

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Writ Petition No.1694/2016

Ocean Pakistan Limited

Versus

Federal Board of Revenue, Islamabad, etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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27.09.2022.	Barrister Salaar Khan, Advocate for the petitioner. Syed Ishfaq Hussain Naqvi and Ms. Sadaf Noman, Advocates for the respondents.
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The petitioner, in the instant petition, has *inter alia* challenged the selection for audit for the Tax Year 2014 as well as Audit Policy, 2015, formulated by respondent No.1.

2. At the very outset, learned counsel for the petitioner contended that the questions of law raised in the instant petition already stand decided by this Court in case titled “*Pakistan Telecommunication Company Limited & Another versus Federal Board of Revenue through its Chairman, Islamabad, etc.*” (**Writ Petition No.25/2016**) vide decision dated 18.05.2018. It was submitted that the instant petition be disposed of in the same terms.

3. Learned counsel for the respondents conceded the position that the matter already stands decided.

4. The petitioner is a taxpayer under the Income Tax Ordinance, 2001 (“**the Ordinance**”) and is aggrieved of the Audit Policy, 2015, as well as selection for audit for the Tax Year 2014. The grievance raised in the instant petition also became the subject matter of lis before the Hon’ble Lahore High Court which eventually culminated before the august Apex

Court. The Hon'ble Supreme Court of Pakistan while deciding C.P No.2370-L/2018 and others observed as follow:-

"16. A perusal of the statutory landscape makes it clear that the provisions of Sections 177 and 214 of the Ordinance; Section 25 of the Act, 1990 and Section 46 of the Act, 2005 provide a mechanism and roadmap which is required to be followed by the Taxation Officer/Auditory. In terms of section 177 of the Ordinance, the Commissioner can call for the record or documents for conducting the audit of the tax affairs of a person, provided he furnishes reasons to do so. Such reasons must be communicated to the Taxpayer. He can also seek explanations from the Taxpayer on issues raised during the audit in terms of Section 177 of the Ordinance. It is only if he is convinced that the explanation furnished by the Taxpayer is not satisfactory, he may proceed to amend the assessment under section 122 of the Ordinance, after giving the Taxpayer an opportunity to defend him. We are therefore of the view that the statutory framework together with the overarching umbrella of constitutional guarantees furnish adequate and sufficient safeguards to the Taxpayer where there is a possibility of overstepping by the Tax authorities.

17. The learned counsel for the Tax Department have vehemently argued that the date i.e. 30.06.2017 prescribed by the learned Single Bench to complete the audit was unlawful and that the extension granted by the learned Appellate Bench to 30.12.2017 was equally unsustainable. They submitted that the law did not contemplate a cut-off date and the both lower fora erred in law in rendering into the Statute what was not there. They submitted that this was not a situation where reliance could be placed on the doctrine of *casus omissus*. This was so because there was reason, rationale and background in which the Legislature intentionally omitted to set a deadline within which the audit needed to be completed. They contended that various factors beyond the control of the Tax Department traditionally pointed towards non-cooperation on the part of the Taxpayers, restraining orders passed by the Courts, volumes of work involved in the matter and lack of requisite manpower to complete audits within a specified framework.

18. Having considered the arguments of learned counsel for the parties, we find that the Audit Policy itself categorically provides that the audit must be completed within the Tax Year in which a Taxpayer is selected for audit. In formulating the policy, the Board had considered all factors pointed out by learned counsel. However, considering that delays in completion of audit not only burden the Taxpayer but also stretch the resources of the Board, it has been considered appropriate at the policy level to place a timeframe for completion of the process. While the power of the Board to conduct an audit cannot be denied, it is equally important that a Taxpayer should not be allowed to be

pestered and dragged indefinitely through an unending process of scrutiny and audit of his accounts. This can have negative and disastrous effects on an ongoing and running business. We are therefore unable to agree with the argument of the learned counsel for the Tax Department that the question of time for completion of the audit can be left open ended and the Department can taken as much time as it wants to complete the audit. That audit of a selected Taxpayer must be completed within a reasonable time is implicit in the Statutes and has explicitly been spelt out in the Policy guidelines of 2015 by the FBR itself which it had ample power and sufficient statutory support to do. Any other interpretation of the law, rules and the policy would not only be absurd but also contrary to the Policy validly and competently implemented which clearly and in no uncertain terms fixes the time for completion of the audit as the financial year during which selection for such audit has been made. Further, we agree with the extension granted by the learned Appellate Bench which has considered the specific facts and circumstances brought to its notice including ongoing litigation between the parties in which restraining orders had been issued for the duration of which audit proceedings had to be stopped.

19. *The learned counsel for the Tax Department vehemently argued that ability of the Department to perform its function had severally been limited and stultified by reason of placing a timeframe on completion of the audit. He submitted that on account of capacity issues it was not always possible to complete the audit within a specific time. Considering the history of audit relation litigation, he submitted that completion of the audit also got delayed on account of litigation pending before the Courts of competent jurisdiction. It was also on account of time constraint issues that Taxpayers were complaining that the Taxation Officers decided the matters hastily, did not follow the mandatory processes and were more interested in meeting revenue targets rather than conducting a genuine audit. We are, however, of the opinion that long delays in concluding audit subject Taxpayers to unnecessary and repeated hearings which reflect badly on the business of the assessee as well as the performance and effectiveness of the Department. We are therefore of the view that the issues and problems relating to delays in conclusion of the audits stem from shortage of capacity and non-availability of adequately trained officers to conduct and complete audit in a professional and efficient manner within a reasonable time. The Board is expected to enhance and improve qualitative and quantitative aspect of its officers for the purpose of audit who are well versed with the processes, mechanisms and tools required for conducting audits effectively, efficiently and expeditiously.*

20. *We note that the learned Single Judge had proposed certain guidelines for the Board to follow. However, while the guidelines may be useful pointers for the Board, it is not the function of the Courts to devise policies and recommend steps and measures to improve capacity*

or reduce delays which factors fall within the purview of policy. This is in view of the fact that on the principle of trichotomy of powers which lies at the heart of our Constitution it is the mandate of the Board to do so. The guidelines provided by the Courts in their judgments may therefore be used as useful pointers towards formulating policies in the future without any manner encroaching the policy making domain of the executive.

21. *The basic requirement for any scheme of self-assessment and audit is to provide a system of checks and balances and ensure that the Taxpayer in whom the system reposes confidence acts justly, fairly and transparently. At the same time upon selection he must be dealt with in an evenhanded, impartial and transparent manner where-under he shall be granted ample opportunity to justify, substantiate and defend the information provided in tax returns that he voluntarily filed. In case, both sides approach this in a professional and judicious manner without unduly hampering each others work, the system would overcome the teething problems that it has been facing for the last many years. We find that the issues, objections and questions raised by the Taxpayers in their appeals questioning their selection as well as the process followed in such selection and the methodology proposed to be used for conducting audit of the tax affairs of a person have adequately been addressed by the lower fora and require no interference.*

22. *By the same token, we are also convinced that a general timeframe is necessary to be put in place in order to ensure that the tool of audit is not abused or misused to pester, torment or harass the Taxpayers on account of reasons not attributable to him. We, therefore find that the timeframe mentioned in the policy guidelines namely completion of the audit within the same financial year in which a Taxpayer is selected for audit is fair and reasonable. It must as far as possible be adhered to. However, if delays are inevitable, beyond the control of the Department and do not occur on account of any act or omission on the part of the Taxation Officers and happen on account of litigation and grant of stay orders, the Audit Officer may seek extension of time from the Federal Board of Revenue for completion of the audit after recording reasons in writing for seeking such extension explaining reasons for his inability to complete the audit within the stipulated time. The Board may on consideration of such reasons grant reasonable extension in order to enable completion of the audit. It is however emphasized that extension if granted should be supported by due application of mind and appropriate reasoning on the part of the Board. It should not be granted casually, repeatedly and as a matter of routine. Adherence to guidelines and timeframes would enhance confidence of the Taxpayers in the system and at the same time act as a check on lethargy and inefficiency on the part of the department functionaries.*

23. *We also find that the argument of the learned counsel for the Tax Department that timeframe for completion of the audit has to be*

kept flexible without capping the same is patently self defeating, unreasonable and contrary to the policy of the Department itself. Even-otherwise, the Department cannot be given a free hand to keep the matters pending indefinitely which is neither in the interest of the Taxpayers nor the Department.

24. *The learned counsel for the parties have not been able to convince us that the impugned judgments of the High Court suffer from any legal, procedural or jurisdictional error or flaw which may require interference by this Court. They are well reasoned and correctly interpret and apply the settled principles of law on the questions raised in these petitions”.*

Since the appeals preferred by the taxpayers as well as department were dismissed, the decision of the Hon’ble Lahore High Court on the subject holds the field and the reasoning thereof is reflected in the case titled "*Nestle Pakistan Limited versus Federal Board of Revenue, etc.*" (**W.P. No.35297/2015**) and is as follow:-

"To sum up the discussion, supra, it is held that State has a right to audit; corresponding to taxpayer's duty to make correct declarations and comply with the statutory commands under three Federal Taxing Statutes. Selection for and conduct of audit is not ex facie detrimental to the interest of taxpayer, however to exercise such powers; the discretion needs to be structured by framing rules and issuance of policies for ensuring consistency and certainty of procedures; transparency and fairness.

FBR shall rectify the defects pointed out, hereinbefore, in the impugned Audit Policy 2015 and in the policies to be issued in future. Following directions shall be read and incorporated in the rules or policies:

- *A taxpayer selected and audited in preceding tax year/period shall not be selected and audited without giving reasons for such selection. FBR shall enhance its capacity to audit a selected taxpayer for last five years to give respite from consecutive selections.*
- *Audit, being administrative proceedings, shall complete on issuance of Audit Report. If audit is not completed within the given time frame, the selection shall be deemed to have been dropped. After issuance of Audit Report; adjudication proceedings shall be carried out by some other taxation officer to satisfy command of the Constitution under Article 10A.*
- *After selection for audit, any demand for increase in payable tax to drop audit proceedings is not only against the scope and*

spirit of audit but is in violation of the provision relating to audit under the Federal Taxing Statutes as well.

- *The audit shall be conducted in accordance with "Income Tax Manual Part V" and "Sales Tax Audit Hand Book" and such procedure for conduct of audit shall be incorporated in the Rules for Selection and Conduct of Audit.*
- *Remedy against any grievance, regarding selection or conduct of audit, under Section 7 of FBR Act, 2007 shall, henceforth, be read as part of every Audit Policy and its procedure is directed to be incorporated in the Rules for Selection and Conduct of Audit.*
- *The decision, directions and observations made in this judgment shall be followed while implementing the impugned Audit Policy 2015 and future audit policies.*

22. *The petitions are allowed in the manner and to the extent noted in this judgment.*

If any Petition is not dealt in accordance with law, he may approach Chairman, Federal Board of Revenue under Section 7 of the FBR Act, 2007 and the Chairman shall decide the representation through speaking order keeping in view the law discussed and laid down in this judgment and by superior Courts in other judgments".

The decision of the Division Bench in I.C.A.338/2017 titled "*Nestle Pakistan Limited, etc. versus Federal Board of Revenue*" is as follow:

"Under the circumstances and in view of the aforesaid, these appeals are partly accepted and the impugned judgment is modified in the terms provided in our judgment and reiterated below:

- a) *The cut-off date given in the impugned judgment is modified such that the date of 30.06.2017 is extended to 31.12.2017.*
- b) *The finding of the learned Single Judge that if the audit is not completed by 30.06.2017 it will deemed to have dropped is modified to the effect that if the audit is not completed within the stipulated time, the audit officer will have to explain the delay before proceeding with the matter and will have to seek an extension from the FBR to complete the audit within the requested time.*
- c) *The directions given in para 21 of the impugned judgment by the learned Single Judge should be considered by the FBR and may be included in its future policies if deemed necessary and beneficial".*

Since the matter already stands decided and this Court already has expressed its views on the basis of decision of the Hon'ble Supreme Court of Pakistan as well as Lahore High Court in cases noted in the submission of the learned counsel for the petitioner, the instant petition also merits the same treatment.

5. For the above reasons, the instant petition is **disposed of** in light of the observations of the Hon'ble Lahore High Court as well as august Apex Court as mentioned hereinabove.

(AAMER FAROOQ)
JUDGE

M. Shah/*