IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Mohammad Abdur Rahman

Mr. Justice Dr. Shah Nawaz Memon

Income Tax Reference Application No. 111 of 2018

M/s. Mackinnon Mackenzie & Co. of Pakistan (Pvt.) Ltd.

Versus

The Commissioner Inland Revenue, Zone-III, Large Taxpayers Unit, Karachi

Date of hearing:	25.09.2026
Date of decision:	10.11.2026
Applicant:	Through Mr. Furqan Mushtaq, Advocate.
Respondent:	Through Mr. Irfan Mir Halepota, Advocate.

J U D G E M E N T

DR. SHAH NAWAZ MEMON, J.: — This Reference Application under section 133(1) of the Income Tax Ordinance, 2001 (the "Ordinance") arises out of the order of the learned Appellate Tribunal Inland Revenue, Karachi (the "Tribunal") dated 26.12.2017 in ITA No. 300/KB/2013, relating to tax year 2009. Although three questions have been proposed, the controversy argued before us is a single one: whether the applicant could be selected for audit of its income tax affairs for tax year 2009 when the selection was made with reference to section 177 of the Ordinance as it stood after its substitution by the Finance (Amendment) Ordinance, 2009.

I. FACTS OF THE CASE

2. The applicant is a private limited company engaged in ships' crew manning, overseas manpower recruitment, air travel and shipping agency, and general and insurance surveys. It also earns dividend income from its investment in Qasim International Container Terminal and rental income from its building on I.I. Chundrigar Road, Karachi. It follows a special tax year ending on 31 December, so that tax year 2009 corresponds to the period 01.01.2008 to 31.12.2008. Its return for that year was treated as an assessment order under section 120 of the Ordinance.

3. By letter dated 31.05.2010, the Commissioner Inland Revenue, Audit Division-II, Large Taxpayers Unit, Karachi, acting under section 210, delegated to the Deputy Commissioner the power to call for the applicant's record for conducting audit of its income tax affairs for tax year 2009 "within the meaning of sub-sections (1), (2), (6) and (10) of Section 177 of the Income Tax Ordinance, 2001 as amended by the Finance (Amendment) Ordinance, 2009". On 11.06.2010 the Deputy Commissioner issued a notice under section 176(1)(a) calling for documents and information. The applicant responded on 18.06.2010, while objecting to its selection. A notice under section 122(9) followed on 22.11.2010, setting out five proposed adjustments, to which the applicant replied in detail on 29.11.2010 and again on 27.12.2010. On 29.12.2010 the Additional

Commissioner passed an order under section 122(1) and (5), repelling the objection to the selection and making additions, principally by apportioning general and administrative expenses to the applicant's dividend, property and commission income under section 67 read with rule 13 of the Income Tax Rules, 2002.

4. In appeal, the learned Commissioner Inland Revenue (Appeals), by order dated 18.02.2013, maintained the selection, observing that the applicant had been selected by the Commissioner and not through a computer ballot of the Federal Board of Revenue (the "Board"), and that the decision of this Court in *Shahnawaz*[1] was therefore distinguishable. He however vacated the additions made on account of apportionment. Both sides appealed. By a common order dated 26.12.2017, the learned Tribunal maintained the finding on the selection for audit, noting that the reasoning of the first appellate authority had not been controverted before it, and remanded the question of apportionment to the officer holding jurisdiction.

II. THE QUESTIONS PROPOSED

5. The applicant has proposed the following questions of law:

(a) "Whether the amendments made to Section 177 of the Income Tax Ordinance 2001 through the Finance (Amendment) Ordinance 2009 dated 23.10.2009 and the Finance Act 2010 can be used to select a taxpayer for an audit for Tax Year 2009?

(b) Whether under Section 67 of the Income Tax Ordinance 2001 read with Rule 13 of the Income Tax Rules 2002 administrative and general expenses have to be allocated between each class of income even where no expenses are actually incurred in earning some classes of income?

(c) Whether the ATIR could have remanded the issue of allocation of expenses to the Additional Commissioner where there was no factual dispute?"

6. Learned counsel for the applicant addressed his submissions principally to question (a). He did not advance independent arguments on questions (b) and (c); his case was that those questions depend on the answer to question (a), since, if the selection for audit was unlawful, the amended assessment, the additions made in it, and the remand directed by the learned Tribunal would all fall with it. We have heard the matter on that footing.

III. SUBMISSIONS

7. Learned counsel for the applicant placed his principal reliance on *Shahnawaz*, which, he submitted, applies squarely to the facts of this case. His submission was that each tax year is a separate unit of assessment; that the Ordinance applies to a tax year as it stands for that year; and that a taxpayer therefore acquires a vested right to be selected for audit of a given year only in the manner provided by section 177 as it stood in relation to that year. Section 177 was recast by the Finance (Amendment) Ordinance, 2009, and later by the Finance Act, 2010, after tax year 2009 had closed, and the applicant, he argued, could not

[1] *Shahnawaz (Pvt.) Ltd. v. Pakistan* [2011 PTD 1558].

be dealt with under the post-amendment provision. Since the letter of 31.05.2010 expressly invoked the amended section, the selection was without lawful authority, and everything that followed, including the amended assessment, the additions and the remand on the apportionment of expenses, fell with it as the fruit of a poisonous tree. In support, he relied on authorities for the proposition that where the foundation of a proceeding is unlawful the superstructure built upon it cannot stand, and on the principles governing vested rights and retrospective legislation.[2] He also relied on *Al-Khair Gadoon*.[3]

8. Mr. Irfan Mir Halepota, learned counsel for the respondent, argued that the amendment to section 177 was procedural in nature and therefore operated retrospectively. He submitted that no right of the applicant was infringed merely by the conduct of an audit, and that the Commissioner was empowered, both before and after the amendment, to select any person for audit, so that the applicant suffered no prejudice.

9. In rebuttal, learned counsel for the applicant reiterated that *Shahnawaz* governs the case.

IV. SECTION 177 AS AMENDED FROM TIME TO TIME

10. Section 177 has been recast several times. Its evolution is traced in *Shahnawaz*, and the omitted and substituted texts are also recorded in the footnotes to the Ordinance as published by the Board. As enacted, and up to the Finance Act, 2003, the section allowed the Commissioner to "select any person for an audit of the person's income tax affairs having regard to" the person's history of compliance, the amount of tax payable, the class of business conducted, and any other matter the Commissioner considered relevant, while the Board could appoint a firm of chartered accountants to audit "any person" on a case by case basis.

11. The section was substituted by the Finance Act, 2004 and, with minor changes, stood in the following form until the Finance Act, 2009. So far as relevant, it provided:

> "(1) The Board may lay down criteria for selection of any person for an audit of person's income tax affairs, by the Commissioner.
>
> (2) The Commissioner shall select a person for audit in accordance with the criteria laid down by the Board under subsection (1).
>
> (3) The Board shall keep the criteria confidential.
>
> (4) In addition to the selection referred to in subsection (2), the Commissioner may also select a person for an audit of the person's income tax affairs having regard to— (a) the person's history of compliance or non-compliance with this Ordinance; (b) the amount of tax payable by the person; (c) the class of business conducted by the person; and (d) any other matter which in the opinion of Commissioner is material for determination of correct income.

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[2] *Sarwar International* [2013 PTD 813]; *Ashfaq Ahmed* [2012 PTD 1329]; *Sadiq Hussain* [2008 YLR 152]; *Union Sport Playing Cards* [2002 MLD 130]; *Muhammad Younas* [2007 SCMR 1835]; *Muhammad Tariq Khan* [2007 SCMR 818]; *Rehmatullah* [2007 SCMR 729]; *China Power Hub Generation* [2024 PTD 1218]; *Shahida Bibi* [PLD 2016 SC 995]

[3] *Al-Khair Gadoon* [2020 PTD 18].

> (5) After selection of a person for audit under subsection (2) or (4), the Commissioner shall conduct an audit of the income tax affairs … of that person."

12. The Finance Act, 2009, which came into force on 01.07.2009, added the words "or classes of persons" at several places in the section, including sub-sections (1), (2), (4) and (5). The Finance (Amendment) Ordinance, 2009, promulgated in October 2009, then substituted sub-sections (1) and (2) and omitted sub-sections (3) to (5). As so substituted, sub-section (1) read:

> "(1) The Commissioner may call for any record or documents including books of accounts maintained under this Ordinance or any other law for the time being in force for conducting audit of the income tax affairs of the person … : Provided that the Commissioner shall not call for record or documents of the taxpayer after expiry of six years from the end of the tax year to which they relate."

13. The Finance Act, 2010, effective from 01.07.2010, re-enacted these changes with a further proviso requiring the Commissioner to record his reasons in writing and to communicate them to the taxpayer when calling for the record, and inserted section 214C, empowering the Board to select persons or classes of persons for audit through computer ballot. The applicant was selected on 31.05.2010, when section 177 stood in the form given to it by the Finance (Amendment) Ordinance, 2009, and before either the Finance Act, 2010 or section 214C came into force. The applicant was not selected by the Board, and section 214C is not in play.

V. THE LAW THAT GOVERNS TAX YEAR 2009

14. *Shahnawaz* proceeded on the footing, then generally accepted, that the Ordinance applies to a tax year as it stands on the first day after that year ends, that is, as amended by the Finance Act of that year. That was also the applicant's own position before the assessing officer, where it contended that it could only be selected under section 177 as it stood on 01.07.2009. The Supreme Court has since revisited the question in *Power Line*.[4] Tracing the rule to the charging section of the Income Tax Act, 1922, and noting that the charging section of the Ordinance makes each tax year its own referent, the Court held that the Ordinance applies to a tax year as it stood on the last day of that year, that the same applies, *mutatis mutandis*, to a special tax year, and that, save for rates and certain special levies, the judgment governs all past tax years. The Court observed:

> "Now, all that one has to ask is how does the statute stand on the last day of the tax year in question? The answer to this will likewise be determinative. No vexed questions of vested rights or past and closed transactions or beneficial legislation would arise or need to be addressed."

15. The applicant's special tax year closed on 31.12.2008, and by virtue of section 74 it is denoted as tax year 2009. It follows that, in relation to tax year 2009, section 177 is to be applied as it stood on 31.12.2008, in the form set out in paragraph 11 above. On that day,

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[4] *Power Line Construction* [2026 PTD 967], paras 36, 38 and 43.

the Board could lay down criteria for selection, and the Commissioner could, in addition, select "a person" for audit having regard to the matters listed in sub-section (4), including "any other matter which in the opinion of Commissioner is material for determination of correct income". There was no power to select classes of persons, and no power of selection by ballot. The text introduced in October 2009 was not the law governing tax year 2009, and to that extent the applicant is right that the amended section could not, of itself, be the source of a power to select it for audit of that year.

16. That, however, does not conclude the matter. The real questions are whether, on 31.05.2010, the Commissioner possessed under the law governing tax year 2009 the power he exercised, and, if so, whether the reference to the amended text vitiates the selection. Since the applicant's case rests on *Shahnawaz,* we examine that decision first.

VI. SHAHNAWAZ EXAMINED

17. On or about 11.12.2009 the Board held a computer ballot at its head office to select companies and associations of persons for a "composite" income tax and sales tax audit of tax year 2008, and mandated firms of chartered accountants to conduct the audits. Some of the selectees had already been selected for audit of the same year, and those audits had been abandoned when the ballot was held. This Court quashed the ballot and all proceedings founded on it.

18. The Court began with three principles: that each tax year is a separate unit of assessment, so that an audit is always carried out with reference to a completed tax year and is, in that sense, always retrospective; that the Ordinance applies to a tax year as it stands for that year; and that the acceptance of the return under section 120 is balanced by the power of audit under section 177. It then held that section 177 confers two rights on a taxpayer in relation to each tax year. The first, the maximum period within which an audit may be called, was held to be a past and closed transaction, fixed by reference to the period for which records must be kept under section 174(3). The second, the basis on which the taxpayer may be selected, was held to be a vested right determined by the section as it stands in relation to that tax year. Where the section has since changed, the Court directed a comparison between the "former position" and the "subsequent position":

> "If the scope of the section has been narrowed and made more restricted, then section 177 is to be applied as it stands in the subsequent position, and not the former position. … On the other hand, if the scope of section 177 has been broadened or extended, then it is to be applied as it stood in the former position, and not as it stands in the subsequent position. … Section 177 as it stands in the subsequent position must therefore be aligned with how it stood in the former position, and the section can only be applied to the extent so made possible."

19. Applying that test, the Court found that under the section as it stood before the Finance Act, 2009, "the power of selection could only be exercised with reference to a specific taxpayer", since "the conditions laid down in subsection (1) could obviously only apply in relation to each taxpayer individually". The words "classes of persons" appeared for the first time in 2009, and the word "any" in the earlier text referred only to an individual

taxpayer. The Board therefore had no power, in relation to tax year 2008, to select taxpayers as a class by computer ballot. Section 214C, though deemed always to have been part of the Ordinance, was held exercisable only from 01.07.2010, and even then as a power "in addition to the power to select a person for audit in terms of section 177 as it stood as a vested right in relation to the tax year in question". The Court further held that a taxpayer may be selected only once for a given tax year, and that the composite audit had no statutory basis.

20. Read as a whole, *Shahnawaz* does not hold that a selection made after section 177 was amended is, for that reason alone, void. Audits are always called after the tax year closes, and the section will often have changed in the meantime. What the decision prohibits is the exercise, in relation to a past tax year, of a power of selection that the law applicable to that year did not confer. The vice of the ballot of 11.12.2009 lay in its mode and its authority: selection of classes of persons, by the Board, by ballot, for a composite audit. Equally, the decision affirms that the Commissioner's power to select an individual taxpayer, under section 177 as it stood for the year, remained intact.

21. The present case is, in every material respect, the converse of *Shahnawaz*. The applicant was selected individually, by the Commissioner, for an audit of its income tax affairs alone. It was not selected as one of a class, by the Board, or by ballot. It had not been selected for audit of tax year 2009 on any earlier occasion, and it was selected well within the period for which its records were required to be kept. The power actually exercised against it is the very power that *Shahnawaz* recognised as available under section 177 in its pre-2009 form.

22. The Supreme Court has noticed *Shahnawaz* as laying down that a deemed assessment becomes a past and closed transaction for the purpose of audit once it is selected and the audit is conducted or abandoned under section 177 as applicable to the tax year concerned.[5] The applicant's case-law index records that the judgment was maintained by the Supreme Court in Civil Appeal No. 617 of 2011. The date by reference to which *Shahnawaz* fixed the applicable law must now be read with *Power Line*; its central principle, that the basis of selection for audit of a tax year is governed by the law applicable to that year and cannot be enlarged to the taxpayer's detriment, is in harmony with it. On either approach the result is the same: section 177 as it stood on 31.12.2008, and equally as it stood on 01.07.2009, empowered the Commissioner to select an individual person for audit.

VII. WHEN THE APPLICANT'S RIGHT VESTED, AND WHAT IT COMPRISED

23. The Supreme Court in *Mekotex* has explained when a right vests and when it becomes a past and closed transaction:[6]

> "A right vests when all the facts required by law to establish that right have occurred. In other words, when all the facts necessary to create a right have

[5] *Mekotex* [PLD 2024 SC 1168], para 15.
[6] *Mekotex* [PLD 2024 SC 1168], paras 13 to 15.

> occurred, the right is said to be 'vested'. A right remains inchoate and contingent when some, but not all, of the investitive facts have occurred."

24. A vested right becomes a past and closed transaction when it is exercised, or deemed to have been exercised by operation of law, on a specific occasion and in specific circumstances. The same judgment explains that a statute is retrospective if it takes away or impairs a vested right already acquired, or creates a new obligation in respect of a transaction that is past and closed, and that a statute which does neither cannot be said to operate retrospectively. Applying these principles, the investitive fact of the right the applicant asserts was the close of its tax year on 31.12.2008, when the Ordinance became fixed in relation to tax year 2009. What vested in the applicant on that day was a right to be selected for audit of that year only on the basis that section 177 then provided: by the Commissioner in accordance with criteria laid down by the Board, or individually by the Commissioner having regard to the matters in sub-section (4). The right did not extend to immunity from individual selection by the Commissioner; nor did it extend to the citation of a particular version of the section. It became past and closed only when the applicant was selected and audited.

25. Measured against that right, the applicant was not subjected to anything beyond what the law applicable to tax year 2009 permitted. The amendment of October 2009 did not take away or impair the right in its application to the applicant, and no retrospective operation, in the sense explained in *Mekotex*, arises. The same answer is reached, more directly, on the approach laid down in *Power Line*: the question is simply how section 177 stood on 31.12.2008, and it then permitted the Commissioner to select the applicant for audit.

26. This accords with the nature of an audit. Selection for audit is the beginning of a process of re-verification of a self-assessed return, in the course of which the taxpayer is heard at every stage before any assessment is amended.[7] The position is similar in India, where, as the learned authors of *Kanga and Palkhivala* note, the availability of an audit report places no fetter on the power of the assessing officer to require the assessee to justify its claims with reference to the records.[8] The right that *Shahnawaz* protects concerns the basis on which a taxpayer may be drawn into that process; it is not an immunity from the process itself.

VIII. THE REFERENCE TO THE AMENDED PROVISION

27. There remains the fact that the letter of 31.05.2010 and the notice of 11.06.2010 invoked section 177 "as amended by the Finance (Amendment) Ordinance, 2009", which, for the reasons given, was not the text governing tax year 2009. The effect of citing an inapplicable provision was considered by the Supreme Court in *Al-Khair Gadoon*, on which learned counsel for the applicant relied. After reviewing the authorities, the Court concluded:

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[7] *Allah Din Steel* [2018 SCMR 1328].

[8] *Kanga and Palkhivala, The Law and Practice of Income Tax* (11th ed.), Vol. I, pp. 1329 to 1332.

> "… quoting of wrong provisions of law in a show cause notice would not necessarily vitiate the entire process initiated thereunder. What is crucial to note is that, in deciding the legal validity of the show cause notice, it is important to first see whether the recipient/assessee of the said notice has been put to any prejudice in preparing and putting up its defence to the allegations made therein. And whether the issuer of the notice had the authority to issue the same …"

28. Both limbs of that test are met. As to authority, the Commissioner possessed, under section 177(4) as it stood on 31.12.2008, the power to select the applicant for audit, and his power to delegate under section 210 is not in question. The Supreme Court in *Saadat Ali Khan* sustained an order although the High Court had relied on a later provision that had no retrospective operation, because "the same power was also available" under the provision that did apply, and no prejudice had resulted.[9] The present case stands on the same footing. It is different in kind from a case in which the obligation enforced exists only under the later provision, and no power to the same effect existed under the law applicable to the period.[10]

29. Two further aspects of authority require notice. First, the letter of 31.05.2010 referred to sub-sections (1), (2), (6) and (10) of the amended section. In substance, sub-sections (1) and (2) conferred the power to call for the record of a person and audit his income tax affairs, which is what sub-sections (4) and (5) of the section as it stood on 31.12.2008 conferred in respect of a person selected by the Commissioner; and sub-section (6), permitting amendment of the assessment under section 122 after obtaining the taxpayer's explanation, was present in both texts. Sub-section (10), which enables a best judgment assessment where the record is not produced, had no counterpart in the earlier text, but it was never invoked: the applicant produced its record, and its assessment was amended under section 122(1) and (5) after a notice under section 122(9), not under section 121. Nothing was therefore done to the applicant under a power that did not exist on 31.12.2008. Secondly, it was not until the Finance Act, 2010 that the Commissioner was required to record his reasons in writing and communicate them to the taxpayer. The absence of reasons in the letter of 31.05.2010 does not, of itself, show that the Commissioner did not have regard to the matters in sub-section (4), and official acts are presumed to have been regularly performed.[11] Whether he did have regard to those matters is a question of fact. The applicant did not raise it before the assessing officer, the learned Commissioner (Appeals) or the learned Tribunal, it does not arise from the order of the learned Tribunal, and it cannot be raised for the first time in this jurisdiction.

30. The comparison is best seen side by side. In the table below, the text on the left is section 177 as it stood on 31.12.2008, the last day of the applicant's tax year 2009, and the text on the right is the section as it stood on 31.05.2010, when the applicant was selected. Words in bold and underlined, on both sides, mark the power that was available to the

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[9] *Saadat Ali Khan* [2018 PTD 483], para 8.

[10] *Allama Iqbal Open University* [2026 PTD 472].

[11] Qanun-e-Shahadat Order, 1984, Article 129, illustration (e).

Commissioner under both texts; words in bold alone mark what the amendment added or changed.

Section 177 as it stood on 31.12.2008	**Section 177 as substituted by the Finance (Amendment) Ordinance, 2009 (as it stood on 31.05.2010)**
(1) The Board may lay down criteria for selection of any person for an audit of person's income tax affairs, by the Commissioner. (2) The Commissioner shall select a person for audit in accordance with the criteria laid down by the Board under subsection (1). (3) The Board shall keep the criteria confidential.	**No corresponding provision. Selection by reference to criteria laid down by the Board omitted.**
(4) In addition to the selection referred to in subsection (2), **the Commissioner may also select a person for an audit of the person's income tax affairs** having regard to— (a) the person's history of compliance or non-compliance with this Ordinance; (b) the amount of tax payable by the person; (c) the class of business conducted by the person; and (d) any other matter which in the opinion of Commissioner is material for determination of correct income.	(1) **The Commissioner may call for any record or documents including books of accounts** maintained under this Ordinance or any other law for the time being in force **for conducting audit of the income tax affairs of the person and where such record or documents have been kept on electronic data, the person shall allow access to the Commissioner or the officer authorized by the Commissioner for use of machine and software on which such data is kept … in respect of such person or any other person:** **Provided that the Commissioner shall not call for record or documents of the taxpayer after expiry of six years from the end of the tax year to which they relate.**
(5) After selection of a person for audit under subsection (2) or (4), **the Commissioner shall conduct an audit of the income tax affairs (including examination of accounts and records, enquiry into expenditure, assets and liabilities) of that person**.	(2) **After obtaining the record of a person under sub-section (1) or where necessary record is not maintained, the Commissioner shall conduct an audit of the income tax affairs (including examination of accounts and records, enquiry into expenditure, assets and liabilities) of that person or any other person and may call for such other information and documents as he may deem appropriate.**
(6) After completion of the audit under subsection (5) or sub-section (8), **the Commissioner may, if considered necessary, after obtaining taxpayer's explanation on all the issues raised in the audit, amend the assessment under subsection (1) or subsection (4) of section 122**, as the case may be.	(6) After completion of the audit, **the Commissioner may, if considered necessary, after obtaining taxpayer's explanation on all the issues raised in the audit, amend the assessment under subsection (1) or subsection (4) of section 122**, as the case may be.
No corresponding provision.	**(10) Notwithstanding anything contained in subsections (2) and (6) where a person fails to produce before the Commissioner … any accounts, documents and records, required to be maintained under section 174 … the Commissioner may proceed to make best judgment assessment under section 121 of this Ordinance and the assessment treated to have been made on the basis of return or revised return filed by the taxpayer shall be of no legal effect.**

31. The power actually exercised against the applicant, namely the selection of a single person by the Commissioner for audit of its income tax affairs, the conduct of that audit, and the amendment of its assessment under section 122 after obtaining its explanation, lies wholly within the words common to both texts. What the amendment added, the power to proceed without the Board's criteria or the matters in sub-section (4), the extension to "any other person", and the best judgment consequence under sub-section (10), was not

needed for, and was not used in, the applicant's case, save for the citation of the amended text in the letter of 31.05.2010.

32. As to prejudice, none has been shown or suggested. The notice under section 176 identified the documents required, and the applicant responded to it. The notice under section 122(9) set out each proposed adjustment, and the applicant answered each in detail, twice. The assessing officer dealt with those replies, and the learned Commissioner (Appeals) vacated the principal additions on their merits. At no stage has the applicant said that it was misled, or hampered in its defence, by the reference to the amended text; its objection has throughout been to the label and not to anything done under it. The relevant facts are on record and are not in dispute, so that, unlike *Al-Khair Gadoon*, no question arises of remitting the matter for their determination.

33. The applicant's other objections before the assessing officer, founded on the absence of criteria laid down by the Board and of a prior notice, were considered by the learned Commissioner (Appeals), who noted that the judgment of the Lahore High Court relied on for the first objection had been set aside by the Supreme Court.[12] Those objections were not pursued before the learned Tribunal and do not form part of the questions proposed.

34. We do not rest our conclusion on the broader contention of learned counsel for the respondent that the amendment, being procedural, operates retrospectively. The Supreme Court has declined to treat an amendment to section 177 as procedural merely because it sits in the part of the Ordinance headed "Procedure",[13] and, after *Power Line*, the question for the Ordinance is answered by asking how the statute stood at the end of the tax year. Our conclusion rests on the narrower ground that the power exercised against the applicant was one that the law governing tax year 2009 conferred.

35. It follows that the authorities cited on behalf of the applicant, to the effect that an unlawful foundation brings down the superstructure raised upon it, do not assist the applicant. The principle is well settled, but it presupposes an unlawful foundation, which, for the reasons given, is not the case here. The selection being lawful, there is no poisoned tree, and nothing that grew from it falls on that account.

IX. THE ANSWERS TO THE QUESTIONS

36. Question (a) is answered in the negative, in these terms. The amendments made to section 177 by the Finance (Amendment) Ordinance, 2009 and the Finance Act, 2010 did not govern tax year 2009 and could not, of themselves, furnish or enlarge the power to select a taxpayer for audit of that year; for that year section 177 applies as it stood on the last day of the tax year, which for the applicant was 31.12.2008. That answer, however, does not avail the applicant. Its selection was an individual selection by the Commissioner, which section 177 as it stood on 31.12.2008 permitted, and it is not vitiated by the reference to the amended provision, the Commissioner having had the authority and the

[12] *Idrees Traders* [2012 SCMR 597].

[13] *HNR Company* [2022 SCMR 1240]; compare *Nestle Pakistan* [2025 PTD 1634], para 18.

applicant having suffered no prejudice. The selection of the applicant for audit of tax year 2009, and the proceedings that followed it, are therefore not rendered unlawful, and the finding of the learned Tribunal on the selection for audit is maintained.

37. Questions (b) and (c) were argued as dependent on question (a), and were to fall only if the selection for audit was held unlawful. Question (a) having been answered as above, they do not require to be answered.

X. ORDER

38. The Reference Application is dismissed. Nothing in this judgment shall affect the remand directed by the learned Tribunal on the apportionment of expenses, which shall proceed in accordance with law. There shall be no order as to costs.

39. A copy of this judgment shall be sent under the seal of this Court to the learned Appellate Tribunal Inland Revenue in terms of section 133(5) of the Income Tax Ordinance, 2001.

J U D G E

J U D G E

Karachi,
Dated: 10th day of November 2026

Ayaz P.S.