

**ORDER SHEET**

**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**JUDICIAL DEPARTMENT.**

**Writ Petition No.1656/2016**

M/s Fauji Cement Company Limited

**Versus**

Assistant/Deputy Commissioner Inland Revenue, Islamabad, etc.

<b>S. No. of order/ proceedings</b>	<b>Date of order/ Proceedings</b>	<b>Order with signature of Judge and that of parties or counsel where necessary.</b>
	20.09.2022.	Hafiz Muhammad Idrees and Syed Farid Ahmed Bukhari, Advocates for the petitioner. Barrister Atif Rahim Burki, Advocate for the respondents.

**AAMER FAROOQ, J.** –This order shall dispose of the

instant petition as well as Writ Petition No.1657/2016, as common questions of law are involved.

2. The petitioner is a taxpayer and is aggrieved of notices under section 161 of the Income Tax Ordinance, 2001 (“**the Ordinance**”) issued by the respondents on 14.03.2016. In this behalf, notice under section 161 of the Ordinance, challenged in Writ Petition No.1656/2016, pertains to the Tax Year 2008 and other notice which is the subject matter of Writ Petition No.1657/2016 is with respect to Tax Year 2009.

3. Learned counsel for the petitioner, *inter alia*, contended that though no period of limitation is prescribed for issuance of notice under section 161 of the Ordinance, however, under section 174 of the Ordinance, the period prescribed is six years and the same is also applicable in the case of notice under section 161 *ibid*. Learned counsel submitted that the august Apex Court has settled the controversy in Commissioner Inland Revenue, Zone-IV, Lahore

versus M/s Panther Sports & Rubber Industries (Pvt) Limited, etc. (2022 SCMR 1135). It was contended that decisions have also been handed down by the Hon'ble Lahore High Court in case reported as Maple Leaf Cement Factory Limited versus The Federal Board of Revenue & Others (2016 PTCL 548) and Hon'ble Sindh High Court in case reported as Habib Bank Limited versus Federation of Pakistan through Secretary, Revenue Division and 5 others (2013 PTD 1659).

4. Learned counsel for the respondents submitted that though the controversy has been settled by the Hon'ble Supreme Court of Pakistan with respect to the limitation period, however, under proviso to section 174(3) of the Ordinance, where any proceeding is pending before any authority or Court, the taxpayer is bound to maintain the record till the conclusion of the proceedings.

5. Arguments advanced by learned counsel for the parties have been heard and the documents placed on record examined with their able assistance.

6. As noted above, the petitioner is aggrieved of notices under section 161 of the Ordinance which pertain to tax years 2008 and 2009 and are dated 14.03.2016, hence are beyond the period of six year. The august Apex Court in Commissioner Inland Revenue, Zone-IV, Lahore versus M/s Panther Sports & Rubber Industries (Pvt) Limited, etc. (2022 SCMR 1135)

observed as follow:-

"4. Section 174(1) binds a taxpayer to maintain such accounts, documents and records as may be prescribed. Rule 29(1) of the Rules provides a list of such records. Subsection (3) of section 174 makes the duty of the taxpayer to maintain the records for a period of six years. Rule 29(4) reiterates the same timeline. Time based obligation of maintaining records contemplated under the Ordinance and the Rules is

*a legislative mandate that promotes efficient and smart fiscal administration and governance. It is underlined that the Ordinance is largely structured around time-framed provisions in order to make the taxing mechanism certain and transparent and the tax administration and tax governance smarter and efficient. Reference, with advantage, can be conveniently made to sections 120 (assessment), 122 (amendment of assessment) and 221 (rectification of mistakes) of the Ordinance in this regard.*

*5.....Harmonized reading of the statute requires that section 174(3) and sections 161, 165 and Rule 44(4) must complement each other so as to promote the purposes of the Ordinance and equally protect and safeguard the rights of both the tax manager and the taxpayer as envisaged under the Ordinance. Therefore, even though notices under sections 161(1A), 165(2B) and Rule 44(4) have no prescribed period of limitation, the statutory timeframe kicks in the minute the time period under section 174(3) is exhausted rendering such notices ineffective and unenforceable, attracting no penal consequences for the taxpayer. It is clarified that the department is only restricted where it seeks record beyond the statutory period under section 174(3) from the taxpayer but is otherwise free to proceed if the action or proceedings under the Ordinance are based on the record already in possession of the department.*

*6. We, therefore, endorse the view expressed in Maple Leaf<sup>4</sup> by the Lahore High Court, where a similar question had come up before the court. We have also examined Habib Bank<sup>5</sup> which holds that the department can override the timeframe under section 174(3) by justifying the delay in initiating the matter against the taxpayer. Section 174(3) of the Ordinance read with Rule 29(4) of the Rules is clear and leaves no room for any such departmental justification, which in any case cannot deprive the taxpayer of the statutory protection under section 174(3) of the Ordinance. We, therefore, do not support the view expressed in Habib Bank as we have not been able to find any statutory support for the conclusion arrived at in the said case.*

*7....."any act or thing to be done" within a timeframe. Section 174(3) on the other hand does not require any act or thing to be done in a particular timeframe but quite on the contrary provides that after a lapse of a period of six years, the taxpayer shall not be obligated to maintain its tax records. Therefore, section 214A has no application to the present case and cannot be invoked to deprive the taxpayer of the statutory protection under section 174(3) of the Ordinance.*

*8. For the above reasons we hold that a taxpayer is obliged to maintain the record under section 174(3) of the Ordinance for a period of six years and the taxpayer cannot be compelled to produce the record for a tax year beyond the period of six years as stipulated in section 174(3) of the Ordinance. Hence notices issued under section*

*165(2B) or 161(1A) of the Ordinance being ineffective and unenforceable are set aside."*

The ratio in the above case of the august Apex Court falls squarely to the facts of the instant case as the record summoned/requisitioned is beyond the period of six years. Similar reasoning has been handed down by the Hon'ble Lahore High Court as well Hon'ble Sindh High in cases reported as Maple Leaf Cement Factory Limited versus The Federal Board of Revenue & Others (2016 PTCL 548) and Habib Bank Limited versus Federation of Pakistan through Secretary, Revenue Division and 5 others (2013 PTD 1659). There is nothing on record which distinguishes case of petitioner from the interpretation rendered by the Hon'ble Supreme Court of Pakistan qua sections 174 and 161 of the Ordinance.

7. For the above reasons, the instant petitions are **allowed** and notices impugned in the instant petitions are **set-aside**.

**(AAMER FAROOQ)**  
**JUDGE**