

Form No: HCJD/C-121
ORDER SHEET
IN THE LAHORE HIGH COURT
MULTAN BENCH, MULTAN
JUDICIAL DEPARTMENT

STR No.69/2022

**The Commisioner Inland
Revenue Legal Zone, Large
Taxpayers Office Multan**

Versus

**M/s Usman Trade Linkers
Multan**

S.No. of order/ Proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of parties of counsel, where necessary
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14.10.2024 Mr. Muhammad Suleman Bhatti, Advocate
for the applicant / department.
M/s Inayat-ur-Rehman and Sahid Hussain
Mitroo, Advocates for the respondent.

Following question of law is proposed for
determination, statedly arisen of the order of
Appellate Tribunal Inland Revenue, Lahore Bench,
Lahore, dated 22.03.2022,

*“Whether under the facts and circumstances
of the case, the Appellate Tribunal Inland
Revenue was justified to annul orders of
authorities below and allowing appeal for
conducting of audit for a period more than
one year terming it beyond jurisdiction when
there is no such bar for conducting such
period?”*

2. Question rasied primarily calls for
interpretation of sub-section (2) of section 25 of
the Sales Tax Act, 1990 (‘Act, 1990’), in
particular, the condition prescribed for the conduct
of audit, once in a year. Appellate Tribunal had
declared that conduct of audit, covering period
from July 2016 to December 2017 – spreading
over eighteen months – was beyond the

jurisdiction of the Officer of Inland Revenue and contrary to the mandate of sub-section (2) of section 25 of the Act, 1990.

3. Heard.

4. Section 25 of the Act 1990, before being amended through the Finance Act 2024, reads as,

“25. Access to record, documents, etc.— [(1) A person who is required to maintain any record or documents under this Act [or any other law] shall, as and when required by [Commissioner], produce record or documents which are in his possession or control or in the possession or control of his agent; and where such record or documents have been kept on electronic data, he shall allow access to [the officer of Inland Revenue authorized by the Commissioner] and use of any machine on which such data is kept.

(2) The officer of Inland Revenue authorized by the Commissioner, on the basis of the record, obtained under sub-section (1), may, once in a year, conduct audit”

5. In terms of sub-section (1) of section 25 of the Act, 1990, a person, subject to the conditionalities prescribed, or its agent may be required to produce such record / documents; and no limitation / restriction regarding the period of time, for which the record / documents could be demanded, was provided, but obviously demand would be subject to the directions prescribed under section 24 of the Act, 1990. In this case, the record required to be provided was for the period from 07/2016 to 12/2017, which demand manifests no violation or arbitrariness in terms of sub-section

(1) of section 25 of the Act, 1990. Evidently, upon failure to produce record / documents, the Officer proceeded to adopt adjudicatory mechanism provided under section 11 of the Act, 1990. In terms of sub-section (2) of section 25 of the Act, 1990, audit may be conducted but once in a year. We are unable to identify any explanation in the order of the Appellate Tribunal, that how the expression 'year' was construed or interpreted. Whether the expression 'year' was construed to mean a 'Calendar year' or a 'Financial year'. If it was construed as 'Calendar year' then period of audit from 07/2016 to 12/2016 was within last six months of 'Calendar year, i.e., 2016. And the period of audit from 01/2017 to 12/2017 could be treated as full one 'Calendar year', i.e., 2017. Is this position manifests adherence.

And if expression 'year' was construed as 'Financial year' then period from 07/2016 to 06/2017 could be treated as one 'Financial year' and period of audit from 07/2017 to 12/2017 be treated as first six months of contemporaneous 'Financial year'. Does this manifest compliance. Factual determination, in aforesaid context, was missing and with respect to the members of the Appellate Tribunal, this conundrum could be

addressed by ascertaining actual intent of the department, inferrable from the record, or upon examining past practice, conventionally adopted, relevant to the context. Even otherwise, Appellate Tribunal patently erred in exercise of jurisdiction in rejecting the audit in entirety, instead of determining the period of validity, in the context of time-limitations prescribed under sub-section (2) of section 25 of the Act, 1990.

There is another aspect of the matter. Under Sales tax regime tax period means a period of one month, or such period as notified accordingly. Expression 'year' was not defined in the Act, 1990. Obviously, the definition or scope of tax period under Income Tax Ordinance, 2001 cannot be imported to interpret the expression 'year'. - [Tax year for the purposes of Income Tax Ordinance, 2001 is different]. Ratio settled in the case of Faisalabad Electric Supply Company Ltd. (FESCO) vs. Federation of Pakistan through Secretary, Finance, Islamabad and others (2019 PTD 1780), is not attracted, which interprets and explains the scope of third proviso added to sub-section (2) of section 25 of the Act, 1990, inserted through Finance Act 2018 and omitted through Finance Act 2019.

6. In view of the narrative above, question proposed is answered in following terms,

“An authorized officer may call for the documents / record under subsection (1) of section 25 for such period as considered appropriate, within the time period prescribed in law for retention of the record, but same is required to conduct audit once in a year, which expression suggests period covering 12 months – either construed as Financial year or Calendar year, depending upon the intent of the department, evident from the record, and / or practice conventionally followed by the department”.

7. Evidently, matter requires re-determination and it is deemed appropriate to remand matter to the Appellate Tribunal, which shall decide the appeal of the registered person / respondent afresh, in light of answer to the question recorded.

8. Office shall send a copy of this order, under seal of the Court, to learned Appellate Tribunal, in terms of sub-section (5) of section 47 of Sales Tax Act, 1990.

(ANWAAR HUSSAIN)
Judge

(ASIM HAFEEZ)
Judge

M.S.Aleem

Approved for reporting

Judge