner or an authorised officer.

(5) A person whose accounts, documents or computer have been impounded and retained under sub-section (1) may examine them and make extracts or copies from them during regular office hours under such supervision as the Commissioner may determine.

(6) *Where any accounts, documents or computer impounded and retained under sub-section (1) are lost or destroyed while in the possession of the Commissioner, the Commissioner shall make reasonable compensation to the owner of the accounts, documents or computer for the loss or destruction.*

(7) *This 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.*

(8) *In this section, "occupier" in relation to any premises or place, means the owner, manager or any other responsible person on the premises or place.*

(9) *For the purpose of clause (a) of sub-section (1), the Board may make rules relating to electronic real-time access for audit or a survey of persons liable to tax.*

.....

214. Income tax authorities to follow orders of the Board. (1) *Subject to sub-section (2), all income tax authorities and other persons employed in the execution of this Ordinance shall observe and follow the orders, instructions and directions issued by the Board.*

(2) *No orders, instructions or directions shall be given by the Board that will interfere with the discretion of the Commissioner (Appeals) in the exercise of his appellate function".*

[Emphasis supplied]

14. Section 175 of the Ordinance, 2001 empowers the Commissioner, or any officer, authorized in writing by the Commissioner, to have full and free access, at all times and without prior notice, to any premises, place, accounts, documents or computers, for the purposes of enforcing any provision of this Ordinance, *inter*

alia for the purpose of carrying audit of taxpayer. Notices were often issued, indicating factum of on-going audit and complaining of non-cooperation by the petitioner to provide complete record / documents, asked for. It is not the case of the petitioner that information / documents solicited were concealed / hidden and delegatee carried out search with an intent to discover any evidence of guilt / offence. The access sought was more akin to an inspection, during which process documents / material were impounded – which exercise of power is within the ambit of section 175 of the Ordinance, 2001. To comprehend the distinction between inspection and searches, it is expedient to reproduce paragraphs 8 and 9 of the judgment, reported as *Khan Bacha V. The Stat* (PLD 2006 Karachi 698), which read as:-

“8. In the case of S Y Modagerkar and Sons v. Commercial Tax Officer, and Belganum, 1978, 41 S. T.C. 298 at page 304 while dealing with the distinction between search and inspection it was observed “All searches are inspections, but all inspections are not searches. A search is a thorough inspection of a man’s house, building or premises or of his person, with the object of discovering some material which would furnish evidence of guilt for some offence with which he is charged. It implies a prying into hidden places for that which is concealed. If the objects sought for is always in plain sight, then there is no search. If the private account books had been kept in the counter openly at all times and they would have been found on an inspection at any time of the day, then the seizure of such account books cannot be said to have been made after a search”.

9. From the above definitions of the word "search" it is clear that it connotes the active seeking or quest of something which is hidden are prying into hidden places for something for that which is concealed and in legal parlance for the implies the use of force, actual or implied. Thus where the articles are lying open and in full view and no prying or seeking is involved or the articles are voluntarily produced by the accused, it cannot be called search".

[Emphasis supplied]

The expression employed in clause (a) of sub-section (1) of section 175 of the Ordinance, 2001, is full and free access, which has to be given full effect. The expression "search" in the heading of section 175 of the Ordinance, 2001 has to be construed in the company of expressions "full and free access". The effect and significance of sub-section (7) of section 175 of the Ordinance, 2001 cannot be undermined or overlooked. It is evident that legislature consciously avoided reference to the requirements prescribed for search in terms of section 103 of Criminal Procedure Code, 1898. Warrant of authorization depicts an apparent purpose, i.e., enforcement of provision of Ordinance, which reconciled with an obvious intent of Section 175 of the Ordinance, 2001, which is enforcement of provisions of the Ordinance, 2001 - section 177 of the Ordinance, 2001 is relevant. Reasons for invoking powers under section 175 of the Ordinance, 2001 were provided in the warrant of authorization, which

explicitly refers to on-going audit proceedings, purpose of invoking authority under section 175 of the Ordinance, in the wake of failure on the part of the petitioner to supply relevant documents, not provided despite persistent demand, which factors rationalized issuance of warrant of authorization to gain access. No hidden or collateral purpose for gaining access to the premises was found or alleged, except facilitation and expeditious conclusion of an on-going audit. This court, under judicial review jurisdiction, will not embark upon an exercise to probe to ascertain whether the documents supplied by the petitioner were sufficient to satisfy officer conducting audit, which satisfaction was the prerogative of the Commissioner, who upon petitioners' lack of cooperation was constrained to invoke section 175, *ibid*. In short, letter of authorization fulfilled statutory requirements in terms of section 175 of the Ordinance, 2001, and dicta settled through various judicial pronouncements, including the cases referred by learned counsel for the petitioner - [details would follow in the latter part of this decision]. It is evident that inspection conducted was followed by preparation of inventory, comprising of details of documents / material

impounded. Inventory was signed by the representative of the petitioner. During hearing, learned counsel has referred to application filed seeking return of the documents, claimed that some of which are not relevant for the purposes of audit. It is not for this court to pass any direction when remedy is available under sub-section (5) of Section 175 of the Ordinance, 2001. And any loss or destruction of the document would enable petitioner entitled for claiming compensation in terms of sub-section (6) of Section 175 of the Ordinance, 2001. Submissions alleging breach of section 175 of the Ordinance, 2001 are misconceived and same are dismissed.

15. Learned counsel laid much emphasis on the order dated 19.10.2022, passed in earlier petition, emphasizing that said order was not implemented. This submission is without substance and must fail. Earlier constitutional petition was disposed with certain observations, which were qualified with material findings recorded, reproduced hereunder for ease of reference,

"3. In this Court's opinion, the reasons noted above for invoking provisions of Section 175 and its denial by the petitioner constitute disputed facts, which cannot be looked into in constitutional jurisdiction.

Nevertheless, the petitioner has a right of being heard particularly on the points of jurisdiction, if there is any, and for resolution of disputed facts. Same would be the legal position for notice under Section 161 and 122 of the Ordinance of 2001, which are independent proceedings. An office/commissioner, having jurisdiction to invoke these provisions cannot be stopped from proceedings merely on the allegation of malafide".

[Emphasis supplied]

16. Court had acknowledged right of the petitioner to raise objections, which opportunity was availed, and objections were filed and same were adjudicated upon vide order dated 02.11.2022. It is not for this court to review the factual aspects touched therein, discussed and findings recorded. To the extent the assertion of breach of section 175 of the Ordinance, 2001 is concerned, it is reiterated that no irregularity or illegality is found qua assumption and exercise of powers under section 175 of the Ordinance, 2001.

17. Learned counsel insisted, at the expense of repetition, that circulars / directions / instructions issued by the Board are mandatory and failure to implement those by seeking prior approvals, before undertaking alleged expedition, would render all proceedings void and ineffective, including the audit conducted based on illegally procured documents by virtue of illegal raid-cum-search. Judgments referred and quoted as

precedents are distinguishable on facts, and none of which held or declared that circulars / instructions, under reference, allegedly issued in exercise of powers under section 214 of the Ordinance, 2001, would displace / exclude statutory provisions of law, rendering them ineffective and inapplicable – section 175 of the Ordinance, 2001 in this case. The directives dated 14.05.2019 are not applicable to the case at hand. No question of any alleged raid arises. No raid was conducted to discover evidence of economic transactions relating to non-taxpayer. Petitioner had prior and sufficient information and access was gained upon adopting due process and complying with principles of natural justice. Argument on its face is patently fallacious. Circulars / directions issued in exercise of powers under section 214 of the Ordinance, 2001, are administrative in nature, which may be binding on field formations / officers but same could not claim any superiority in the context of explicit statutory provision of law. Circulars / instructions / directions issued would always be subject to the applicability of statutory provisions of law. In nutshell, circulars / instructions referred cannot, by any stretch of imagination, either dilute /

obliterate or travel beyond the command contained in the provisions of the statute(s), framed by the Parliament in exercise of legislative powers. It is reiterated that in the case under reference Commissioner has authorized entry and access to the premises in wake of the failure to comply with the provisions of the Ordinance, 2001 – notably audit proceedings had commenced before the exercise of powers under section 175 of the Ordinance, 2001. Learned Division Bench of this Court, recently, in the case of *D.G. Khan Cement Company Limited, etc. V. The Federal Board of Revenue*, (Constitutional petition bearing **W.P No.15880/2021** and judgment dated 27.04.2022), elaborated the scope of powers conferred on the Commissioners, under section 177 of the Ordinance, 2001, and interpreted those powers in the context of instructions / directions issued by FBR for expeditious conclusion of sectoral audit(s), wherein such instructions / directions, being found in breach of the statutory provision of law, and same were declared ineffective. Guidance is also solicited from the ratio settled in the case of *Collector of Customs, Islamabad V. Messrs Askari Cement (Pvt.) Ltd.*

and others (2020 SCMR 649), relevant portion whereof is reproduced hereunder for reference,

“The instructions, order or directions made or given must yield to the Act and Rules framed thereunder and should not go beyond the provisions of the statute itself. Direction as envisaged by section 223 of the Act can be given in matters falling within the range of the administrative power so long as the field is not occupied by any statutory provision or a rule”.

18. In case of **Messrs Askari Cement (Pvt.) Ltd.** (supra), Section 223 of the Customs Act, 1969 was interpreted. In another case, illustrative observations were recorded by the learned Division Bench of Hon'ble Sindh High Court in the case reported as **Atlas Honda Ltd. through authorized attorney V. Pakistan through Secretary Revenue and 3 others (2022 PTD 866)**.

Relevant portion whereof reads as:-

27. As far as Sections 213 and 214 of the Ordinance 2001 are concerned, it provides that while being within their respective spheres FBR may "in the course of proceedings under this Ordinance" may provide guidelines to the Commissioner or any taxation officer and they may be assisted, guided or instructed by any income tax authority to whom he is subordinate or any other person authorized in this regard by the Board. This does not mean that the role of Section 214C may also be entrusted to commissioner indirectly while issuing guidelines for proceedings under this Ordinance. Two independent proceedings under the Ordinance cannot be merged on the proposed interpretation of 213/214 of Ordinance, 2001. The proceedings under the Ordinance would mean independent proceedings under sections 177 and 214C. While interpreting Sections 213 and 214 of the Ordinance 2001 following orders/directions in terms of 213 and 214 does not mean that Board would trespass or transgress the statutory limits

of the authorities as defined under the Ordinance, 2001.

[Emphasis supplied]

19. Learned counsel unsuccessfully attempted to make out a case of *mala fide* by referring to multiple proceedings initiated against petitioner, which submissions are without any substance in the context of observations in order of 02.11.2022, relevant text therefrom is reproduced hereunder for ease of reference,

Sr.#	Taxpayer's objection	Remarks
01	Initiation of multiple proceedings, i.e. u/s 161, 122(5A), 177 and 25 of the Sales Tax Act, 1990 in the case of the taxpayer.	<p>As is evident from timeline given by the taxpayer in its objection No.1, proceedings u/s 161 and 122(5A) of the Ordinance were initiated in the routine course. However, when it was discovered that discrepancies in the case of the taxpayer warranted a thorough examination, then case of the taxpayer was selected for audit u/s 177 of the Income Tax Ordinance, 2001 on 24.03.2022 and u/s 25 of the Sales Tax Act, 1990 on the same date.</p> <p>However, when representatives of KPMG raised the issue, they were apprised that no separate proceedings u/s 122(5A) and 161 will continue after selection of the case for audit u/s 177 of the Ordinance, and after completion of audit, notices issued u/s 122(5A) and 161/205 will be withdrawn so that there would be no multiplication of proceedings. It may be noted that after initiation of audit proceedings, no separate notice has been issued to the taxpayer u/s 161 and 122(5A).</p> <p>Hence, there is no malafide or illegality is involved in the proceedings.</p>

20. Another argument was that adequate protections and limitations were provided in related statutes under Sales Tax Act, 1990, Federal Excise Act, 2005 and Customs Act, 1969, which safeguards, against arbitrary raids / search of premises, need to be imported and be read as part of provision of law under reference, which borrowing is otherwise essential to regulate and structure the discretion conferred through section 175 of the Ordinance, 2001. Submission is misconceived. This kind of borrowing is not permissible, when intent and language of section 175 of the Ordinance, 2001 is clear and calls for no tweaking the law in garb of statutory interpretation. The subject matter of the statutes referred, their objects, and scope are different. Textual clarity is evident from perusal of section 175 of the Ordinance, 2001 and there is no need to resort to statutory interpretation by invoking rule of *pari material*, not otherwise attracted in instant case. Provisions of laws referred from different fiscal statutes cannot be read as part of section 175 of the Ordinance, 2001, which is *per se* offensive to the textual meaning of section 175, *ibid.* *Absoluta Sentantia expositore non indigent* – Plain words need to exposition. No ambiguity in

the text is otherwise found or pointed. Judicial review jurisdiction cannot be disguised as authority / power to legislate. Learned counsel unsuccessfully tried to persuade this court to re-write the law or least to interpret it in a manner to distort the otherwise textual and plain meaning of section 175 of the Ordinance, 2001. Submission must fail.

21. The judgments referred by learned counsel for the petitioner may constitute authorities in the context of the facts involved therein, bulk of which were passed in exercise of Reference jurisdiction, which otherwise extends no support to the submissions made. It is appropriate to analyze the decisions referred. Primary reliance is placed on the case of *Agha Steel Industries Ltd.* (Supra). Referred case is examined and evidently learned counsel has not appreciated underlying distinguishing feature therein. In the referred case, notice under section 175 of the Ordinance, 2001 was issued by the Director Intelligence in the absence of any pending proceedings / inquiry and learned Single in Chambers of Hon'ble Sindh High Court observed various jurisdictional deficiencies qua powers of the Intelligence Officer and noted that no question of enforcement of any

provision of the Ordinance arises in those circumstances, and section 175 of the Ordinance, 2001 cannot be invoked in vacuum. And circular dated 22.02.2017 was interpreted in context of peculiar facts of said case. The takeaway from the decision referred was that powers under section 175 could be exercised, provided conditions prescribed are adhered. In the case at hand all requisite conditions are fulfilled, and authorization letter dated 27.09.2002 met the conditions – which authorization has had to be construed in the context of continuing audit proceedings and alleged failure of the petitioner to facilitate audit. Relevant portion from the decision in the case of **Agha Steel Industries Ltd.** (Supra) is reproduced hereunder as,

“In fact the power under Section 175 of the Ordinance 2001 is ancillary in nature, and is not an independent function of itself; and this leads to the conclusion that firstly, there must be some pending proceedings; and secondly, the power is to be exercised by the Commissioner, who is otherwise competent and has jurisdiction in respect of pending proceedings against the taxpayer.”

22. Learned counsel for the petitioner referred decision in the case of **Khurram Shahzad V. Federation of Pakistan and others** (2019 PTD 1124). In said case jurisdiction of Commissioner to invoke section 175 of the Ordinance, 2001 was

affirmed with emphasis that before proceeding under section 175 *ibid*, are undertaken, Commissioner must allege default of any provision of the Ordinance and action to be taken must be pursuant to any alleged infringement. In the case at hand, the audit is under process and cooperation was not forthcoming, which defiance threatened the continuity of audit proceedings. In the case at hand, authorization letter under reference contained reasoning and causes leading to invocation of authority under section 175 of the Ordinance, 2001. In fact, the authorization letter met the guidelines suggested in the case of *Khurram Shahzad* (supra) – which guidelines were elaborated in paragraph 6 of referred judgment.

23. The reliance of petitioner's counsel on the case of *K.K. Oil and Ghee Mills (Pvt.) Ltd.* (supra) is misplaced. In said case question of exercise of powers under section 175 of the Ordinance, 2001 were examined and construed in the context of section 65-D of the Ordinance, 2001. Learned Single Judge-in-Chambers, in the referred case, in fact, reiterated the true scope and effect of section 175 of the Ordinance, 2001 in paragraph 9 of the judgment. Examined in the context of the

observations made in case of case of K.K. Oil and Ghee Mills (Pvt.) Ltd. (supra), I find that no illegality was committed in assuming and exercising powers under section 175 of the Ordinance, 2001.

24. The cases of A.M.Z. Spinning & Weaving Mills (Pvt.) Ltd. through Manager Finance (supra) and Messrs Ihsan Yousaf Textile Mills (Pvt.) Ltd., Faisalabad (supra) deal with application and scope of sections 38, 40 and 40-A of the Act of 1990, which decisions are not attracted to the facts of this case. Section 175 of the Ordinance, 2001 cannot be interpreted being the shadow provision of section 38 of the Act of 1990 or be treated as *pari materia* provision. Likewise, the case of Messrs Master Enterprises (Pvt.) Ltd. (supra) is also not applicable to the facts of instant case, which judgment deals with the scope and effect of Section 40 and 40-A of the Act of 1990. And the case of Messrs Food Consults (Pvt.) Ltd. (supra) is also not attracted to the facts of the case, wherein no discussion regarding section 175 of the Ordinance, 2001 is found. Another argument is that respondent No.3 was not impartial. No prejudice has been caused if the objections were decided by respondent No.3

when no illegality is found in the assumption and exercise of jurisdiction under section 175 of the Ordinance, 2001, otherwise. The allegation of bias is unsubstantiated.

25. Opinion formed is reaffirmed. Warrant of Authorization dated 27.09.2022 fulfills prescribed statutory requirements, contained reasoning, justification and requisite necessity of invoking section 175, *ibid*, in the wake of violation to comply with the directives under section 177 of the Ordinance, 2001 - in the context of audit proceedings conducted and apparent non-cooperation by failing to provide the documents requested for facilitating audit. No illegality is found qua the exercise of jurisdiction under section 175 of the Ordinance, 2001. No bias, *mala fide*, or misuse of authority is established. Obliquely the purpose of the petition is to forestall or obstruct audit proceedings.

26. Before penning down pen-ultimate paragraph, it is appropriate to reproduce the questions of law proposed by the petitioner's counsel for adjudication and state response thereto, which are reproduced hereunder as,

I. "Whether the Authorization Order dated 27.09.2022 issued by the Commissioner Inland

Revenue under Section 175 of the Income Tax Ordinance, 2001 ("the Ordinance") is without jurisdiction and unlawful in view of the instructions and directions issued by the Federal Board of Revenue ("FBR") vide Circular dated 14.05.2019 read with Section 214 of the Ordinance? If so, to what effect?

Response: Authorization in question is neither without jurisdiction nor unlawful. Reasons provided in paragraphs above.

- II. *Whether the raid, search and impounding of record and equipment of the petitioner in consequence of Authorization Order dated 27.09.2022 and subsequent proceedings are unlawful and shall not be used directly or indirectly in adjudication proceedings against the petitioner or any other proceedings based thereupon in any other manner?*

Response: Documents / information obtained could be lawfully used for conduct of audit. Reasons provided in paragraphs above.

- III. *Whether raid and search is an extreme action taken by the respondent officials against the petitioner/taxpayer and has infringed the rights guaranteed under the Constitution of Islamic Republic of Pakistan, 1973?*

Response: No fundamental right was violated. Reasons provided in paragraphs above.

- IV. *Whether the Authorization Order, raid, search and subsequent proceedings are violative to the law settled by the Honourable High Courts of the country in cases reported as 2019 PTD 2119, 2019 PTD 1124 and 2016 PTD 2601?*

Response: Judgments referred are discussed in paragraphs above.

- V. *Whether there was reasonable cause for taking action under Section 175 of the Income Tax Ordinance, 2001?*

Response: Based on facts no illegality is found in invocation of section 175 of the Ordinance, 2001. Reasons provided in paragraphs above.

- VI. (a) *Whether the show cause notice dated 24.10.2022 under Section 11 of the Sales Tax Act, 1990 has been issued in violation of the order dated 19.10.2022 passed by this Honourable Court in W.P. No.64261/2022.*

Response: No apparent violation of order dated 19.10.2022 is found. Reasons provided in paragraphs above.

(b) Whether the audit report under Section 177(6) of the Income Tax Ordinance, 2001 dated 21.10.2022 has been issued in violation of the order dated 19.10.2022 passed by this Honourable Court in W.P. No.64261/2022.

Response: No violation of Order dated 19.10.2002 was committed. Reasons provided in paragraphs above”.

27. In view of the aforesaid, this Court finds no reason to assume and exercise constitutional jurisdiction, assumption of jurisdiction would otherwise be unjust and unfair, which tantamount to interfering in the audit proceedings. No comments are required to decide the issue of legality of Notice under Section 11 of Act, 1990. Petitioner may invoke remedies available in the context of said proceedings. Order of dismissal of petition was announced in open Court upon hearing submissions, reasons followed.

This petition is devoid of merits and same is, therefore, **dismissed**. No order as to the costs.

**(ASIM HAFEEZ)
JUDGE**

Imran/*

Heard on 08.12.2022.
Signed on 28.12.2022.

Approved for reporting.

Judge.