

## **Taxhelpline Case No. 159 of 2013**

### **[INLAND REVENUE APPELLATE TRIBUNAL]**

**S.T.A. No.579/LB of 2012, decided on 18th October, 2012.  
Date of hearing: 10th October, 2012**

**Before Ch. Munir Sadiq, Judicial Member and Sohail Afzal,  
Accountant Member**

**Malik Muhammad Arshad and Mian A.R. Bari for Appellants.  
Aftab Aalam, D.R. for Respondents**

**WORLD TELECOM LIMITED, LAHORE**

**Vs**

**COMMISSIONER INLAND REVENUE (APPEALS-I), LAHORE  
and 2 others**

### **ORDER**

CH. MUNIR SADIQ JUDICIAL MEMBER.---The order shall dispose of the title appeal filed by the taxpayer/registered person calling in question Order-in-Appeal No.4 dated 20-4-2012 passed by the Commissioner, Inland Revenue (Appeals-1), Lahore.

2. Brief facts as recorded in the show-cause notice dated 20-8-2011 are that the Deputy Director, Directorate of Intelligence and Investigation FBR, Lahore reported that a credible information was received that the registered person, engaged in running telecommunication services chargeable of Federal Excise Duty (in Sales Tax mode) vide notification S.R.O. 648(I)/2005 dated 1-7-2005 superseded vide S.R.O. 550(I)/2006 dated 5-6-2006 was not making apportionment of input tax adjustment against its supplies/services which were exempt vide Serial-2(i) and 2(ii) of the Table-II to 3rd Schedule of the Federal Excise Act, 2005 and, thus, contravening the provision of sub-section (2) of section 8 of Sales Tax Act, 1990 read with Chapter IV, Sales Tax Rules, 2005 and

2006. The matter was referred to Directorate of Intelligence and Investigation FBR, Lahore vide letter dated 5-11-2009 for investigative audit with prior approval of the Board vide letter dated 27-10-2009. Registered person was asked to provide record of its exempt supplies vide letter dated 17-12-2009, 14-1-2010, 21-1-2010 and 29-4-2010 and in response thereto the registered person provided partial record vide letters dated 24-12-2009, 29-4-2010 and 2-8-2010. The Directorate asked the registered person to provide complete record vide letter dated 7-10-2010 but it did not furnish the same, therefore, on the basis of available record the audit was conducted for the period July, 2005 to December, 2009 in which it was observed that:--

(i) Messrs Worldcall Telecom Limited are not declaring exempt supplies in their Sales Tax/Federal Excise returns for the period July, 2005 to December, 2009.

(ii) Exempt services rendered by Messrs Worldcall Telecom Limited can broadly be categorized into two categories i.e., (a) services exempt vide S.No. 2(i) & 2(ii) of the Table-II of Third Schedule of the Federal Excise Act, 2005 and (b) services exempt vide S.No.2(iii) of the Table-II of Third Schedule of the Federal Excise Act, 2005 (International Incoming Call).

(iii) The Financial Audited Accounts of Messrs Worldcall Telecom Limited shows total amount of net revenue generated from the operations but...the breakup of said revenue in the form of international revenue and domestic revenue has not been provided. However, they have declared domestic revenue in sales tax return during the years July, 2005 to December, 2009 respectively. In order to arrive at the international revenue, domestic revenue declared in the sales tax returns has been excluded from the total net revenue declared in the Financial Audited Accounts. Detail is as under:--

Tax Period

Total Revenue as per Financial Audited Accounts/ Income Tax Returns

Taxable Revenue as per Sales Tax Returns

Exempt Revenue (1-2)

Total Input Tax Claimed as per Sales Tax Returns/ Computer Profile.

Inadmissible Input Tax Adjustment Against Exempt Revenue (4'3/1)

1

2

3

4

5

2005-2006

4,355,859,000

157,816,180

4,198,042,820

20,404,504

19,665,233

2006-2007

4,312,513,000

132,143,867

4,180,369,133

16,300,520

15,108,040

2007-2008

4,508,111,000

984,334,619

3,523,776,381

120,894,914

94,374,127

7/2008 to 12/2008

3,091,482,000

490,613,960

2,600,868,040

52,858,215

44,217,298  
1/2009 to 12/2009

840,827,5000  
1,233,648,852  
7,184,626,148  
68,222,884  
58,294,468  
Total

232,352,166

On the basis of above observations, the show cause notice containing demand amounting to Rs.232,352,166 as inadmissible input tax adjustment attributed to exempt services for the period July, 2005 to December, 2009 in violation of sections 8(2) and 26 was issued under sections 11(2) and 36(1) of the Sales Tax Act, 1990. The registered person replied the show cause notice and the adjudication proceedings culminated in passing of assessment order dated 31-1-2012 by the Deputy Commissioner, Inland Revenue, LTU, Audit-1, Zone-II, Lahore. The amount of Rs.19,665,233 relating to tax period barred by limitation under section 36(1) of the Sales Tax Act, 1990 was deleted. Therefore, the liability of registered person was reduced from Rs.232,352,166 to Rs.212,886,933 and he was directed to deposit the same. The default surcharge and penalty in term of sections 34, 33(5) and 33(6) were also imposed. The appeal filed against order-in-original also failed as the Commissioner, Inland Revenue (Appeals-1), Lahore has upheld the order passed by Deputy Commissioner vide impugned Order-in-Appeal No.4 dated 20-4-2012. However, it was directed by the Commissioner, Inland Revenue (Appeals-1), Lahore in the impugned order that the figures may be reconciled by both the parties within 15 days as also agreed by the audit officer appearing on behalf of the department. It was further directed that any period barred by time should also be deleted while reconciling the demand. Hence, this appeal.

3. The learned counsel for the registered person at the very outset raised legal objection (i) Audit was conducted by the officer of

Directorate of Intelligence and Investigation-FBR, Lahore without seeking permission from the Commissioner or as the case may be officer equivalent to his rank as required under section 25 of the Sales Tax Act, 1990, (ii) Deputy Commissioner, Inland Revenue, LTU, Lahore was not authorized and competent for issuance of show cause notice and adjudicating the matter being beyond his monetary limit, in term of S.R.O. 555(I)/1996 dated 1-7-1996, thus, without jurisdiction and coram non judice and (iii) demand for violation of subsection (2) of section 8 of the Sales Tax Act, 1990 was illegal as the words "services" were inserted in section 8(1) by virtue of Finance Act, 2008 by giving retrospective effect not permissible under the law. In respect of legal issue No. (i) regarding conducting audit without seeking permission from the Commissioner, it has been contended that prior to promulgation of Finance (Amendment) Ordinance, 2009, the officers of Directorate of Intelligence and Investigation were delegated the powers of officers of Sales Tax by the Board vide S.R.O. 48(I)/2008 dated 15-1-2008. On amendment w.e.f. 28.10.2009, the words "officers of Sales Tax" were substituted with words "officers of Inland Revenue" in the definition of an appropriate officer contained in subsection (2) of section 2 of the Sales Tax Act, 1990. Therefore, the powers delegated vide S.R.O. referred above were no more available to officers of Directorate General of Intelligence and Investigation FBR. The Board issued S.R.O. 56(I)/2010 dated 2-2-2010 delegating the powers of the officers of Inland Revenue to Officers of Directorate General of Intelligence and Investigation FBR. During the intervening period from 28-10-2009 to 2-2-2010, the entire action including issuance of notices to the registered person for providing record was beyond their jurisdiction. Out of 4 letters, 3 were issued un-authorizedly on 7-12-2009, 14-1-2010, 21-1-2010. However, the letter dated 29-4-2010 was issued after delegation of powers vide S.R.O. 56(I)/2010 dated 2-2-2010 issued in supersession of earlier S.R.O. 48(I)/2008 dated 15-1-2008. The registered person provided record in response to letters issued by the Directorate of Intelligence and Investigation FBR, Lahore and the audit of the record was conducted after 7-10-2010 when the final letter for production of complete record was issued by the said Directorate. The learned counsel contended that it is evident from the perusal of Para-2 of the show cause notice that the audit of the registered

person was conducted after 7-10-2010 when section 25 of the Sales Tax Act, 1990 was already amended vide Finance Act, 2010 and the condition precedent for conducting audit was that the officer conducting audit should have been authorized by the Commissioner, Inland Revenue. He contended that only provision relating to the audit of the registered person was containing in section 25 and prior and after the amendment of said section, the Board was not figuring in the said section and as such the Board was not competent to grant permission for conducting audit. He submitted that the findings of Commissioner, Inland Revenue (Appeals-1), Lahore, that audit conducted after obtaining the permission from Board was not against the statute and the audit conducted by the Deputy Director, Intelligence 8, Investigation-FBR, Lahore was in order, were contrary to the statutory provisions contained in section 25 of the Sales Tax Act, 1990 as the authorization for conducting audit from Commissioner, Inland Revenue or as the case may be officer equivalent to his rank was mandatory. He further contended that it is well settled law that where the initial notice or action was illegal the entire subsequent proceeding based on such illegal act would be nullity in the eyes of law. He further contended that the Board has the powers to appoint Chartered Accountants or Cost Accountants for conducting special audit in term of section 32-A or select persons or classes of persons for audit of tax affairs by computer ballot which may be random or parametric under section 72-B of the Sales Tax Act, 1990 whereas neither the audit of the registered person was conducted by any Chartered Accountants appointed by Board through notification in the official gazette nor the registered person was selected through computer balloting at random or otherwise by the Board, thus, grant of approval dated 7-10-2009 by the Board was illegal, void and without jurisdiction.

4. As regards 2nd issue relating to the pecuniary jurisdiction of the Deputy Commissioner, Inland Revenue, Lahore, the learned counsel for the registered person contended that issuance of show cause notice and on the basis thereof passing the order-in-original was without jurisdiction as having been issued/passed by an officer of Inland Revenue not competent in term of S.R.O. 555(I)/1996 dated 1-6-1996 holding the field at the relevant time on omission of section 45 of the Sales Tax Act, 1990 vide Finance Act, 2010. He

submitted that the pecuniary jurisdiction of the Deputy Commissioner was to deal with the cases involving amount of tax not exceeding one million rupees whereas the show cause notice was issued for alleged inadmissible input tax adjustment exceeding such limit, thus; the Deputy Commissioner, Inland Revenue was not competent to issue show cause notice or adjudicate the matter or pass original order being beyond the said monetary limit provided in the above referred S.R.O. He further contended that the said S.R.O. remained dormant till the omission of section 45 of the Sales Tax Act, 1990 and from the date i.e. 5-6-2010, the said S.R.O. become applicable on omission of said section. He contended that S.R.O.555(I)/1996 dated 1-7-1996 was alive and holding the field till 1-6-2012, the date it was rescinded vide S.R.O. 594(I)/2012 dated 1-6-2012. He contended that if the S.R.O. 555(I)/1996 was not in the field prior and after omission of Section 45 of the Sales Tax Act, 1990, there was no reasons to rescind the same on 1-6-2012 after about 2 years on omission of Section 45 of the Sales Tax Act, 1990. He relied on a judgment of hon'able Supreme Court of Pakistan in case "Izhar Alam Farooqi, Advocate v. Sheikh Abdul Sattar Lasi and other" (2008 SCMR 240) and the consolidated judgment dated 11-10-2012 of this Tribunal in appeals No. STA No.530/LB/2011 and STA No.578/LB/2011 and judgment dated 06.04.2012 passed in STA No.55/LB/2012. He also contended that S.R.O. 555(I)/1996 dated 1-7-1996 was very much in the field because the said S.R.O. was rescinded on 1-6-2012 vide S.R.O. 594(I)/2012 dated 1-6-2012 and Para-2 of said S.R.O. clarified that the notification shall take effect on and from 2'd day of June, 2012. He contended that till 1-6-2012, the notification S.R.O. 555(I)/1996 dated 1-7-1996 containing the pecuniary jurisdiction of the officers was in the field and as such the findings of the Deputy Commissioner, Inland Revenue as well as Commissioner, Inland Revenue (Appeals-1), Lahore were erroneous being without any legal backing resultantly the show cause notice and the original order passed by un-authorized officer were a nullity in the eyes of law. Since the show cause notice and original order were without jurisdiction, thus, the impugned order is also illegal and without jurisdiction as held in case "Messrs Kamran Industries v. Collector of Customs (Exports), Karachi and 4 others" PLD 1996 Kar. 68. As regards subsection (2) of section 8 of the Sales Tax Act, 1990

incorporated in show cause notice as well as original order and impugned order, he contended that words "services" are not appearing in said subsection even today. Subsection (2) of Section 8 deals in taxable and non taxable supplies and claims of proportion of input tax to taxable supplies in such manner as may be specified by the Board. He contended that since the word "services" were not included in subsection (2) of section 8 of the Sales Tax Act, 1990, the question of the contravention of the said section and raising demand on the basis thereof would not arise. He further contended that the registered person was charged specifically for violation of subsection (2) of section 8 of the Sales Tax Act, 1990 as is evident from the perusal of show cause notice. He contended that the words "services" were inserted in clause (a), (b) and (ca) in sub-section (1) of section 8 through Finance Act, 2008 which provision cannot be given retrospective effect. He further contended that the registered person was specifically charged for violation of subsection (2) of section 8 of the Sales Tax Act, 1990 and as such the findings relating to this objection of Commissioner, Inland Revenue (Appeals-1) by re-phrasing the said section in his own language as reproduced in Para 2 at page 11 of the impugned order is erroneous and against the law. He further argued that sales tax could not be levied on services due to constitutional barring and the levy on telecommunication services must remain a levy of excise. Further argued that section 7 of the Federal Excise Act provides the methodology for ascertaining the amount which is to be paid by the tax payer and that the words "Sales Tax Mode" only provides that once the amount is calculated as per section 7 ibid then it is to be collected and/or recovered and/or/paid in the manner provided by the Sales Tax. Further argued that any other interpretation of the section 7 of Federal Excise Act would render the provisions of section 7(a) to (d) redundant and it is trite law that redundancy cannot be attributed to the legislature. Further argued that bar on deduction of input duty is only restricted to the extent of goods and not services. On the basis of above arguments, learned counsel prayed that order-in-original as well as order-in-appeal may be set aside.

5. The learned D.R. on the other hand while opposing the arguments advanced by the learned counsel for the registered



person supported the impugned order and contended that permission granted by the Board for conducting audit was valid because the same was forwarded to the Director, Intelligent and Investigation-FBR, Lahore which was further forwarded to the Deputy Director which means that the Deputy Director was duly authorized by the Board for conducting the audit and there was no need to obtain authorization from the Commissioner, Inland Revenue. He further contended that S.R.O. 555(I)/1996 dated 1-7-1996 only issued in respect of officers of Collectorates and not the officer of Inland Revenue and on omission of section 45 from the Sales Tax Act, 1990, every officer of Inland Revenue was competent to issue show cause notice and adjudicate the cases irrespective of pecuniary jurisdiction. He further contended that the show cause notice was rightly issued under section 36 of the Sales Tax Act, 1990 and the Deputy Commissioner, Inland Revenue was competent to adjudicate the matter.

6. In rebuttal, the counsel for the registered person submitted that S.R.O. 555(I)/1996 dated 1-7-1996 was very much applicable because section 72A inserted vide Finance Act, 2010 clarified the position of the said S.R.O. stating that any reference to Collector, Additional Collector, Deputy Collector, Assistant Collector, Superintendent, Senior Auditor and an officer of Sales Tax wherever occurring in this Act and the rules, notifications, clarification, general order made or issued there-under shall be construed as reference to Commissioner Inland Revenue, Additional Commissioner, Inland Revenue, Deputy Commissioner, Inland Revenue, Audit Officer and an officer of Inland Revenue respectively meaning thereby the reference to Deputy Collector in the S.R.O. 555(I)/1996 dated 1-7-1996 shall be read as Deputy Commissioner, Inland Revenue. He further argued that subsection (3) of Section 36 of the Sales Tax Act, 1990 was very much in the field when the show cause notice was issued and as such the officer of Sales Tax/Inland Revenue "empowered in this behalf" can only issue show cause notice to determine the amount of tax or charge payable by such person. He contended that after omission of section 45 of the Sales Tax Act, 1990, the S.R.O. 555(I)/1996 was in field empowering the officers to issue show cause notice and to

adjudicate the matters in term of section 36 of the Sales Tax Act, 1990.

7. We have heard the learned counsel for the registered person as well as learned DR, perused the record and the case law cited at the bar. The audit of the registered person was statedly conducted by the Deputy Director, Intelligence & Investigation-FBR, Lahore under the approval granted by the Board vide letter dated 27-10-2009. The audit of the registered person can be conducted by the officer of Inland Revenue either under section 25 or by the Chartered/Cost Accountants appointed by the Board through notification in the official gazette under section 32-A of the Sales Tax Act, 1990. The Board is only competent either to appoint Chartered/Cost Accountants in the manner prescribed under section 32-A or to select persons or classes of persons for audit of tax affairs through computer ballot which may be random or parametric as the Board may deem fit and on making such selection, the audit of the tax affairs of persons shall be conducted as per procedure given in Section 25 and provisions of the said Act shall apply accordingly. For better appreciation, it would be appropriate to reproduce subsections (1) and (2) of Section 25 hereinafter:--

"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 he shall, as and when required by Inland Revenue, 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 subsection (1), may, once in a year, conduct audit."

8. Similarly section 32-A provides for special audit by Chartered Accountants or Cost Accountants and the Board is competent to appoint such Accountants through notification in the official gazette

for conducting special audit of record of registered person and the auditor appointed there-under shall have the power of officer of Inland Revenue under sections 25, 37 and 38 of the Sales Tax Act, 1990. Section 32A reads as under:--

"32-A. Special audit by Chartered Accountants or Cost Accountants.---(1) The Board or the Commissioner may, appoint a Chartered Accountants as defined under Chartered Accountants Ordinance, 1961 (X of 1961) or a firm of a Chartered Accountants or a Cost and Management Accountant within the meaning of Cost and Management Accountants Act, 1966 (XIV of 1966) or a firm of Cost and Management Accountants, for conducting special audit of record of registered person.

Provided that the Board may, by notification in the official gazette, appoint a firm of Chartered Accountants as defined under Chartered Accountants Ordinance, 1961 (X of 1961), or a Cost and Management Accountant within the meaning of Cost and Management Accountants Act, 1966 (XIV of 1966), or a firm of Cost and Management Accountants to conduct audit of refund claims.

(2) Notwithstanding that records of a registered person have been audited by an officer appointed under section 30, the Board or a Commissioner may direct an auditor appointed under sub-section (1) to audit the record of any registered person.

(3) An auditor appointed under subsection (1) shall have the power of officer of Inland Revenue under sections 25, 37 and 38."

9. Besides above, the Board may select persons or classes persons for audit of tax affairs through computer ballot which may be random or parametric as the Board may deem fit and audit of the tax affairs of the persons selected shall be conducted as per procedure given in section 25 section 72B reads as under:--

"72B. Selection for audit by the Board.---(1) The Board may select persons or classes of persons for audit of tax affairs through

computer ballot which may be random or parametric as the Board may deem fit.

(2) Audit of tax affairs of persons selected under subsection (1) shall be conducted as per procedure given in section 25 and all the provisions of this Act shall apply accordingly.

(3) For the removal of doubt, it is hereby declared that the Board shall be deemed always to have had, the power to select any persons or classes of persons for the audit of tax affairs under this Act."

10. It is an admitted position that neither any Chartered Accountant or Cost Accountant was appointed by the Board for conducting special audit of the registered person under section 32A nor the registered person was selected through computer ballot at random or parametric in term of section 72B of the Sales Tax Act, 1990, thus, the powers of the Board under sections 32A and 72B of the Sales Tax Act, 1990 need not to be discussed in this case The only provision invoked for conducting audit of the registered person was section 25 according to which a person who is required to maintain any record or document under the Sales Tax Act, 1990 or any other law shall, as and when required by the 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 the Inland Revenue authorized by the Commissioner and use of any machine on which such data is kept and the officer of the Inland Revenue authorized by the Commissioner on the basis of such record may once in a year conduct audit. It is also an admitted position that neither the record was requisitioned by the Commissioner nor he authorized any officer of the Inland Revenue or as the case may be Directorate of Intelligence and Investigation-FBR, Lahore to require such record nor the audit of the registered person was conducted by any officer authorized by the Commissioner in term of section 25 of the Sales Tax Act, 1990. The said provision of law does not speak of any approval to be obtained or granted by the Board. Thus, the approval granted by the Board vide letter dated 27-10-2009 and forwarded to the Director and

further transmitted to Deputy Director without specifying the provision of law under which the same was given cannot be termed as authorization from the Commissioner or any other officer equivalent to his rank in term of section 25 of the Sales Tax Act, 1990 by any stretch of imagination. Thus, the audit conducted by the Deputy Director I & I exercising his powers as officer of Inland Revenue without authorization from the Commissioner or any officer equivalent to his rank was without jurisdiction. It is further added that perusal of the impugned order itself shows that Deputy Director was not authorized by the Commissioner and the audit was conducted under the approval granted by the Board which is not figuring anywhere in section 25 of the Sales Tax Act, 1990. Thus, the contention of the learned counsel for registered person that the audit was conducted in violation of the mandatory provision contained in the Sales Tax Act, 1990 carries force.

11. The show cause notice and the adjudication were held in term of sections 11(2) and 36(1) of the Sales Tax Act, 1990. The Board in exercise of powers conferred by subsection (2) of section 11 and section 36 of the Sales Tax Act, 1990 had authorized the officers of the Sales Tax specified in the said notification to adjudicate the cases involving assessment of sales tax, charging of additional tax, imposition of penalty and recovery of amount erroneously refunded subject to limitation and conditions as specified in S.R.O. 555(I)/1996 dated 1-7-1996. According to the said notification, the Deputy Commissioner, Inland Revenue was competent vide Serial-3 of the Table to said S.R.O. to adjudicate cases falling under sections 11(2) and 36 of the Sales Tax Act, 1990 provided that the amount of tax involved does not exceed one million rupees. The designation Additional Collector, Deputy Collector and other officers of the Sales Tax where-ever appearing was to be read as Deputy Commissioner Inland Revenue, Additional Commissioner Inland Revenue etc by virtue of section 72A of the Sales Tax Act, 1990 which reads as under:--

"72A. Reference to authorities.---Any reference to Collector, Additional Collector, Deputy Collector, Assistant Collector, Superintendent, Senior Auditor and an officer of Sales Tax, where-ever occurring, in this Act and the rules, notifications, clarifications, general orders or orders made or issued there-under, shall be

construed as reference to Commissioner Inland Revenue, Additional Commissioner Inland Revenue, Deputy Commissioner Inland Revenue, Assistant Commissioner Inland Revenue, Superintendent Inland Revenue, Inland Revenue Audit Officer and an officer of Inland Revenue, respectively."

12. Perusal of the aforesaid provision clearly shows that the Deputy Collector appearing at Serial-3 of the Table to S.R.O. 555(I)/1996 dated 1-7-1996 shall be construed and read as Deputy Commissioner, Inland Revenue and as such the objection of the learned DR that since the Deputy. Collector was mentioned in the said notification, thus, it would not apply to the Deputy Commissioner, Inland Revenue is without any substance. It is an admitted position that the tax involved in this case was much beyond the monetary limit prescribed for adjudication of the cases by the Deputy Commissioner, Inland Revenue at Serial-3 of the Table to S.R.O. 555(I)/1996 dated 1-7-1996 and the said S.R.O. remained in the field till 01.06.2012 when it was rescinded by the Federal Government vide S.R.O. 594(I)/2012 dated 1-6-2012. While rescinding S.R.O. 555(I)/1996 dated 1-7-1996, the Federal Government specifically mentioned that the rescinded S.R.O. shall take effect on and from the 2nd day of June, 2012 meaning thereby that the earlier notification prescribing the pecuniary jurisdiction of the various officers was very much in the field till 1-6-2012 and the contention of the learned counsel for the registered person that the show cause notice and superstructure built there upon by way of original order and the impugned order was without jurisdiction and coram non judice has force and the case law relied by him fully supports his contention as the hon'able Supreme Court of Pakistan in case "Izhar Alam Farooqi, Advocate vs. Sheikh Abdul Sattar Lasi and others" (2008 SCMR 240) has held that the institution specifically barred to adjudicate any matter to the extent of certain mandatory limits shall not be competent and had no jurisdiction to deal with any such matter exceeding such mandatory limits prescribed under the law. Honourable Supreme Court of Pakistan has held in case of Sardar A,hmad Yar Khan Jogezeai v. Province of Balochistan 2002 SCMR 122 that "Where essential feature for assumption of jurisdiction is contravened or forum exercises powers not vested in it, or exceeds authority beyond limits prescribed by law, the judgment is rendered coram non judice and inoperative".

Honourable Supreme Court in re: "Faqir Abdul Majeed Khan v. Distt Returning Officer and others 2006 SCMR 1713 has observed as under:--

"By now it is well settled that any order which suffers from patent illegality or is without jurisdiction, deserves to be knocked down" Re: PLD 1958 SC, 104 PLD 1973 SC 326, PLD 2002 SC 630, 2003 SCMR 50, 2004 SCMR 28, 2004 SCMR 1798."

It is further pointed that the issue regarding jurisdiction of the officer of Inland Revenue to adjudicate tax matters has already been decided by this Tribunal in case "Messrs Global (Pvt.) Ltd. and an other v. Commissioner, Inland Revenue, RTO, Multan" vide order dated 11-10-2011 passed in S.T.A. No.530/LB of 2011 and S.T.A. No.578/LB of 2011 and "Messrs Ibrahim Steel Casting, Dewab Nagar Road, More Emanabad, Gujranwala v. Commissioner Inland Revenue (Appeals), Lahore" vide order dated 6-4-2012 passed in S.T.A. No.55/LB of 2012. In the said cases, it was held that the show cause notice issued by the Deputy Commissioner was beyond his pecuniary jurisdiction in term of S.R.O. 555(I)/1996 dated 1-7-1996 and we find ourselves in full agreement with the aforesaid judgments. As regard the last issue that the words "services" are not appearing in subsection (2) of section 8 and that the amendment made in clause (a) (b) (ca) in subsection (1) of section 8 vide Finance Act, 2008 cannot be given retrospective effect and that the learned Commissioner, Inland Revenue (Appeals-1), Lahore cannot rephrase the said subsection according to his own wishes seems correct. It is added that the Commissioner, Inland Revenue (Appeals-1), Lahore can interpret any provision of law while passing any order according to his own wisdom but he cannot direct that such and such provision should have been in such and such form by putting certain words at his own in any provision. The observation of the Commissioner, Inland Revenue (Appeals-1), Lahore that section 8(2) "if a registered person deals in taxable and non-taxable supplies, he can reclaim only such proportion of the input tax as is attributable to taxable supplies in such manner as may be specified by the Board" would be read as "if a registered person deals in services that are subject to FED and the services that are exempt

he can reclaim only such proportion of the input tax as is attributable to taxable supplies in such manner as may be specified by the Board" is patently violative of the statutory provisions as he has no jurisdiction or authority to amend or legislate any provision at his own. The learned DR when confronted with the aforesaid observation of the Commissioner, Inland Revenue (Appeals-1), Lahore was unable to controvert the assertion made by the learned counsel for the registered person.

13. In nutshell, the investigative audit conducted by officials of the Directorate General, Intelligence and Investigation-FBR was without jurisdiction being violative of the mandatory provisions contained in section 25 of the Sales Tax Act, 1990. The show cause notice and order in original passed by the Deputy Commissioner, Inland Revenue, Lahore were beyond his pecuniary jurisdiction as mentioned in S.R.O. 555(I)/1996 dated 1-7-1996 and being so it was an order coram non judice and without lawful authority. It is further held that the acts of omission and commission taken without jurisdiction are illegal, void ab initio and no action can be taken against the taxpayer in pursuance thereof as held in case cited as "Messrs Kamran Industries v. Collector of Customs (Exports), Karachi and 4 others". PLD 1996 Kar. 68 "Messrs Kamran Industries v. Collector of Customs (Exports), Karachi and 4 others".

14. In view of above discussion, the appeal is accepted. The impugned order passed by learned CIR(A) is set aside and the order in original is declared null and void and of no legal consequences

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