

THE HIGH COURT OF SINDH KARACHI

Present:

Mr. Justice Adnan Iqbal Chaudhry
Mr. Justice Muhammad Jaffer Raza

C.P. No. D - 1593 of 2019: Engro Eximp Agriproduct (Pvt.) Ltd.,
versus The Deputy Commissioner
(Audit), IR and others.

For Petitioner : M/s. Atir Aqeel Ansari and
Muhammad Ajmal Khan, Advocates.

For Respondents : Mr. Munawar Ali Memon
Advocate

Federation of Pakistan : Ms. Mehreen Ibrahim, Deputy
Attorney General for Pakistan.

Date of hearings : 18-09-2025, 21-10-2025, 12-11-2025 &
re-hearing on 18-04-2026.

Date of Announcement : 22-04-2026

JUDGMENT

Adnan Iqbal Chaudhry J.- The Petitioner challenges audit proceedings taken against it by the Inland Revenue, Karachi pursuant to audit notice dated 17.02.2017 under section 177 of the Income Tax Ordinance, 2001 [ITO]. The premise of the challenge is as follows.

2. The Petitioner was under audit for tax year 2014 when it was also selected for audit of tax year 2015 pursuant to a random computer ballot held under section 214C of the ITO. By the impugned notice dated 17.02.2017, issued under section 177 of the ITO, the Deputy Commissioner (Audit), Inland Revenue-IV, Karachi called upon the Petitioner to furnish documents for such audit. While audit of both tax year 2014 and tax year 2015 was pending, clause 105 was inserted in Part IV of the Second Schedule to the ITO by the Finance Act, 2018, which came into force on 01.07.2018 to provide an exemption from provisions of audit as follows:

“(105): The provisions of sections 177 and 214C shall not apply to a person whose income tax affairs have been audited in any of the preceding three tax years:

Provided that the Commissioner may select a person under section 177 for audit with approval of the Board.”¹

Soon after the insertion of clause 105, the Petitioner’s audit for tax year 2014 culminated on 15.08.2018 in an order of amended assessment passed under section 122(1) of the ITO.

3. By an interim order passed in this petition on 08.03.2019, the Inland Revenue was restrained from finalizing the Petitioner’s audit for tax year 2015. It appears that before such order could be communicated, the Inland Revenue passed an order of best-judgment assessment against the Petitioner on 11.03.2019 under section 121 of the ITO. However, when confronted with a contempt application, the Inland Revenue recalled that assessment order in exercise of powers under section 122A of the ITO. Therefore, audit of the Petitioner for tax year 2015 remains stayed.

4. It is submitted by the Petitioner that w.e.f. 01.07.2018, when clause 105 was inserted in Part IV of the Second Schedule to the ITO, the Deputy Commissioner (Audit), Inland Revenue could no longer exercise powers of audit under section 177 of the ITO in respect of tax year 2015 because the Petitioner was already under audit for tax year 2014, thus meeting the condition to exemption from further audit under clause 105. On the other hand, the stance of the Inland Revenue was that the exemption from audit provided by clause 105 did not apply retrospectively; that since the impugned audit notice dated 17.02.2017 in respect of tax year 2015 was issued prior to the insertion of clause 105, the exemption was not available to the Petitioner for tax year 2015.

5. Mr. Atir Aqeel Ansari, learned counsel for the Petitioner submitted that the question of retrospectivity did not arise as the

¹ Clause 105 was omitted by Finance Act, 2019 w.e.f 01.07.2019. A similar exemption for four years was again introduced w.e.f. 01.07.2022 by the Finance Act, 2022 by insertion of clause 105A in Part IV of the Second Schedule to the ITO, which provision was amended by the Finance Act, 2025.

text of clause 105 itself suggested that a taxpayer could not be further audited if it had been selected for audit in the three tax years preceding the insertion of clause 105. In that regard, learned counsel also placed reliance on the Audit Policy 2018 dated 04.04.2019 issued by the FBR, which excluded tax years 2014 to 2016 from audit selection. In the alternative, learned counsel submitted that clause 105 was beneficial legislation as it saved the taxpayer from rigors of repeated audits, and being beneficial legislation, it must be applied retrospectively. In that regard, reliance was placed on the case of *Commissioner of Income Tax v. Shahnawaz Ltd.* (1993 SCMR 73).

6. Mr. Munawar Ali Memon, learned counsel for the Inland Revenue submitted that the audit pending for tax year 2015 was unaffected by clause 105 because such audit had commenced prior to its insertion in the ITO.

7. Heard learned counsel and perused the record.

8. Admittedly, the Petitioner's audit for tax year 2015, which was pursuant to the impugned audit notice dated 17.02.2017, had commenced much before 01.07.2018 when clause 105 was inserted in Part IV of the Second Schedule to the ITO. The submission of the Petitioner is essentially that clause 105 also exempted pending audits if the taxpayer had already been audited or was under audit for a preceding tax year in the last three years. In that submission, the foremost question is indeed whether clause 105 applied retrospectively to exempt audits that were pending at the time the provision was introduced. All other aspects argued by learned counsel will become relevant only if said provision is applied retrospectively.

9. Finance Act 2018, whereby clause 105 was inserted in Part IV of the Second Schedule to the ITO to exempt an audit, did not stipulate that it affected pending audits. It is then settled law, as reiterated by the Supreme Court in *Commissioner Inland Revenue v. Mekotex (Pvt.) Ltd.* (PLD 2024 SC 1168), that when a law regulating

certain affairs is introduced for the first time, it is presumed to apply to future affairs, and not to alter the character of past transactions made under the law as it then existed. A retrospective law is an exception to this general principle, and exceptions of retrospective effect are interpreted strictly. That being the legal position, clause 105 cannot be interpreted as retrospectively exempting audits that were pending when the provision was introduced.

10. The fall-back argument of learned counsel for the Petitioner was that because clause 105 provided the taxpayer an exemption from audit, it was beneficial legislation, and because it was beneficial legislation, it was to be applied retrospectively. However, the rule of beneficial construction of statute is not *ipso facto* retrospective.

11. The argument that beneficial legislation necessarily applies retrospectively, was rejected in the following cases.

In *Commissioner Inland Revenue v. Ambreen Fawad Co. Pak Arab Fertilizers Ltd.* (2014 PTD 320), Justice Mansoor Ali Shah speaking for a Division Bench of the Lahore High Court, discussed the treatise on beneficial, remedial and retrospective legislation and concluded as follows:

“11. The legal position that emerges is that generally beneficial legislation is to be given liberal interpretation, however for the said legislation to have a retrospective effect, the beneficial legislation must carry curative or remedial content. Such legislation must, therefore, either clarify an ambiguity or an omission in the existing law and must therefore be explanatory or clarificatory in nature. While beneficial legislation is to be liberally interpreted, in order to advance the beneficent object of the statute, it in no manner means that "beneficial legislation" or "liberal interpretation" necessarily includes or interchangeably means retrospective application of the statute. Unless the legislation is remedial, curative, explanatory or clarificatory, it cannot be interpreted retrospectively merely on the ground that the legislation is generically beneficial in nature. Reliance with advantage is placed on "Commissioner of Income Tax v. Shahnawaz Ltd. and others" (1993 SCMR 73) and "State Bank of Pakistan v. Messrs Faisal Spinning Mills Limited" (1997 SCMR 1244).

12. In the present case there was no ambiguity or anomaly existing in the law, as it stood prior to Finance Act, 2010. Section 5 of the Ordinance was and is the charging section for the imposition of tax on dividends. Clause 103B of Part-I of the Second Schedule to the Ordinance simply introduced a conditional exemption in the year 2010 which does not remedy or cure any ambiguity or omission in the law. On the contrary, it provides an exemption from tax for the first time, which was not in existence in the year 2008. Hence to label Clause 103B as remedial or curative legislation is misconceived.”

In *Fawad Ahmed Mukhtar v. Commissioner Inland Revenue* (2022 SCMR 426), it was held by the Supreme Court:

“14. Now, the clause was an exemption and, by definition, an exemption has a beneficial effect. But, as correctly pointed out by learned counsel for the department, simply because a statutory provision has a beneficial effect does not mean that it automatically has, or can have, retrospective effect. If this were so, then that would be true for all exemptions, i.e., any exemption added to or inserted in any of the Parts of the Second Schedule could be claimed to have retrospective effect more or less automatically. This can hardly be the correct position in law. Especially in the context of income tax law, it would tend to run counter to the fundamental principle already noted, that each tax year is a separate unit of account and taxation. Of course, the principle is not sacrosanct. It can be overridden by the legislative will. But that must be done either expressly or shown to be the necessary intendment of the provision sought to be applied retrospectively. There is nothing in either Clause 103B or the Finance Act, 2010 that expressly gave it retrospective effect. Therefore the taxpayer-appellants have to show that the clause was necessarily intended to have retrospective effect.”

Again, it was held by the Supreme Court in *Rajby Industries Karachi v. Federation of Pakistan* (2023 SCMR 1407):

“14. It is well settled that the curative statute is meant for lawmakers to recuperate the prior enactment for rectifying the defect or omission. In order to find out whether any beneficial, remedial or curative legislation has a retrospective effect, the litmus test is to explore whether it is intended to clear up an ambiguity or oversight in the prevailing or standing law and in its pith and substance, it corrects or modifies an existing law or an error that interferes with interpreting or applying the statute. For sure, its scope is clarificatory in nature but if it has no such character or essence, it cannot be deduced to be retroactive merely for the reason that it amounts to beneficial legislation. The retroactive application of curative legislation can be gauged and measured from the plain language and intention of legislature. It is by and large passed to supply a conspicuous omission or to elucidate misgivings as to the meaning of the previous law.”

12. The *ratio decidendi* of aforesaid precedents is that:
- (a) legislation is not to be construed retroactive merely for the reason that it is beneficial; and
 - (b) for beneficial legislation to have retrospective effect, it must be curative or remedial in nature.

13. Reliance by learned counsel for Petitioner on the case of *Commissioner of Income Tax v. Shahnawaz Ltd.* (1993 SCMR 73) is misplaced. In that case the provision under scrutiny was remedial legislation and therefore held to be applicable retrospectively to pending cases. Over here, clause 105 in Part IV of the Second Schedule to the ITO was neither a curative nor a remedial provision. It did not seek to clarify any ambiguity or omission in the law existing before it. It was a provision that prevented the Inland Revenue from selecting a person for audit w.e.f. 01.07.2018 if a certain condition was met.

14. For the foregoing reasons, clause 105 in Part IV of the Second Schedule to the ITO (since repealed) could not be applied retrospectively to exempt the pending audit of the Petitioner for tax year 2015 that had commenced prior to said provision with the impugned notice dated 17.02.2017. The petition is therefore dismissed as misconceived.

JUDGE

JUDGE

Signed at Karachi
On 18-04-2026