

KTBA CASE LAW UPDATE (05th of 2023 dated May 12, 2023)

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Dear Members,

A brief update on a recent judgment on “**Seizure of records is illegal if the Commissioner cannot justify in writing the circumstances for his Raid under Section 40A**” by Lahore High Court is being shared with you for your knowledge.

This update is in line with the efforts undertaken by our “**CASE LAW UPDATE COMMITTEE**” apprise our Bar members with important court decisions.

You are equally encouraged to share any important case law, which you feel that should be disseminated for the good of all members.

You may contact the Committee Convener Mr. Shams Ansari or at the Bar’s numbers 021-99212222, 99211792 or email at info@karachitaxbar.com & ktba01@gmail.com

(Zafar Ahmed)

President

May --, 2023

(M. Mehmood Bikiya)

Hon. General Secretary

May --, 2023

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SEIZURE OF RECORDS IS ILLEGAL IF THE COMMISSIONER CANNOT JUSTIFY IN WRITING THE CIRCUMSTANCES FOR HIS RAID UNDER SECTION 40A

Appellate Authority: Lahore High Court (LHC)

Appellant: The Commissioner Inland Revenue (CIR)

Section: 38, 40 & 40A of the Sales Tax Act, 1990 (the Act)

Detailed judgment was issued on April, 12 2023 [STR No. 97 of 2013]

Background: The LHC dismissed the departmental appeal on the ground that the raid conducted under Section 40A of the Act was not based on sufficient grounds as required for raids thereunder. For raids to be conducted without prior notice, the Commissioner has to have justifiable reasons to believe that there was a risk that the record might be removed before the search could be undertaken and that the Commissioner should bring out that justification in writing, failing which the whole exercise will be illegal.

Since the matter pertains to a period prior to the Finance Act, 2006, which deleted Section 40A from the Act, the legality of such raids undertaken during that time period would be governed by the provisions of the Act as they existed at the time.

Decision of the Court:

First Ruling of the Court: The LHC held that that when an authorized officer is conducting an inspection or taking something into custody, he must limit it to only using records that are in plain sight or voluntarily given to him. He has no authority to compel the production of any records that are not presented voluntarily. If he takes something into custody, it cannot be used against the person from whom it was taken involuntarily.

Second Ruling of the Court: The provisions of Section 38 could not be read in isolation for taking any action under Sections 40 and 40A of the Act. Any action under Section 40A to implement the requirement of section 38 must be brought into writing.

Third Ruling of the Court: Since, no evidence was presented to show any valid reasons for deviating from the normal procedure under Section 40 coupled with non fulfilment of the requirements under Section 40A, any action taken under Section 38 (such as a search and seizure) becomes illegal.

Fourth Ruling of the Court: Record seized in an illegal manner cannot be used against taxpayer in any assessment of tax.

Conclusion:

The court found that no statement in writing was prepared to justify such a belief that such risk existed. It was therefore held that the raid, search, seizure of record and subsequent proceedings including show cause notice and order-in-original are illegal and without lawful authority as per law laid down in by the Supreme Court of Pakistan in PLD 1991 (SC) 630 & 2021 PTD 1379.

NOTE: Members are requested to read the complete order attached herewith.

This update has been prepared for KTBA members and carries a brief narrative on a detailed Judgment and does not contain an opinion of the Bar, in any manner or sort. It is therefore, suggested that the judgment alone should be relied upon. Any reliance on the summary in any proceedings or project would not be binding on KTBA.