

## THE HIGH COURT OF SINDH KARACHI

### Present:

Mr. Justice Adnan Iqbal Chaudhry

Mr. Justice Muhammad Jaffer Raza

C.P. No. D – 5833 of 2022: M/s. Murshid Builders (Private) Limited versus The Federation of Pakistan & another.

C.P. No. D – 5834 of 2022: M/s. Murshid Builders (Private) Limited versus The Federation of Pakistan & another.

C.P. No. D – 8133 of 2022: M/s. Chase Up versus The Federation of Pakistan & others.

C.P. No. D – 8131 of 2022: Muhammad Rauf Chapal versus The Federation of Pakistan & others.

For Petitioners : M/s. Qazi Umair Ali, Shams Mohiuddin Ansari, Muhammad Inzimum Shareef and Shafqat Zaman Advocates

For Respondents : M/s. Barrister S. Ahsan Ali Shah, Syed Mohsin Ali Shah and Qaim Ali Memon Advocates.

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 Petitioners have challenged notices issued by the Commissioner (Audit) Inland Revenue-III under section 177(1) of the Income Tax Ordinance, 2001 [ITO], calling upon the Petitioners, with reasons, to furnish documents for audit of their income tax affairs. The premise of the challenge is as follows.

2. In C.P. No. D-5833/2022, Petitioner was previously audited for tax year 2016. According to the Petitioner, that audit culminated on

31.12.2020 in an order of amended assessment under section 122(1) of the ITO. Thereafter, by the impugned notice dated 21.04.2022, the Petitioner was again selected for audit for tax year 2021.

In C.P. No. D-5834/2022, the Petitioner was previously audited for tax year 2016. According to the Petitioner, that audit culminated on 31.12.2020 in an order of amended assessment under section 122(1) of the ITO. Thereafter, by the impugned notice dated 18.11.2021, the Petitioner was again selected for audit for tax year 2017.

In C.P. No. D-8131/2022, the Petitioner was previously audited for tax year 2019. According to the Petitioner, that audit culminated on 31.05.2022 in an order of amended assessment under section 122(1) of the ITO. Thereafter, by the impugned notice dated 30.06.2022, the Petitioner was again selected for audit for tax year 2017.

In C.P. No. D-8133/2022, the Petitioner was previously audited for tax year 2020. According to the Petitioner, that audit culminated on 31.05.2022 in an order of amended assessment under section 122(1) of the ITO. Thereafter, by the impugned notice dated 30.06.2022, the Petitioner was again selected for audit for tax year 2017.

3. On 01.07.2022 i.e. after the Petitioners had been selected for audit by the impugned notices, the Finance Act, 2022 came into force to insert clause 105A in Part IV of the Second Schedule to the ITO, which provided an exemption from provisions of audit as follows:

“(105A): 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 four tax years:  
Provided that the Commissioner may select a person under section 177 for audit with approval of the Board.”<sup>1</sup>

4. It is submitted by the Petitioners that they are exempt from audit by virtue of clause 105A because the period of four years mentioned therein is to be counted (the *terminus a quo*) from the date of amended assessment made pursuant to their last audit, which period is computed by them as follows: in C.P. No. D-5833/2022 and C.P. No. D-5834/2022, from 31.12.2020 up to 31.12.2024; in C.P. No. D-8131/2022 and C.P. No. D-8133/2022, from 31.05.2022 up to

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<sup>1</sup> Clause 105A was amended by the Finance Act, 2025.

31.05.2026. It is therefore contended by the Petitioners that the impugned audit notices are hit by clause 105A.

5. To support the aforesaid interpretation of clause 105A, the Petitioners rely on Circular No. 15 of 2022-23 dated 21.07.2022 issued by the FBR, which explains the *terminus a quo* under clause 105A as follows:

*“Example:*

*Taxpayer A’s audit of income tax affairs of tax year 2017 has been finalized in tax year 2022. Taxpayer A can only be audited again after four tax years i.e in tax year 2027”.*

6. The Commissioner (Audit), however, was of the view that the exemption from audit provided by clause 105A did not apply retrospectively to pending audits; that since the impugned audit notices were issued prior to the insertion of clause 105A, the exemption was not available to the Petitioners. Responding to that, learned counsel for the Petitioners submitted that clause 105A was beneficial legislation as it saved the taxpayer from rigors of audit, and being beneficial legislation, it must be applied retrospectively to pending audits. In that regard, Mr. Umair Qazi, learned counsel for some of the Petitioners, relied on the cases of *Commissioner of Income Tax v. Shahnawaz Ltd.* (1993 SCMR 73) and *Army Welfare Sugar Mills Ltd. v. Federation of Pakistan* (1992 SCMR 1652). Mr. Shams Mohiuddin Ansari, learned counsel for the other Petitioners added that since the intent behind clause 105A was to curtail repeated audits, the provision applied to pending audits. He submitted that such exemption provision is to be construed in favor of the taxpayer.

7. On the other hand, Mr. Ahsan Ali Shah, learned counsel for the Inland Revenue submitted that the impugned audit notices were unaffected by clause 105A because those were issued prior to the insertion of said provision, which did not operate retrospectively. As regards the argument that the *terminus a quo* under clause 105A is the assessment order passed on the last audit report of each Petitioner, he submitted that such argument along with FBR’s Circular No. 15 of 2022-23 dated 21.07.2022 had already been rejected by a learned

Division Bench of this Court in *Fazlee Sons (Pvt.) Ltd. v. Federation of Pakistan* (2025 PTD 1609). In that case, it was held that the words “tax years” in clause 105A signified that the preceding four year period would be counted from the tax year that was last audited, not the date of audit selection or the date of audit completion; that the concession under clause 105A was essentially to confine audit to once in four years, therefore the provision cannot be interpreted in a manner that extends the concession beyond four years.

8. Heard learned counsel and perused the record.

9. Admittedly, the impugned audit notices under section 177(1) of the ITO, were issued to the Petitioners prior to the exemption from audit introduced on 01.07.2022 by the insertion of clause 105A in Part IV of the Second Schedule to the ITO. The submission of the Petitioners is that clause 105A also exempted pending audits if the taxpayer had been audited for a preceding tax year in the last four years. In other words, it is contended that the impugned audit notices and the audit commenced thereunder abated because the Petitioners had already been audited during the preceding four years.

10. Given that the impugned audit notices had been issued prior to clause 105A, the foremost question is whether that provision applies retrospectively to pending audits. The question of *terminus a quo* of the ‘preceding four tax years’ will only arise if clause 105A applies retrospectively. The plea of vested rights and reliance on the case of *Army Welfare Sugar Mills Ltd. v. Federation of Pakistan* (1992 SCMR 1652) is also misconceived here. In that case the challenge was to a notification withdrawing a tax exemption with retrospective effect, thereby affected rights that had come to vest in the taxpayer under the previous exemption notification. In the instant petitions, no such question arises as clause 105A does not take away any exemption, rather it provides one from audit.

11. Finance Act 2022, whereby clause 105A was inserted in Part IV of the Second Schedule to the ITO to exempt an audit, did not

stipulate that pending audits would abate if the condition to the exemption applied. 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 105A cannot be interpreted as retrospectively exempting audits that were pending when the provision was introduced.

12. The argument of learned counsel for Petitioners is that because clause 105A provides the taxpayer an exemption from audit, it is beneficial legislation, and because it is beneficial legislation, it is to be applied retrospectively. However, the rule of beneficial construction of statute is not *ipso facto* retrospective.

13. 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 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."

14. 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.

15. Reliance by learned counsel for Petitioners 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 applicable retrospectively to pending cases. Over here, clause 105A in Part IV of the Second Schedule to the ITO is neither a curative nor a remedial provision. It does not seek to clarify any ambiguity or omission in the law existing before it. It is simply an exemption, with certain conditions, that prevents the Inland Revenue from selecting a person for audit w.e.f. 01.07.2022. Therefore, it is not applicable retrospectively to audit notices or audit proceedings pending before 01.07.2022.

16. Having concluded that the impugned audit notices are not affected by clause 105A in Part IV of the Second Schedule to the ITO, we need not discuss the *terminus a quo* under said provision. For said reasons, these petitions are dismissed. Office shall place a copy of this order in the connected petitions listed above.

**JUDGE**

**JUDGE**

Signed at Karachi  
On 18-04-2026