

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

HCA No.478 of 2024

(Commissioner Inland Revenue v. Zaka Sons & Others)

Date	Order with Signature of Judge
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1. For Orders on office objection a/w reply at A
2. For Hearing of Main Case
3. For Hearing of CMA No.2949/2024

27-02-2026

Mr. Jazib Aftab Memon, Advocate for Appellant
Mr. Jahanzeb Balouch, Advocate for Respondents No.1 to 3
Mr. Irshad Ali, Assistant Attorney General

Has challenged the Impugned Order dated 26.9.2024,
which reads as under:-

“Mr. Aslam Mari, Commissioner, Inland Revenue is present and submits that this matter is covered by a judgment dated 13.09.2021 passed in Suit No.2019 of 2015, inter alia, per the discussion and findings contained in paragraph 20 and onwards.

In view hereof, for the reasons so assigned in the aforementioned judgment and in mutatis mutandis application thereof to the present facts and circumstances, this suit is disposed of.”

For ease of understanding, the Judgment referred to in the Impugned Order is reported in SBLR 2022 Sindh 322 (A & Z Agro Industries (Pvt) Ltd and others v. Federation of Pakistan and another) authored by a learned Single Judge of this Court, which has subsequently been upheld by a Division Bench of this Court in HCAs 11, 12, 62 and 73 of 2022 [Commissioner Inland Revenue, Legal Zone (MTO) v. Team A. Ventures (Pvt) Ltd and others], as discussed below.

2. Learned Counsel for the Appellant contends that the reason for filing this Appeal is that the learned Single Bench was not properly assisted in respect of the controversy relating to exercising power under Section 38 of the Sales Tax Act, 1990 (**STA**). States that such power is independent of Section 40 of the STA, which can be seen from the language of both Provisions, which cater to two different situations and one cannot be made interdependent on the other, and this contention is supported by the Decision of this Court given in *Apple Paper Products (Pvt.) Ltd. v. Federation of Pakistan (2019 PTD 787) – APP Case*. Has also filed on last date of hearing a compendium of documents including the case law. Has drawn our attention to the latest Judgment of the Hon'ble Federal Constitutional Court (**FCC**), rendered in the **Sceptre Case** [F.C.P.L.A. No. 23 of 2026 – *M/s Sceptre Pvt. Ltd. Versus Federation of Pakistan*], whereby the FCC dismissed *Sceptre's* petition (challenging this Court's Division Bench judgment passed in **H. M. Motors Case** [C.P. No. D-4910 of 2025 – *H. M. Motors v. Federation of Pakistan and others*]) and maintained the decision in *H. M. Motors Case*. By way of clarification, the *H. M. Motors* case was the lead case in a batch of constitutional petitions decided by this Court, in which *Sceptre Pvt. Ltd.* was also one of the petitioners – wherein the various petitioners in the said batch had challenged surprise searches of their respective business premises carried out under Sections 38 and 40 of the STA and Section 175 of the Income Tax Ordinance, 2001 (**ITO**). Counsel has laid much emphasis on the ratio laid down by the FCC, while interpreting the scope of Section 175 of the ITO, which is exercisable regardless of

whether any proceeding is pending or not, while disagreeing with the reasoning of this Court stated in ***Agha Steel Case*** [*Agha Steel Industries Ltd. and another v. Directorate of Intelligence and Investigation and others* – (2019 PTD 2119)]. States that in the present controversy, the power under Section 38 of STA was lawfully exercised when the premises of the Respondents were entered and subjected to inspection in accordance with the statutory provisions. Contends that the Judgment in *H.M. Motors Case*, as affirmed by the FCC, shows that although the Division Bench of this Court categorized the constitutional petitions into four groups in accordance with the provisions of the ITO and STA, its findings under Section 175 of the ITO apply equally to Section 38 of the STA, the two provisions being *pari materia*.

3. This Appeal is opposed by the Respondents' Counsel who, besides supporting the Impugned Order, has questioned the maintainability of this Appeal for the reasons that it was a consent order and furthermore it has been instituted by an unauthorized person, that is, Deputy Commissioner instead of Commissioner, which power cannot be delegated under Section 32(3) of STA. Has relied upon the Judgment pronounced in ***Team A-Ventures Case*** [HCAs No.11, 12, 62 and 73 of 2022 – *Commissioner Inland Revenue, legal zone (MTO) v. Team A-Ventures (Pvt) Ltd. and others*].

4. Arguments heard and record perused.

5. With regard to the above two provisions of Sections 38 and 40 of STA, two recent Judgments of this Court are in the field, that is, the afore-referred *H.M. Motors* and *Team A.*

Ventures (Pvt.) Ltd. Cases. The *H.M. Motors Case* has been maintained by the FCC in the *Sceptre Case (supra)*, but only in respect of Section 175 of the ITO, as the above Decision of this Court concerning Sections 38 and 40 was not challenged and has accordingly attained finality. Whereas, in the Judgment of *Team A-Ventures*, the *ratio decidendi* of the learned Single Bench of this Court in various Suits filed by the individuals, entities, have been upheld, which is mentioned in the Impugned Order. Undisputedly, the *Team A-Ventures* Judgment is still in the field and has not been suspended or overturned by the higher forum, in Paragraph 14 whereof, it is **held** that power exercisable to raid and search a premises would be dependent upon Section 40 of STA, that is, obtaining Search Warrant from the concerned Magistrate. In *H.M. Motors Case (supra)* same view has been expressed while interpreting the import of the aforesaid Sections 38 and 40 of STA.

At this juncture it is necessary to clarify, that in *H. M. Motors Case*, this Court has bifurcated the constitution petitions into four different categories in the following manner:

“Category	Features
A.	<i>This category involves cases in which authorization letter for search was issued under Section 38 of the Act, but no warrants for the search were obtained under Section 40.</i>
B.	<i>This category involves cases in which authorization letter for search was issued under Section 38 of the Act, however warrants were obtained under Section 40, without the department initiating any proceedings.</i>
C.	<i>In this category, search under section 175 of the Ordinance was undertaken when no proceedings under the Ordinance were pending against the Petitioner.</i>

- D. *This category involves search carried out under Section 175 of the Ordinance, with proceedings initiated against Petitioner under the Ordinance and reasons duly assigned in authorization letter.”*

The Petitions falling in above Category ‘D’ relating to Section 175 of the ITO were dismissed, by ruling that_

“Income Tax:-

6. *The law relating to Section 175 of the Ordinance was discussed extensively in the case Team A-Venture (Pvt) Ltd (supra) and the conditions laid down for invoking said provision may be summarized as follows:-*

- (i) The provision of the Ordinance sought to be enforced by the search must be specified by the authority as the power to search is not intended as a fishing inquiry.*
- (ii) Some legal action under the Ordinance must be pending against the taxpayer.*
- (iii) To avoid misuse of the provision, reasons for the search ought to be stated in the authorization letter.”*

6. In the **Sceptre Case** [supra] relied upon by the Appellant’s Counsel, the FCC has only considered the scope and applicability of Section 175 of the ITO, holding, inter alia, that it is not necessary that the above Section 175 can be applied only when a proceeding is pending; except for this latter dictum, the rest of the Judgment in *H.M. Motors Case* is upheld. Conversely, in the same Judgment of *H. M. Motors* so also the *Team A-Venture Case*, the discussion on Sections 38 and 40 of STA goes against the contention of the Appellant’s Counsel, which is, that Section 38 [ibid] is not an independent power to inspect, have an access and carry out search, and is to be read with Section 40 of STA, that is, a prior search warrant is necessary for carrying out search of premises and

collecting evidence. This principle has evolved on the basis of the Decisions of the Hon'ble Supreme Court, which are mentioned in *Team A-Venture Case*. As far as *APP Case* judgment is concerned [cited by the Appellants Counsel], the same does not advance the case of the Appellant either, because in the said judgment it is held, that both provisions, viz. 38 and 40 of STA cater to two different situations, but it has not determined, that Section 38 is independent from Section 40. In the said Judgment also, this Court has structured the discretion of the Appellant, by ruling that a premises of a registered person cannot be made on a mere hunch or suspicion, but “*the department must have reasonable cause to believe that such a visit is warranted.*”; such record and documents that are in plain sight or have voluntarily been made available, can be taken into custody, within the meaning of Section 38 of STA, and an officer has no power to compel the production of any record or document that is not in plain sight. No finding is given in this Judgment which is contrary to the afore-referred Decisions of this Court handed down in *H. M. Motors* and *Team A-Ventures* Cases.

7. This crucial factual and legal aspect has either been overlooked by the Appellant while filing this High Court Appeal, or the Appellant wants this Court to disregard it as well. Secondly, Mr. Aslam Mari, the Commissioner Inland Revenue, has given a conscious concession in the Impugned Order about applicability of the above referred Judgment of this Court on the scope of Sections 38 and 40 of the STA, but interestingly he

has delegated the authority to file this Appeal to his Deputy Commissioner.

8. The upshot of the above discussion is that this Appeal is meritless and deserves to be dismissed with heavy costs. However, we are restraining ourselves and have cautioned the Appellant and their Counsel to exercise care in future.

9. This High Court Appeal is **dismissed** along with pending application(s), if any.

JUDGE

JUDGE

Shakeel, PS