

Stereo. HCJDA 38
JUDGMENT SHEET
LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Writ Petition No. 46365/2024

Abdullah Zulfiqar

Vs.

Federal Investigation Agency and others

JUDGMENT

Date of hearing:	29.04.2025
For the Petitioner:	Ms. Asma Hamid, Advocate, assisted by Mr. Mustafa Khalid, Advocate.
For the Respondents:	Mirza Nasar, Additional Attorney General, Mr. Asad Ali Bajwa, Deputy Attorney General, and Mr. Shahid Ahmad Ranjha, Assistant Attorney General, with Nadeem Akhtar, Assistant Director, FIA, Lahore.

Tariq Saleem Sheikh, J. – This consolidated judgment shall decide Writ Petitions No. 46365/2024 and 46449/2024 as both of them impugn the same actions of the Federal Investigation Agency (FIA). Writ Petition No. 46365/2024 is by Abdullah Zulfiqar, a BPS-18 officer of the Inland Revenue Service (IRS), presently serving as Deputy Commissioner Inland Revenue, Zone-II, Lahore. On the other hand, Writ Petition No. 46449/2024 has been filed by Mir Badshah Khan Wazir, Member Inland Revenue (Operations), Federal Board of Revenue (FBR). He has been appointed by the Federal Government under section 3 of the Federal Board of Revenue Act, 2007 (FBR Act). He exercises various powers and functions delegated to him by the Board under section 8 of the Act.

Factual background

2. On 11.06.2024, Respondent No.4 (Assistant Director, FIA) issued a notice under section 5(5) of the FIA Act, and sections 94 & 160 Cr.P.C. to the Additional Commissioner Inland Revenue (AC Headquarters), Lahore, stating that Enquiry No. E-77/2024 was pending before the FIA Anti-Corruption Circle (ACC), Lahore, in relation to allegations of corruption, kickbacks, bribery, misconduct, and illegal approval of tax refunds to large taxpayer companies by officers of the

LTO, Lahore. He required him to produce the records of income and sales tax refunds issued over the preceding five years of all large taxpayer companies of all Zones of LTO Lahore, including those of DWP Engineering Industries (Private) Limited. The Additional Commissioner responded through letter dated 14.06.2024, stating, *inter alia*, that section 216(1) of the ITO declares such records confidential and prohibits public servants from disclosing them. He further pointed out that section 216(2) contains a *non obstante* clause barring any court or authority, notwithstanding other laws, including the FIA Act, from compelling their production. Thereafter, Respondent No.4 issued a second notice dated 20.06.2024 to the Additional Commissioner Inland Revenue, reiterating the earlier demand and fixed 24.06.2024 for compliance. The Additional Commissioner, through reply dated 21.06.2024, reaffirmed the department's legal position.

3. On 18.07.2024, Respondent No.2 (Assistant Director, FIA Anti-Money Laundering Circle, Lahore Zone), issued notice under section 94 Cr.P.C. and section 25 of the Anti-Money Laundering Act, 2010 (AMLA), addressed to the Chief Commissioner, Inland Revenue, LTO Lahore, and the Additional Commissioner Inland Revenue (AC Headquarters), Lahore, again required the production of the relevant records in connection with the same enquiry. Separately, on 19.07.2024 at 1:15 p.m., Abdullah Zulfiqar (Petitioner in Writ Petition No. 46365/2024) received notice dated 18.07.2024 under section 160 Cr.P.C. from Respondent No.2, directing him to appear the same day at 11:00 a.m. before the FIA and bring the refund records. Petitioner Abdullah Zulfiqar, in his reply of 19.07.2024, explained that the notice was received after the scheduled appearance time and requested that a fresh notice be issued with reasonable advance intimation. The Chief Commissioner Inland Revenue, through the Additional Commissioner Inland Revenue (AC Headquarters), reaffirmed the department's above-mentioned position in detail by letter dated 22.07.2024.

4. On 23.07.2024, around 3:00 p.m., a team from the FIA entered the premises of the LTO Lahore with a contingent and presented a search warrant issued the same day by a Judicial Magistrate (Section 30), Lahore, on an application filed by Respondent No.4. Petitioner Abdullah

Zulfiqar was compelled to hand over the records of DWP Engineering Industries (Private) Limited under duress and protest.

5. Through these petitions under Article 199 of the Constitution of the Islamic Republic of Pakistan (the “Constitution”), the Petitioners have challenged the legality of the notices dated 11.06.2024, 20.06.2024, and 18.07.2024 (collectively the “Impugned Notices”), the search warrant dated 23.07.2024, and the subsequent coercive measures (the “Impugned Actions”). They further pray that Enquiry No. E-77/2024, the Impugned Notices and the search warrant dated 23.07.2024 be quashed, and that the record obtained under protest from Petitioner Abdullah Zulfiqar be ordered to be returned to him forthwith.

6. The FBR filed Writ Petition No. 46443/2024 in this Court against the Impugned Notices and Impugned Actions. That petition was disposed of on the ground that the dispute constituted an institutional disagreement between the Revenue Division and the Interior Division, which must be resolved through the mechanism provided by Rule 8(2) of the Rules of Business, 1973, framed under Article 99 of the Constitution (the “Rules of Business”).

The submissions

7. Ms. Asma Hamid, counsel for the Petitioners, contends that section 227(2) of the ITO provides that, notwithstanding anything contained in any other law for the time being in force, no investigation or inquiry shall be undertaken or initiated by any governmental agency against any officer or official for anything done in his official capacity under the ITO, or the rules, instructions, or directions made or issued thereunder, without the prior approval of the FBR. A similar condition is imposed by section 51(3) of the Sales Tax Act, 1990 (STA), section 41(3) of the Federal Excise Act, 2005 (FEA), and section 217(1) of the Customs Act, 1969. She submits that, since the FIA did not obtain prior approval from the FBR, the Impugned Notices and Impugned Actions are without lawful authority. She relies on *Muhammad Ahmad Zaheer etc. v. Federation of Pakistan etc.* (2022 LHC 6041) in support.

8. Ms. Hamid further submits that section 216(1) of the ITO obligates all public servants to maintain the confidentiality of taxpayer

information. Section 56B of the STA and section 47B of the FEA cast a similar duty in respect of matters governed by those statutes. Section 216(2) of the ITO contains a *non obstante* clause which overrides general laws, including the FIA Act, the AMLA, and the Code of Criminal Procedure 1898. Therefore, the FIA could not lawfully require production of the records in question through notices issued under section 94 Cr.P.C. or section 25 of the AMLA, nor could it obtain such records through a search warrant. Counsel further points out that any unauthorized disclosure of such information exposes the officer concerned to penal consequences – imprisonment or fine – under section 198 of the ITO. She adds that section 216(8) of the ITO prohibits the institution of prosecution for such disclosure unless prior sanction is obtained from the FBR, and argues that these provisions collectively underscore the high threshold imposed by law to protect taxpayer confidentiality.

9. Ms. Hamid maintains that neither the ITO nor the STA nor do the alleged offences fall within the scope of the FIA Act. She explains that income and sales tax refunds are processed under section 170 of the ITO and sections 10 and 66 of the STA, while discrepancies are addressed through the remedial mechanism prescribed under section 122 of the ITO and section 11A of the STA. According to her, these provisions establish a self-contained adjudicatory regime which excludes parallel inquiry by external investigating agencies. She contends that the FIA cannot sit in judgment over actions taken pursuant to these statutory frameworks. She relies on **Universal Cables Industries Limited v. Federation of Pakistan and others** (PLD 2020 Sindh 601).

10. Ms. Hamid further contends that the Impugned Notices are general in nature and do not identify any taxpayer other than DWP Engineering Industries (Private) Limited, and seek income and sales tax refund data spanning the last five years. This, she submits, constitutes a *mala fide* fishing expedition that is prohibited under the law. She argues that the search warrant obtained by Respondent No.4 is unsustainable because it was based on vague and unsubstantiated allegations.

11. Mr. Asad Ali Bajwa, Deputy Attorney General, contends that these petitions are not maintainable because the Petitioners do not qualify as “aggrieved parties” within the meaning of Article 199 of the

Constitution. Their grievance primarily concerns their official functions rather than any personal legal injury. He submits that to establish standing, a party must demonstrate that its proprietary or personal rights, recognized under the law, have been invaded, denied, or adversely affected. It must also have a direct and personal interest in the matter, not merely an official interest, and show that it will suffer a tangible legal consequence from the court's determination of the dispute. He relies on *Tariq Transport Company v. Sargodha Bhera Bus Service and another* (PLD 1958 SC 437), and *Commissioner Inland Revenue v. OGDCL* (2015 PTD 899) in support of this submission.

12. Mr. Bajwa further submits that even if this Court were to hold that the Petitioners satisfy the threshold of *locus standi*, a closer review of the pleadings reveals that the present petitions centre on the FBR's institutional role as custodian of tax records, the statutory confidentiality attached thereto (which, in his submission, does not confer personal protection), and the scope of the FIA's jurisdiction. Mr. Bajwa maintains that these are institutional matters rather than individual rights violations. He suggests that, given the commonality of issues between these petitions and Writ Petition No.46443/2024 filed by the FBR (see paragraph 6), the Court may consider clubbing the matters for joint resolution. Since the FBR's petition has been treated as an internal administrative dispute, these petitions, though formally brought by natural persons, should be dealt with in the same manner and remitted to the executive for resolution through the consultative process.

13. On the merits, Mr. Bajwa submits that Enquiry No. E-77/2024 was initiated on the complaint of one Shabbir Ahmad and involves serious allegations of abuse of power, corruption, and corrupt practices by officers of the LTO, Lahore. He contends that section 227(2) of the ITO and section 51(3) of the STA, which the Petitioners seek to invoke, provide protection only for acts done in good faith and in furtherance of statutory duties. According to him, where a tax officer is alleged to have acted fraudulently or outside the lawful scope of authority, that protection does not apply. He argues that such allegations, if substantiated, disentitle the officer from invoking statutory safeguards. Therefore, the Impugned Notices and Impugned Actions were lawful and no exception can be taken

thereto. Reliance is placed on *Amjad Qadoos v. Chairman, National Accountability Bureau (NAB), and others* (2014 SCMR 1567).

14. In rebuttal, Ms. Hamid submits that Article 4 of the Constitution guarantees to every citizen the inalienable right to be treated in accordance with law and, under Article 4(2)(c) of the Constitution, not to be compelled to do what the law does not require. She contends that the Petitioners were forced through the Impugned Notices and the execution of the search warrant to disclose taxpayer information protected under section 216 of the ITO, in breach of a mandatory statutory prohibition. This, she argues, not only exposed them to potential disciplinary action and to criminal liability under section 198 of the ITO, but also interfered with their lawful discharge of official duties. According to her, such compelled disclosure constitutes a personal legal injury that goes beyond institutional interests and falls outside the scope of the consultative mechanism prescribed in Rule 8(2) of the Rules of Business. Hence, the Petitioners are “aggrieved parties” within the meaning of Article 199, and these petitions are maintainable.

Discussion

15. The High Court’s power of judicial review under Article 199 of the Constitution is a matter of original jurisdiction. It is, however, subject to the Constitution and *inter alia* the condition that no other adequate remedy is provided by law. Further, in respect of the matters mentioned in Article 199(1)(a), the High Court must be moved by an aggrieved party, while any person may approach it for an order under Article 199(1)(b). As for the matters falling within the ambit of Article 199(1)(c), it can exercise jurisdiction only on the application of an aggrieved person. Determining whether a party meets this threshold is a mixed question of law and fact governed by settled principles and not left to judicial discretion.

16. In *Tariq Transport Company v. Sargodha Bhera Bus Service and another* (PLD 1958 SC 437), the Supreme Court of Pakistan stated that it is a “basic principle that a person seeking judicial review of administrative or *quasi*-judicial action must show that he has a direct personal interest in the act which he challenges before his prayer for

review is entertained.” The Court also cited with approval the opinion of Justice Frankfurter in *Giant Anti-Fascist Refugee Committee v. McGrath* (341 U.S. 123, 151), where he observed: “A petitioner does not have standing to sue unless he is interested in and affected adversely by the decision of which he seeks review. His interest must be of a personal and not of an official nature.” The Supreme Court further explained that an application for an order of *certiorari* can be made only by an aggrieved party and not by any member of the public; and that in the case of an application for *mandamus*, the applicant must demonstrate a personal legal right to the performance of a legal duty by the party against whom the writ is sought. This principle was reaffirmed in *Hafiz Hamdullah v. Saifullah Khan and others* (PLD 2007 SC 52).

17. The first question is whether the Petitioners are aggrieved parties within the meaning of Article 199 of the Constitution.

Writ Petition No. 46449/2024

18. Writ Petition No. 46449/2024 has been filed by Mir Badshah Khan Wazir, Member, Inland Revenue (Operations), FBR. He is a functionary of the FBR who was not served with any personal notice, nor was he subjected to any coercive action. His petition appears to be filed in a representative or supervisory capacity to protect the institutional interests of the FBR. It is indistinguishable in substance from W.P. No. 46443/2024 filed by the FBR, which has already been disposed of on the ground that it is an inter-departmental dispute that can be resolved through the mechanism provided by Rule 8(2) of the Rules of Business. In the absence of any infringement of a personal legal right, the Petitioner lacks *locus standi*.

Writ Petition No. 46365/2024

19. In Writ Petition No. 46365/2024, Petitioner Abdullah Zulfiqar alleges that the Respondents interfered with his statutory responsibilities concerning tax administration, including confidentiality obligations imposed under the applicable fiscal laws. He contends that he was compelled to disclose taxpayer information in violation of section 216(1) of the ITO and section 56B of the STA, which exposed him to penal consequences. These facts, when considered in light of Article 4 of the

Constitution, disclose a personal legal injury that is separate from the institutional interests underlying the FBR's petition. Based on the pleadings, the Petitioner qualifies as an "aggrieved party" within the meaning of Article 199(1)(a) of the Constitution. The case **Commissioner Inland Revenue v. OGDCL** (2015 PTD 899), cited by Mr. Bajwa, is distinguishable. There, the Commissioner Inland Revenue, in a matter relating to his official functions, filed a constitutional petition seeking judicial review of an order passed by the Appellate Tribunal Inland Revenue. The Islamabad High Court held that he could not claim to have been wrongfully deprived of anything to which he was legally entitled. There was no denial of any personal, pecuniary, or property right, nor the imposition upon him of a legal burden or obligation. In the circumstances, he may have been dissatisfied with the impugned order, but he had not suffered any personal injury. Therefore, he was not an "aggrieved party" for the purposes of Article 199 of the Constitution. By contrast, Petitioner Abdullah Zulfiqar alleges that he was compelled to act in violation of section 216 of the ITO, which has exposed him to potential personal liability. His challenge is grounded in a concrete legal grievance, not institutional dissatisfaction.

20. The Deputy Attorney General contended that, like the FBR's petition, Writ Petition No. 46365/2024 is also not maintainable because Petitioner Abdullah Zulfiqar has an alternate remedy under Rule 8(2) of the Rules of Business. This argument is misconceived. The limitation in Article 199(1) applies only where an adequate remedy is "provided by law", meaning a statutory or legal remedy enforceable before a competent forum. Rule 8(2), by contrast, is an intra-governmental coordination mechanism deriving its authority from Article 99 of the Constitution to foster institutional comity between Divisions. It is not adjudicatory in nature and does not bar judicial review where a public officer alleges coercive action in violation of statutory protections. Therefore, it is not an alternate remedy for the purposes of Article 199(1) and does not oust this Court's jurisdiction.

Merits of Writ Petition No. 46365/2024

21. Having found that the Petitioner Abdullah Zulfiqar is an aggrieved party under Article 199(1)(a) of the Constitution and that the

Writ Petition No. 46365/2024 is maintainable, I now turn to the legality of the FIA's actions and the impugned proceedings. This requires consideration of three principal questions. First, whether the FIA possesses statutory jurisdiction to investigate the alleged acts, particularly where the ITO and STA are not included in the Schedule to the FIA Act. Second, whether the initiation of Enquiry No. E-77/2024 and the Impugned Notices and Impugned Actions are vitiated for want of prior approval from the FBR under section 227(2) of the ITO and corresponding provisions of the STA.

22. Section 3(1) of the FIA Act provides that the Agency (FIA) is established for the inquiry into and investigation of offences specified in the Schedule to the Act, including any attempt or conspiracy to commit, or abetment of, such offences. Evidently, neither the ITO nor the STA is included in that Schedule. In *Universal Cables Industries Limited. v. Federation of Pakistan and others* (PLD 2020 Sindh 601), the High Court held that the FIA cannot assume investigative jurisdiction in matters arising under special fiscal statutes where the alleged conduct does not disclose an offence falling within the Schedule to the FIA Act. It was further observed that the assessment and refund processes under those laws fall within a structured adjudicatory framework and are subject to their own appellate hierarchies. The Court also emphasized that vague and generalized allegations, unsupported by reference to specific tax years, NTN numbers, or transactions, do not confer jurisdiction on the FIA. The requirement to obtain prior approval from the competent authority was characterized as a substantive precondition, not a procedural formality. Although *Universal Cables* arose in the context of a private company, its core holding is relevant to the present proceedings, which concern alleged misconduct within the LTO Lahore.

23. The FIA sought to justify the Impugned Notices on the basis of section 25 of the AMLA. That provision applies where there is a predicate offence specified in the Schedule to the Act. While allegations of corruption or abuse of authority may, in appropriate cases, constitute such a predicate offence, the Impugned Notices do not identify any scheduled offence with legal specificity, nor do they disclose a factual nexus between the refund transactions in question and any offence falling within the

Schedule to the Act. Refund processing under the ITO or the STA does not, by itself, attract the application of the AMLA. In the absence of a clearly identified predicate offence, section 25 could not validly be invoked as an independent source of investigative authority.

24. The Respondents have relied upon *Amjad Qadoos v. Chairman, National Accountability Bureau (NAB), and others* (2014 SCMR 1567) to contend that prior approval of the FBR under section 227(2) of the ITO is not required where a tax officer is alleged to have acted unlawfully. The reliance is misplaced. *Amjad Qadoos* was decided in the context of the National Accountability Ordinance, 1999, a special statute containing an express overriding clause and conferring primacy upon NAB in matters of corruption. It was in this legislative framework that the Supreme Court held that no prior FBR approval was required to initiate an inquiry where the alleged acts were *prima facie* unlawful and fell within NAB's statutory mandate. The present case arises under a materially different set of legal provisions. The proceedings have been initiated by the FIA under the FIA Act, which does not confer overriding authority over fiscal statutes nor dispense with permission requirements expressly stipulated by Parliament. In the absence of any offence identified under the FIA Act itself, the protections under section 227(2) of the ITO and section 51(3) of the STA continue to apply.

25. Earlier, in *Muhammad Ahmad Zaheer etc. v. Federation of Pakistan etc.* (2022 LHC 6041), this Court considered the scope and effect of section 217(1) of the Customs Act, a provision analogous to section 227(2) of the ITO. It held that the requirement of prior approval from the FBR is not a mere formality but a mandatory safeguard that must be observed at two distinct stages – prior to the initiation of any inquiry and again before the registration of a criminal case. These safeguards were described as structural protections against harassment and as reinforcements of institutional discipline. At the same time, the Court cautioned that such protection is not absolute. Drawing from *Ch. Zahur Ilahi v. Zulfikar Ali Bhutto* (PLD 1975 SC 383), the Court reiterated that immunity provisions must be construed strictly, as no one is above the law. An act committed fraudulently or in colourable exercise of authority would fall outside the phrase “in pursuance of this Act or the Rules,” and thus

would not attract protection. This principle, while restricting blanket immunity, nonetheless affirms that procedural safeguards such as prior approval remain applicable unless bad faith is demonstrable on the basis of specific and credible material. Mere allegations, however forceful, do not suffice.

26. At first glance, there appears to be tension between *Amjad Qadoos* and *Ahmad Zaheer*. However, the divergence is more apparent than real. *Amjad Qadoos* was decided under the NAB Ordinance, a special anti-corruption statute with overriding effect and a distinct factual matrix involving identified officers and concrete allegations. *Ahmad Zaheer*, by contrast, interpreted the statutory safeguards embedded in fiscal legislation that are analogous to those applicable in the present case and held that prior approval remains mandatory unless bad faith is demonstrable through credible material. Therefore, the two precedents arise in different statutory contexts and do not conflict.

27. Applying these principles here, it follows that while the FIA may have competence to investigate offences involving corruption, it cannot initiate such an inquiry in relation to IRS officers without satisfying the procedural requirements of section 227(2) of the ITO and section 51(3) of the STA. The failure to obtain prior approval from the FBR before initiating Enquiry No.E-77/2024 renders the action without lawful authority.

28. It may be argued that the present case falls within the exceptions contemplated by clauses (o) and (p) of section 216(3) of the ITO. Clause (o) permits disclosure of taxpayer information relevant to an inquiry into the conduct of an officer of the Income Tax Department, while clause (p) allows such disclosure to any Government agency or department for the purpose of enabling it to carry out a civil or criminal investigation.¹ These clauses lift the confidentiality bar under subsection (1) in defined

¹ These clauses are reproduced below for ready reference:

- (3) Nothing contained in subsection (1) [of section 216] shall preclude the disclosure of such particulars –
- (o) relevant to any inquiry into the conduct of an official of the Income Tax Department to any person or officer appointed to hold such inquiry, or to a Public Service Commission, established under the Federal Public Service Commission Ordinance, 1977 (XLV of 1977), when exercising its functions in relation to any matter arising out of such inquiry;
 - (p) as may be required by any officer or department of the Federal Government or of a Provincial Government for the purpose of investigation into the conduct and affairs of any public servant, or to a Court in connection with any prosecution of the public servant arising out of any such investigation;

situations. However, they do not operate in isolation and must be construed strictly and harmoniously with the rest of the statute. In particular, they do not override the requirement under section 227(2) of the ITO or section 51(3) of the STA that prior approval be obtained from the FBR before initiating any inquiry or investigation against an officer for acts done in his official capacity. Nor do they dispense with the sanction requirement under section 216(8) of the ITO where disclosure may give rise to penal consequences under section 198. In the present case, the record was obtained through generalized notices and coercive processes, without satisfying the preconditions in section 227(2). Accordingly, even if clauses (o) or (p) were otherwise attracted, they do not justify the Impugned Notices and Impugned Actions.

29. Petitioner Abdullah Zulfiqar has also contended that the Impugned Notices are overly broad, indefinite, and lacking in particularity. Apart from DWP Engineering Industries (Private) Limited, the FIA sought income and sales tax refund data for the preceding five years for all large taxpayer companies assessed in all Zones of LTO Lahore. The notices did not identify any specific taxpayer, tax year, or allegedly fraudulent transaction, nor did they disclose how the records sought related to a cognizable offence. Such generalized demands, unsupported by a clearly identifiable offence, amount to a roving inquiry of the kind disapproved in *Universal Cables*. They exceed the investigative mandate of the FIA and offend the rule of law. The Impugned Notices are, therefore, *ultra vires* and cannot be sustained.

Disposition

30. Writ Petition No. 46449/2024 is **dismissed** for want of *locus standi*.

31. Writ Petition No. 46365/2024 is **partly allowed** in the following terms:

31.1 The Impugned Notices and the search warrant dated 23.07.2024 are declared to be without lawful authority insofar as they required or resulted in obtaining confidential taxpayer information without prior approval of the FBR under section 227(2) of the ITO and section 51(3) of the STA.

31.2 Any information obtained in violation of section 216 of the ITO shall not be used for Enquiry No. E-77/2024. The original record shall forthwith be returned to the office from which it was taken, namely the Large Taxpayers Office, Lahore, to be dealt with under the administrative control of the FBR. The FIA shall not retain any copies or derivative records thereof.

31.3 Nothing in this judgment shall preclude the FIA from initiating proceedings afresh in accordance with law, provided that it first satisfies the applicable jurisdictional requirements and obtains prior approval from the FBR under section 227(2) of the ITO and section 51(3) of the STA, where so required.

31.4 If the FBR refuses to grant approval or access to the protected records, the parties may have recourse to Rule 8(2) of the Rules of Business for resolution through the Prime Minister.

31.5 Nothing in this judgment shall restrict the FIA from investigating any offence that otherwise falls within its statutory mandate or from relying on evidence not protected under section 216 of the ITO.

(Tariq Saleem Sheikh)
Judge

Naeem

Announced in open court on _____

Judge

Approved for reporting

Judge