

HAMID WALEED

Tax administration's discretionary powers lead to litigation, opine experts

LAHORE: Entering and searching property of taxpayer to seize material, including record, accounts, documents and computer etc., without due diligence is a negation of the fundamental right of taxpayers.

According to tax experts, the discretionary attitude of tax administration leads to excessive litigation, wastage of time and resources, as there is no check on the tax collector and taxpayers are totally at the mercy of tax machinery, which humiliates fundamental rights unabatedly.

Talking to Business Recorder, a leading tax expert Muhammad Shahid Baig said that the constitutional provisions with respect to taxation constitute a limitation on the legislative powers.

According to him, the tax authorities are involved in the misuse of Section 175 of the Income Tax Ordinance, 2001, as the powers enumerated can only be exercised in order to enforce any provision of the Ordinance 2001 (including for the purpose of making an audit of a taxpayer or a survey of persons liable to tax).

He said the discretion of the concerned authorities has led to abuse of powers as the field staff mixes issues relating to wealth statement with sales tax of running businesses and enter to the premises of taxpayers to seize all the material relating to the sale of the services.

He said the powers enumerated under section 175 of the Ordinance 2001 can only be exercised in order to enforce any provision of the Ordinance; therefore, the same cannot be exercised in a vacuum or independently. Furthermore, he added, this section can be invoked if there is resistance or refusal on the part of the taxpayer to comply with a lawful order or direction passed an authority empowered under any provision of the Ordinance.

Baig said a raid under section 175 is the hardest hit on the business and reputation of the petitioner and the power under clauses (a) to (e) of section 175(1) are definitely in the nature of encroaching upon the rights of privacy and liberty of a taxpayer, therefore, the same cannot be exercised on the whims of a tax authority.

He said the field staff of the Federal Board of Revenue (FBR) is also practicing of releasing information about unlawful raids to media in order to blackmail, malign and destroy the reputation of taxpayers and coerce them to accede to the illegal and unjustified demands of the department. This creates suspicion not only the intent but also the reasons for which entry and seizure take place, he added.

He said a tax authority cannot exercise this power unless he is satisfied and possesses justification in writing that it is necessary to enter and search the premises, place, accounts, documents or computer of a taxpayer.

Baig said the higher courts have also passed rulings that despite the fact that section 175 of the Ordinance grants power to Commissioner or any authorized officer to enter and search premises without notice but this power should have to be seen in conjunction with the rights enjoyed by a taxpayer with reference to its premises and property and with the right of due process.