

## THE HIGH COURT OF SINDH KARACHI

### **Present:**

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

- C.P. No. D - 40 of 2022 : M/s. Al-Momin Packaging Industries (Pvt) Ltd. versus Federation of Pakistan & others.
- C.P. No. D - 1417 of 2022: M/s. Meezan Tea Pvt. Limited versus Federation of Pakistan & others.
- For Petitioners : M/s. Lubna Pervez and Muhammad Aleem, Advocates.
- For Respondents : M/s. Rana Sakhavat Ali and Imtiaz Ali Solangi 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, Karachi 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 Petitioner No.1 for tax year 2018, and the Petitioner No.2 for tax year 2019.

2. The Petitioners submit that they are exempt from audit for said tax years by virtue of clause 105 in Part IV of the Second Schedule to the ITO, which was inserted by the Finance Act, 2018 w.e.f. 01.07.2018 and subsisted till 01.07.2019 when it was omitted by the Finance Act, 2019.<sup>1</sup> Clause 105 provided an audit-exemption as follows:

---

<sup>1</sup> 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.

“(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.”

3. Heard learned counsel and perused the record.

4. In C.P. No. D-40/2022, the Petitioner was previously audited for tax year 2017, which culminated on 30.07.2019 in an order of amended assessment passed under section 122(1) of the ITO. Thereafter, by the impugned notice dated 03-11-2021, issued under section 177(1) of the ITO, the Petitioner was selected for audit of tax year 2018.

In C.P. No. D-1417/2022, the Petitioner was previously audited for tax year 2018, which culminated on 06.05.2020 in an order of amended assessment passed under section 122(1) of the ITO. Thereafter, by the impugned notice dated 11-10-2021, issued under section 177(1) of the ITO, the Petitioner was selected for audit of tax year 2019.

5. Therefore, in both petitions, the impugned notices selecting the Petitioners for audit, were issued much after clause 105 had been omitted (on 01.07.2019) from Part IV of the Second Schedule to the ITO. This much is accepted by Petitioners. The submission of their counsel was that since their previous audit (for tax year 2017 and 2018 respectively) had commenced while clause 105 was in field, they had acquired a right in exemption from audit for the following three tax years viz. 2018 to 2020, which right continued notwithstanding the omission of clause 105; therefore, it was submitted, that audit selection by the impugned notices (tax year 2018 and 2019 respectively) was unlawful.

6. With the legal principle that omission of a statutory provision is the same thing as its repeal,<sup>2</sup> the submission of Petitioners is essentially for protection against repeal provided by section 6(c) of the General Clauses Act, 1897 as under:

---

<sup>2</sup> *Muhammad Tariq Badr v. National Bank of Pakistan* (2013 SCMR 314).

**“6. Effect of repeal.** Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not-

(a) .....

(b) .....

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed;”

7. To unfold the Petitioners’ argument, it is propounded by them that once they qualified for exemption from subsequent audit under clause 105, they are entitled to avail that exemption notwithstanding its repeal. A somewhat similar argument regards an advantage not taken under a repealed enactment was rejected by the Supreme Court in *Jaleesa Begum v. Iqbal Ahmed Qureshi* (PLD 1982 SC 396) by observing:

“When a repeal takes place, the situation but for the provisions like section 6 of the General Clauses Act is as if the repealed law never existed. The saving is with regard to the proceedings pending, and in the context of this case, the rights accrued or the obligation incurred. The exact meaning and scope of concepts like rights accrued or the obligation incurred have been considered time and again and are not question open for serious debate. For example, in the case of *Abbot v. Minister of Lands* (1894 A C 425) at p. 431, it was held that-

"It has been very common in the case of repealing statutes to save all rights accrued. If it were held that the effect of this was to leave open to any one who could have taken advantage of any of the repealed enactments still to take advantage of them, the result would be very far-reaching.

It may be, as Windeyer J. observes, that the power to take advantage of an enactment may without impropriety be termed a "right". But the question is whether it is a "right accrued" within the meaning of the enactment which has to be construed.

Their Lordships think not, and they are confirmed in this opinion by the fact that the words relied on are found in conjunction with the words "obligations incurred or imposed". They think that the mere right (assuming it to be properly so-called) existing in the members of the community or any class of them to take advantage of an enactment, without any act done by an individual towards availing himself of that right, cannot properly be deemed a "right accrued" within the meaning of the enactment.”

8. Therefore, based on the dictum of *Jaleesa Begum*, we hold that the mere opportunity with the Petitioners to avail exemption from audit under the repealed clause 105 (in Part IV of the Second Schedule to the

ITO), did not amount to a 'right accrued' within the meaning of section 6(c) of the General Clauses Act. Resultantly, the impugned audit notices issued after the repeal of clause 105, are unexceptional. Petitions are dismissed as misconceived. Office shall place a copy of this order in the connected petition listed above.

**JUDGE**

**JUDGE**

Signed at Karachi  
On 18-04-2026