IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Agha Faisal
Mr. Justice Muhammad Osman Ali Hadi

H.C.A. No. 11 of 2022

The Commissioner Inland Revenue, legal Zone (MTO) VS Team A-Ventures (Pvt) Ltd.

H.C.A. No. 12 of 2022

The Commissioner Inland Revenue VS Team A Ventures (Pvt) Ltd.

H.C.A. No. 62 of 2022

Directorate of I & I Inland Revenue VS M/s. Century Engineering Ind. Pvt Ltd.

H.C.A. No. 73 of 2022

Directorate of I & I Inland Revenue VS M/s. Exide Pakistan Ltd

Date of hearing	:	17.10.2025
Date of decision	:	29.10.2025
Appellant in HCA Nos. 11 & 12 of 2022	:	Through Mr. Shahid Ali Qureshi, Advocate.
Appellant in HCA Nos. 62 & 73 of 2022.	:	Through Mr. Mukesh Kumar Khatri, Advocate
Respondent/Federation	:	Through Ms. Zehra Sahar Vayani, Assistant Attorney General.

JUDGMENT

PRELUDE

MUHAMMAD OSMAN ALI HADI J.- The instant appeals have arisen from a common Judgement dated 05.11.2021 and Decree dated 15.11.2021 (collectively referred to as the **"Impugned Judgement"**) passed in several connected Suits filed by the respective Respondents, before the High Court of Sindh at Karachi under its (then) Original Civil Jurisdiction. The learned single Judge was pleased to declare that searches conducted by the Appellants at the Respondents' premises under the garb of section 38 off the Sales Tax Act 1990 (**"STA 1990"**), section 175 of the Income Tax Ordinance 2001 (**"ITO 2001"**) and section 25 of Federal Excise Act 2005 (**"FEA 2005"**) were illegal, *inter alia*, as the said raids / searches were

conducted without the Appellants / Inland Revenue Authority (**"FBR"**) having obtained any search warrants or following due process.

2. The learned single Judge based the Impugned Judgement on settled precedent and statutory interpretation, and was pleased to pass judgement in favour of the Respondents, by holding that such searches conducted by the FBR were unlawful and without jurisdiction, as no prior search warrant had been obtained (in cases falling under the STA 1990); or (in other cases) no existing investigation / inquiry was already underway pursuant to which such search was deemed essential (in cases falling under the ITO 2001).[1] Neither of the mentioned (two) preconditions were met by the Appellants in the matters-at-hand, and the learned single Judge maintained in favour of the private rights of the Respondent taxpayers.

It is against this ruling that the FBR have filed the instant appeals.[2]

ARGUMENTS OF COUNSEL(S)

3. Learned Counsels appearing for the Appellants[3] commenced their arguments by submitting that the law was settled and the learned single Judge had erred in holding that a search warrant was required. Counsel pointed to page 149 of the Impugned Judgement, noting that sections 38 STA 1990, 175 ITO 2001 & 25 of the Federal Excise Act 2005 allow the FBR to conduct such searches without warrants or pre-requisites, which was incorrectly not considered by the Single Judge held in the Impugned Judgement.

4. Counsel then submitted that sections 51 STA 1990 and 227 ITO 2001 contained ouster clauses, and the jurisdiction of the civil court was barred from hearing the matter. As such, counsel stated that the suits themselves were not maintainable and could not have been decided by the learned Single Judge under the Original Jurisdiction of the High Court.

5. Counsel then submitted that section 40 STA 1990 (under which requirement of a warrant is mentioned) was only applicable in instances

---

[1] NB: None of the cases in appeal before us related to the FEA 2005, and hence we will not deliberate upon the same. These appeals shall be restricted to the STA 1990 and ITO 2001.

[2] Since there are several appeals connected together, we will be using the File of HCA No. 11 of 2022 as a reference point throughout this Judgement, unless expressly stated otherwise

[3] Since the Counsels for the Appellants argued the same / similar points, we shall refer to arguments of all the said Counsels collectively

where records were hidden, otherwise the said provision did not apply. They placed reliance on section 38 STA 1990 for their search, under which no warrant was required, and stated the raids were conducted in accordance with section 38.

6. Learned Counsels for the Private Respondents[4] briefly countered the assertions put forth by the FBR by submitting that under the STA 1990, a warrant was required, and that the Appellants did not hold unfettered powers to raid private business concerns without due process (which included obtaining of warrants) in the hope of getting some information. They further averred that under the ITO 2001 there were other considerations such as a prior proper investigation being underway, a right of hearing, fair chance of representation etc. before such a search could be conducted by the Appellants. Counsel submitted that such considerations were not adhered by the Appellants. Counsel for the Respondents relied entirely upon the Impugned Judgement, which they stated was exhaustive and accurate, and had covered all legal points. Reliance was also placed on **2003 PTD 1034**, which they state had previously covered the matter at hand.

THE COURT'S DELIBERATIONS

7. We have heard all the learned Counsels, after which we opine as follows:

Once the Respondents had filed their suits, the learned Single Judge (without any objections from the parties) observed that since no disputed questions of fact arose, settled the following *Issues* of law:

i. Whether the suits are barred by reason of the special provisions of the Sales Tax Act, 1990 and/or the Income Tax Ordinance. 2001?

ii. Whether the raid and/or search and seizure by the Directorate General (Intelligence & Investigation) Inland Revenue or by the Commissioner at the premises of the Plaintiffs under section 38 of the Sales Tax Act, 1990 was unlawful? If so, to what effect?

iii. Whether the entry, search and seizure of record by the Directorate General (Intelligence & Investigation) Inland Revenue under section 175 of the Income Tax Ordinance, 2001 at the offices of the Plaintiffs was unlawful? If so, to what effect ?

[4] The Counsels for the Respondents also argued the same points, hence their arguments are also referred to collectively

iv. Whether the search of the Plaintiffs' premises and seizure of their record under the Federal Excise Act, 2005 or the Federal Excise Rules, 2005 was unlawful? If so, to what effect?

v. What should the decree be?

8. After hearing all relevant Counsels, the learned single Judge proceeded to give a detailed 31 page judgement on the matter, which deliberated the grievances put forward, culminating in the outcome that such raids on the Respondents' premises could not have been conducted by the Appellants.

9. As the Appellants / FBR have appealed the Impugned Judgement before us, we have highlighted the following two points for deliberation:

A. If the Impugned Judgement took an erroneous view in interpretation of sections 38 & 40 of the STA 1990, and the corresponding provision being section 175 of the ITO 2001;[5]

B. If the Impugned Judgement was correct in holding that the High Court's Original Civil jurisdiction was not ousted under the referred taxing statutes' *'ouster clauses'*.

10. In the first instance, we shall consider **Point 'A'** *ibid.* Under the framed *Issue No. ii*, the Appellants have argued that that the provisions of section 38 STA 1990 & 175 ITO 2001 were misinterpreted by the learned Single Judge. However, the Appellants have failed to how such misinterpretation had occurred? The learned Single Judge in the Impugned Judgement has gone through the legislative history of both the STA 1990 and ITO 2001 in extensive detail. Before proceeding further, for purposes of providing ease when reading our ruminations below, we hereby reproduce the relevant sections 38 & 40 of the STA 1990 and 175 ITO 2001:

Sales Tax Act 1990

[38. Authorized officers to have access to premises, stocks, accounts and records.--(1) Any officer authorized in this behalf by the Board [or the Commissioner] [* * *] shall have free access [including real-time electronic access] to business manufacturing premises, registered office or any other place where any stocks, business records or documents required under this Act are kept or

[5] It is to be noted that the corresponding section 25 of the Federal Excise Act 2005 was also deliberated in the Impugned Judgement, but that remains unchallenged in the instant Appeals before us, and hence we are have reflected upon the same.

maintained belonging to any registered person or a person liable for registration or whose business activities are covered under this Act or who may be required for any inquiry or investigation in any tax fraud committed by him or his agent or any other person; and such officer may, at any time, inspect the goods, stocks, records, data, documents, correspondence, accounts and statements, utility bills, bank statements, information regarding nature and sources of funds or assets with which his business is financed, and any other records or documents, including those which are required under any of the Federal, Provincial or local laws maintained in any form or mode and may take into his custody such records, statements, diskettes, documents or any part thereof, in original or copies thereof in such form as the authorised officer may deem fit against a signed receipt.

(2) The registered person, his agent or any other person specified in sub-section (1) shall be bound to answer any question or furnish such information or explanation as may be asked by the authorised officer.

(3) The department of direct and indirect taxes or any other Government department, local bodies, autonomous bodies, corporations or such other institutions shall supply requisite information and render necessary assistance to the authorised officer in the course of inquiry or investigation under this section.]

(4) For the purpose 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.

40. Searches under warrant.--(1) Where any officer of [Inland Revenue] has reason to believe that any documents or things which in his opinion, may be useful for, or relevant to, any proceedings under this Act are kept in any place, he may after obtaining a warrant from the magistrate, enter that place and cause a search to be made at any time.

(2) The search made under sub-section (1) shall be carried out in accordance with the relevant provisions of the Code of Criminal Procedure, 1898 (V of 1898).

<u>Income Tax Ordinance 2001</u>

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 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 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.

11. Para Nos. 15 – 22 of the Impugned Judgement have discussed the development of sections 38 and 40 (as well as the erstwhile 40-A[6]) of the STA 1990, showing the detailed mannerism undertaken by the single Judge, when discussing the process of jurisprudential evolvement of the aforementioned statutes, supported by case law.

[6] Omitted by the Finance Act 2006

12. We do not feel the need to overburden the reader by reproducing the entire said Paras which are relatively lengthy, but the gist of the Impugned Judgement holds that time and again the Courts have endorsed the view that conducting such raids without warrants under the STA 1990 is unlawful.

13. For purposes of clarity, the mentioned determining Paras No. 21 & 22 of the Impugned Judgement are reproduced below:

> *"21. Given the settled interpretation of sections 38 and 40 STA discussed above, the argument of the tax department that section 38 STA is a power of search independent of section 40 STA, has no force. Rule 92 of the Sales Tax Rules, 2006 also stipulates that: "All searches shall be carried out in accordance with the relevant provisions of the Code of Criminal Procedure, 1898". After the omission of section 40A STA by the Finance Act, 2006, tax authorities under the STA do not have any power to search a premises without obtaining a warrant under section 40 STA. Even before that, section 40 STA can only be invoked where the relevant officer "has reason to believe that any documents or things which in his opinion, may be useful for, or relevant to, any proceedings under this Act are kept in any place". While that 'reason to believe' is to be demonstrated by the authorized officer before the Magistrate from whom the warrant is sought, the sine qua non for the search is "proceedings under this Act". In my view, the 'proceedings' referred to in section 40A STA are those which are already initiated under the STA prior to the search. A provision for search cannot be used by tax authorities to collect evidence to see if proceedings can then be initiated against a person, for such an act would amount to a fishing inquiry, an act held by the Supreme Court to be unlawful in Assistant Director, Intelligence and Investigation, Karachi v. B. R. Herman (PLD 1992 SC 485).*
>
> *22. Excepting the suits that are discussed infra, it is not the case of the tax department that the search was in relation to proceedings pending against the Plaintiffs or another other person under the STA. In none of the suits that impugn a search under section 38 STA, including the suits discussed separately infra, did the tax authorities obtain a search warrant as required by section 40 STA. Therefore, if not for want of a pending proceeding, the impugned searches under section 38 STA were unlawful for want of a warrant. The written statements of the tax department where they attempt to justify the search by submitting that the same was carried out after monitoring the business activities of the Plaintiffs and after gathering intelligence against them, are firstly reasons that are assigned ex-post facto, and secondly, do not answer section 40 STA. In some of the suits, the written statements plead that the record taken into custody during the search has revealed tax evasion. Again, the answer to that is in the principles laid down in para 20 above, viz., that the record seized unlawfully from the Plaintiffs cannot be used against them in determining their tax liability."*

14. The above Para No. 21 of the Impugned Judgement has categorically discussed the provisions of sections 38 & 40 STA 1990, and the reasons as to why there is no independent power of search provided under section 38. The same must be read holistically with the entire STA 1990, and not in an

independent singled-out manner. The learned Judge has gone further to deliberate upon the effect of omission of section 40A STA 1990, which had previously provided powers for search without obtaining a warrant. The Judge held that since its omission, there remains no ambiguity insofar as establishing the Appellants do not have any powers of search without obtaining a prior warrant, under the STA 1990.

15. Para No. 22 shows the Impugned Judgement has considered the Appellants' submissions, and held their reasoning placed before the Court for conducting such raids was in essence an attempt to cover their base, as the searches were admittedly not in pursuance of pending proceedings, and therefore search warrants were required (which of course were not obtained, hence the entire salvo of legal proceedings). Furthermore, the learned Single Judge has held that the Appellants failed to address the clear requirement of section 40 of the STA 1990, which explicitly provides a necessity of first obtaining a search warrant, before raid / search can be carried out by the FBR.

16. In Para Nos. 25 – 30, the Impugned Judgement discusses and sets the parameters for searches to be conducted under the ITO 2001. The learned Single Judge while having comprehensively deliberated upon various precedents, and supplying statutory interpretation, held that there were three basic conditions required for a search under the ITO 2001. Such conditions were enunciated in Para 29 of the Impugned Judgement, which reads as under:

> ***"29.*** *Learned counsel for the Plaintiffs had relied on the case of K.K. Oil and Ghee Mills to submit that the word 'enforce' in section 175 ITO implies that if can only be invoked after the taxpayer has been called upon to produce record under some provision of the ITO, such as section 176, and the taxpayer resists or refuses to do so. With that view I am unable to agree, for that would rule out a search where the tax authority has evidence that the true record is suppressed from it, or that it would escape on a notice to produce. In my view, the conditions of a search under section 175 ITO discussed above, viz. (i) specifying the provision sought to be enforced, (ii) some legal action under the ITO pending against the taxpayer, and (iii) the giving of reasons for the search in the Authorization Letter, are adequate safeguards against the misuse of said provision." (emphasis supplied)*

17. The learned Single Judge then followed-up on his observations (*ibid.*) at Para 30, in which he explains his reasons as to why the Respondents had a valid grievance against the Appellants. Para 30 follows:

> *"30. Excepting the suits that are discussed infra, it is not the case of the tax department that the search was in relation to any inquiry, investigation, audit or other action pending against the Plaintiffs under the ITO. In none of the suits that impugn a search under section 175 ITO, including the suits discussed separately infra, did the Authorization Letter of the search specify the provision sought to be enforced or give reasons for the search. Therefore, if not for want of a pending action against the Plaintiffs under the ITO that could have justified a search, the impugned searches under section 175 ITO were unlawful for failing to specify the provision sought to be enforced and for failing to give reasons. The written statements of the tax department where they attempt to justify the search by submitting that the same was carried out after monitoring the business activities of the Plaintiffs and after gathering intelligence against them, are firstly reasons that are assigned ex-post facto, and secondly, do not meet the conditions of section 175 ITO discussed above. In some of the suits, the written statements plead that the record taken into custody during the search has revealed tax evasion. However, as discussed under Issue No. (ii) above, the record impounded/ seized from the Plaintiffs during an unlawful search, cannot be used against them as evidence in determining their tax liability."*

18. In Para Nos. 23, 24 & 31, the learned Single Judge has provided a painstaking effort of discussing the suits individually, and the reasons where the Appellants went wrong when carrying out searches, in each specific instance.

19. There can be no cavil the learned Single Judge has not left any stone unturned when providing his reasoning in the Impugned Judgement, which he has further bolstered with a plethora of case law[7] in support thereof.

20. As the matter pertained only to legal questions,[8] the rationale provided in the Impugned Judgement along with reading of the jurisprudence cited therein,[9] has clearly demonstrated the pre-requisite requirements by the Appellant prior to carrying out such searches / raids were (admittedly) not fulfilled. Section 40 STA 1990, holds a specific requirement for searches to be conducted <u>*with*</u> a warrant. Section 40 STA 1990 reads:

> **"40. Searches under warrant.--(1)** Where any officer of [Inland Revenue] has reason to believe that any documents or things which

[7] 2018 SCMR 1444; PLD 1997 SC 3; 2014 PTD 1733; 2003 PTD 1034; 2003 PTD 2037; 2004 PTD 1731; 2007 PTD 2356; PTCL 2005 CL. 32; 2005 SCMR 1166; 2007 PTD 1351; 2007 PTD 2356; 251 US 385 (1920); 302 US 379 (1937), 308 US 338 (1939); PLD 1992 SC 485; 2016 PTD 2601; 2019 PTD 1124; 2019 PTD 2119; 2017 PTD 2114;

[8] Since *Issues* were framed accordingly only on legal points in the Suits, as the parties accepted there were no disputed facts

[9] We do not find it necessary to reproduce the said case law, as the same would unduly lead to repetition and overload

in his opinion, may be useful for, or relevant to, any proceedings under this Act are kept in any place, he may after obtaining a warrant from the magistrate, enter that place and cause a search to be made at any time.

(2) The search made under sub-section (1) shall be carried out in accordance with the relevant provisions of the Code of Criminal Procedure, 1898 (V of 1898)."

21. This point was discussed in the case of *Haq Cotton Mills (Pvt.) Ltd.*[10] when dealing with a similar matter under the STA 1990, in which a 3 Member Bench of the August Supreme Court held:

"6. It may be pertinent to point out that sections 38, 40 and 40-A were amended vide Act II of 2004 with effect from 1-7-2004 whereby section 38-A was inserted in the Act, 1990 and section 40 as well as 40-A were appropriately amended with a view to curtail and monitor the unlimited and unbridled powers of the sales tax authorities resulting in undue harassment and humiliation to the taxpayers. This question has been the subject-matter of consideration before this Court at a number of times. In Federation of Pakistan v. Master Enterprises (Pvt.) Ltd. 2003 PTD 1034, this Court held as under:--

"It is expressly stipulated in the provisions of sections 40 and 40A of the Sales Tax Act, 1990 that all searches made under Act or the Rules shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898). Procedure regarding search has been laid down in sections 96, 98, 99-A and 100 of the Code whereby, firstly, a search warrant is to be obtained from the Illaqa Magistrate when search of the premises is to be made. In view of section 103 of the Code, it is mandatory to join two or more respectable inhabitants of the locality in which the place to be searched is situated, to attend and witness the search and a list of all articles taken into possession shall be prepared and a copy thereof shall be delivered there and then. In the present case Department had failed to show from record that the above provisions of law were strictly followed while seizing the record and sealing the premises of the Company. As such, there was no cogent reason to interfere with the impugned judgment which was unexceptionable."

7. In N.P. Water Proof Textile Mills (Pvt.) Ltd. v. Federation of Pakistan 2004 PTD 2952, a Division Bench of the Sindh High Court laid down that failure of tax officials to place any material before the Court to establish that there were sufficient reasons and grounds for bypassing normal course of action specified in section 40 and resorting to section 40-A of the Act, 1990, action under section 40-A was not sustainable and consequently the search and seizure was held illegal and of no legal consequence. hi Collector of Customs v. Universal Gateway Trading Corporation 2005 SCMR 37, which was a case involving interpretation and application of sections 162 and 163 of the Customs Act, 1969, search was conducted without obtaining a search warrant for the reason that it could have been done in view of the circumstances prevalent at the relevant moment, which could only be adjudged by concerned officer under

[10] 2007 SCMR 1039 – authored by the (late) Justice Rana Bhagwandas

> *whose supervision the raid was being conducted, it was held that the same could not be done in routine practice and every possible effort should be made to comply with the provisions as enumerated in sections 162 and 163 of the Customs Act, 1969. It may not be out of place to observe that such provisions more or less correspond to sections 40 and 40-A of the Act, 1990. Lastly, the scope and authority in terms of sections 38, 40 and 40-A of the Act, 1990 was examined in Collector of Sales Tax and Central Excise v. Mega Tech 2005 SCMR 1166 by a Bench of this Court; including Rana Bhagwandas and Nasir-ul-Mulk, JJ. It was held that section 40-A, in the absence of any strong belief to such effect does not confer unlimited and unbridled powers on the authorised officer to conduct search or impound any kind, of documents, in the absence of any reasonable cause and without obtaining any search warrant from the Magistrate."*

22. In the case of *Commissioner Inland Revenue v Pakistan Beverages Ltd.*,[11] another 3 Member Bench of the Apex Court held:

> *"4. …….All discretionary powers, especially that as conferred by statute, must be exercised in terms of well established principles of administrative law, which are of longstanding authority and have been developed, enunciated and articulated in many judgments of this Court. There is no need to rehearse those principles here save only to note one aspect. This is that a discretionary statutory power can only be exercised on a ground or to achieve an object or purpose that is lawfully within the contemplation of the statute. Now, as correctly noted by the High Court, the power under section 40B has been granted to "monitor" the "production, sale of taxable goods and stock positions" of a registered person or class of such persons, by posting Inland Revenue officers at the relevant premises. But the monitoring can only be for some object, ground or purpose that is legitimately and lawfully within the contemplation of the 1990 Act." (emphasis supplied)"*

23. The above dictums enunciated in the cases of *Haq Cotton Mills* and *Pakistan Beverages Ltd.* unequivocally ascertain that before disenfranchising taxpayers from their protected rights and safeguards, a proper and due process was required to be obeyed by the Inland Revenue Authorities, whose powers were not unbridled. In the case of *Haq Cotton Mills* it is interesting to note that when the raid / search was carried out under the STA 1990, section 40A (which specifically provided for 'search *without* warrant') was still in effect.[12] Meaning, despite the statute itself having a specific provision enabling search *without* a warrant, the Apex Court held that despite the said specific provision; administrative and substantial aspects of law / statute must be observed, and willy-nilly interference in the privacy of persons (i.e. the taxpayers) resulting in harassment and humiliation without following due process was strictly impermissible. Even section 24-A *General Clauses Act 1897* would come to the aid of the Respondents in this regard.

---

[11] 2018 SCMR 1544

[12] Section 40A STA 1990 was omitted by the Finance Act 2006 (assented on 30.06.2006)

24. Moreover, the said precedents (*supra*) stand endorsed by the legislature, who in their wisdom deleted section 40A of the STA 1990.[13] This omission would mean to hold the legislature were desirous of removing the unfettered powers of the Appellants to conduct searches *without* warrants. This may be deduced through the dictum that a change in statute signifies the intent of the legislature, and cannot be considered a mere irrelevance. Such view was fortified by the Supreme Court in the case of *Pakistan Tobacco Co. Ltd. v KMC,*[14] where Justice Hamoodur Rehman, speaking for the Court, pronounced:

> *"a Legislature is deemed to be aware of the previous state of the law and if knowing this it makes a change when repealing it and re enacting some of its provisions the intention is clearly to effect a change".*

25. As per reading, all these concerns raised before us, were argued at the Trial Stage and contemplated in the Impugned Judgement.[15] But the Appellants/Defendants (in the Suits) were unable to provide any justification to pacify the legal concerns raised against the raids / searches being conducted in derogation of statute and law. Even before us, when we confronted the counsels for the Appellants in this regard they remained unable to dissipate our anxiety on the matter, and were incapable to differentiate settled case law on theses points; nor were they able to provide any legal precedent in support of their own submissions. Moreover, they remained feeble when trying to highlight any legal impediment with the Impugned Judgement.

26. The reading of various provisions, particularly section 38 & 40 of the STA 1990 and 175 ITO 2001, must be done holistically whilst looking at the substantive aspects of the statute. It is trite that certain checks and balances are always incorporated under law, to prevent abuse of power and to ensure protection of persons.

27. The Impugned Judgement has clearly identified that for such a raid / search to be invoked under section 175 ITO 2001, a reason needs to be specified by the authorized officer of the Appellant / FBR; and it must be

---

[13] In the year 2006 as discussed *ibid.*
[14] P 1967 SC 241
[15] Between Para Nos. 8 – 12 of the Impugned Judgement

on the basis of an existing inquiry/investigation/audit where deemed absolutely necessary, else the same would be a mere fishing expedition and impermissible (as was held to be done against the instant Respondents).[16]

28. Similarly in Para No. 20, the Impugned Judgement has held that under the STA 1990, a warrant was mandated under section 40 of the Act prior to conducting a search, and has settled such principles accordingly. The learned Single Judge has even referenced the 'fruit of the poisonous tree' *doctrine*, whereby any evidence collected during an illegal search cannot be used against such person, the corollary being that since the search on which evidence was obtained was in itself illegal, hence any evidence collected would be deemed to have been gained illegally. Para No. 20 of the Impugned Judgement reads:

> ***"20.*** *After a study of the case-law above, the principles that are settled after the case of Mega Tech can be stated as follows:*
> *(i) Section 38 STA is not an independent power to search and has to be read with section 40 STA, otherwise section 40 becomes surplus if not redundant, which cannot be the intent of the legislature;*
> *(ii) The power to search a premises under section 38 STA is conditioned by section 40 STA, (a) by requiring a search warrant from the Magistrate, and (b) by a reason to believe that the search would yield a document or thing, which in the opinion of the tax authority would be useful for, or relevant to, any proceedings under the STA;*
> *(iii) Section 40 STA exists as a procedural counter-balance and safeguard provided to citizens against the misuse of free access and drastic powers granted to tax authorities under section 38 STA;*
> *(iv) A search conducted without fulfilling the above mentioned requirements of section 40 STA is unlawful, and as a consequence, the record obtained unlawfully has to be returned and cannot be used in evidence against the person in determining his tax liability.*
>
> *The finding that evidence collected during an unlawful search of a person's premises cannot be used against him, is of course based on the doctrine of 'fruit of the poisonous tree', a rule of exclusion of evidence. The doctrine came to be established by decisions of the Supreme Court of the United States in Silverthorne Lumbar Co. v. United States, 251 US 385 (1920); Nardone v. United States, 302 US 379 (1937); and Nardone v. United States, 308 US 338 (1939). There are however certain exceptions to that doctrine, the relevant one being, as observed in Silverthrone Lumbar that: "Of course this does not mean that the facts thus obtained become sacred and inaccessible. If knowledge of them is gained from an independent source they may be proved like any others ...." . Where that exception is invoked, it was held in Nardone (308 US 338) that the independent source alleged is open to question before the relevant forum and has then to be proved."*

[16] Para No. 28 of the Impugned Judgement

29. Additionally, as the Impugned Judgement has discussed each Suit individually (despite the same having common issues involved), it cannot by any stretch of the imagination be said that the learned Single Judge has not remained thorough in his approach. As such (and in response to **'Point A'** of our determination), we find the Impugned Judgement has accurately interpreted the relevant provisions of the statutes being the Sales Tax 1990 and Income Tax Ordinance 2001, based on sound legal principles, not requiring any interference by us.

30. Our second **Point 'B'** for consideration, pertains to the *ouster* clauses contained in the STA 1990 and ITO 2001, and the impact thereof. This issue has been long settled by the Supreme Court in several judgements such as *Abbasia Cooperative Bank*[17] which held that where an authority acted in violation of statute, the jurisdiction of the civil would not be ousted;[18] and more recently in the *Searle IV*[19] case in which the Supreme Court specifically held that the Original Civil Jurisdiction of the High Court was not ousted and the High Court could take cognizance of any suit arising from actions / orders of tax authorities (such as the Appellants, albeit with certain limitations). In the instant matters, provisions of law were violated and due process was not followed (already discussed above). Requisite obligations before carrying out searches remained unfulfilled. Actions of the Appellants being contrary to law and the powers bestowed upon them under statute, were susceptible to challenge before the Original Civil Jurisdiction of the High Court, in consonance with settled precedent (under which we are bound).

31. We need not delve further on this point and remain in agreement with the Impugned Judgement, by holding that the Suits were maintainable and the *ouster* clause(s) remained inapplicable in the circumstances.

32. In conclusion, we find the Impugned Judgement is based on proper legal reasoning backed by settled caselaw. The view contained in the Impugned Judgement is supported by our own view, in accordance with precedent and statutory readings, as already discussed and cited by us *supra*.

---

[17] PLD 1997 SC 3 &

[18] Discussed in Para 14 of the Impugned Judgement

[19] 2018 SCMR 1444dec

The Impugned Judgement has correctly held that the Sales Tax Act 1990 and the Income Tax Ordinance 2001 do not hold blindly unrestricted powers for the Appellants to conduct raids / searches, in the manner done against the Respondents.

33. An appeal can only be successful if any material / legal irregularity resulting in a miscarriage of justice is established, which in our opinion, has not been shown in the Impugned Judgement. It is further noted that the contentions of the Appellants have also remained weak and devoid of legal merit throughout.

34. For reasons highlighted above, we do not find any infirmity in the Impugned Judgement. Accordingly, we dismiss the instant Appeals with no order as to costs. Office is instructed to place copy of this Judgment in the above connected Appeals

Appeals Dismissed

Judge

Judge

Ayaz p.s