

JUDGMENT SHEET
ISLAMABAD HIGH COURT
ISLAMABAD

W.P. No. 139/2012

M/S OMV Pakistan Exploration
Versus
Commissioner of Inland Revenue etc.

Petitioners by:	Sirdar Ahmed Jamal Sukhera, Advocate Mr Ayyaz Shaukat Advocate Mr M. Raheel Kamran Sheikh Advocate Bashir Hussain Accountant in W.P. No. 731/11 Hafiz Muhammad Idrees, Advocate in his own petitions as well as on behalf of Mr Ahmed Bashir Advocate Mr Atif Waheed Sh. Advocate Mr Shahbaz Butt Advocate Ch. Naeem-ul-Haq Advocate Syed Tanseer Bukhari Advocate Mian Abdul Ghaffar, Advocate Sheikh Azfar Ameen Advocate
Respondents by:	Tariq Mahmood Jehangiri D.A.G. for Attorney General for Pakistan. Mr Saeed Ahmed Zaidi Advocate Mr Farhat Zafar Advocate Mr Babar Bilal and Muhammad Bilal Advocates Hafiz Munawar Iqbal Advocate Mr Muhammad Irshad Chaudhary Advocate Saleem Raza Qureshi Advocate Farakh Aftab Chaudhary, Advocate Mian Touqeer Aslam Advocate Syed Touqeer Bukhari Advocate

Date of hearing: **23-01-2013**

Riaz Ahmad Khan J: This consolidated judgment is directed to dispose of above titled writ petition as well as following writ petitions, as common questions of law and facts are involved in all these writ petitions.

1. **W.P. No. 67/2012**
M/s Nokia Siemens Networks Pakistan (Pvt) Ltd. Vs. Deputy Commissioner (Inland Revenue) & another
2. **W.P. No. 731/2011**
Islamabad Flour & General Mills (Pvt.) Ltd. Vs. The Commissioner Inland Revenue etc.

3. W.P. No. 3457/2011
M/S Pak Gulf Construction (Pvt.) Ltd. Vs. Commissioner Inland Revenue etc.
4. W.P. No. 68/2012
Pak Telecom Mobile Limited Vs. Deputy Commissioner (Inland Revenue) & another
5. W.P. No. 128/2012
M/S Askari Commercial Bank Limited Vs. Commissioner Inland Revenue etc.
6. W.P. No. 129/2012
M/S Askari Leasing Limited Vs. Commissioner Inland Revenue etc.
7. W.P. No. 137/2012
Pakistan Telecommunication Company Limited Vs. Deputy Commissioner (Inland Revenue) & another
8. W.P. No. 159/2012
M/s S.H.V. Energy Pakistan (Pvt.) Ltd. Vs. The Federation of Pakistan etc.
9. W.P. No. 162/2012
M/s Wateen Telecom Limited Vs. Commissioner of Inland Revenue etc.
10. W.P. No. 192/2012
Warid Telecom (Pvt.) Limited Vs. Commissioner of Inland Revenue etc.
11. W.P. No. 221/2012
M/s Fauji Fertilizer Bin Qasim Limited Vs. The Federation of Islamic Republic of Pakistan etc.
12. W.P. No. 307/2012
Zaver Petroleum Corporation Limited Vs. Commissioner of Inland Revenue etc.
13. W.P. No. 485/2012
M/s Techaccess Pakistan (Pvt) Ltd. Vs. Commissioner of Inland Revenue etc.
14. W.P. No. 545/2012
Securities & Exchange Commission of Pakistan Vs. Commissioner of Inland Revenue etc.
15. W.P. No. 550/2012
M/S CM Pak Limited Vs. Federation of Pakistan etc.
16. W.P. No. 851/2012
M/S National Telecom Corporation Vs. Commissioner of Inland Revenue etc.
17. W.P. No. 852/2012
M/S Pakistan Oilfields Limited Vs. Commissioner of Inland Revenue etc.
18. W.P. No. 1115/2012
M/s MCB Bank Ltd. Vs. Commissioner of Inland Revenue etc.
19. W.P. No. 1178/2012
M/S Shad Enterprise Executive Suites Vs. Commissioner of Inland Revenue etc.
20. W.P. No. 1760/2012
M/s Saif Power Limited Vs. Commissioner of Inland Revenue etc.
21. W.P. No. 2576/2012
M/S Attock Refinery Limited Vs. Commissioner, Inland Revenue etc.
22. W.P. No. 2873/2012
M/s Sonya Travels (Pvt.) Limited Vs. Federation of Pakistan etc.
23. W.P. No. 3384/2012
M/S Star Hydro Power Limited Vs. Commissioner of Inland Revenue etc.

2. Facts constituting the background of all these writ petitions are that the petitioners were issued notices of audit under S. 177 of the Income Tax Ordinance 2001 for the tax

year 2010. By virtue of these notices, the petitioners were asked to provide record/documents including books of accounts for the period relating to tax year 2010, for the purpose of conducting audit of income tax. These notices were issued by the Commissioner Inland Revenue. The petitioner challenged these notices through present writ petitions claiming therein that the Income Tax Ordinance 2001 was amended in 2010 and Section 214(c) was added. According to Section 214(C), the Board would select a person or classes of persons for audit of income tax affairs and after their selection, audit could be conducted by the Commissioner in accordance with Section 171(c) of the Income Tax Ordinance. According to petitioners, their cases had not been selected by the Board and the Commissioner had issued notices without prior selection, therefore, the notices were illegal. In the petition, however, it was prayed that Section 177 as well as 214(C) be declared as illegal, ultra vires and against the Constitution of Islamic Republic of Pakistan, 1973, as both the sections are violative of Article 25 of the Constitution.

3. Similar writ petitions were filed before Lahore High Court, Lahore. All the petitions filed before the Lahore High Court were accepted vide judgment reported as **(2012) 106 TAX 109 (H.C. Lah.)** in case titled “**Chenone Stores Ltd. Vs. The Federal Board of Revenue etc.**”

4. Learned counsel for the petitioners submitted that present cases be decided in accordance with the above said

judgment of Lahore High Court, Lahore. In the said judgment, his Lordships held as follows:-

"I am, therefore, inclined to save the statute and read down Section 177(1) (except its first proviso) and interpret it to be subservient to section 214C. Therefore, while the substantive power to select a person for audit is provided in section 214C, the machinery provision providing procedure for conducting the audit is in section 177. The taxpayer will first be selected for audit under section 214C by the Federal Board of Revenue and only then would be Commissioner conduct its audit in accordance with procedure given in section 177.

The first proviso is section 177(1) i.e. 177(1)(a) & (b) is different from Section 177(1). Unlike section 177(1), it stands excluded for the purposes of section 214C and therefore, assumes an independent role of empowering the Commissioner to practically select a taxpayer for audit without any guidelines. Hence, the said first proviso equips the Commissioner with the arbitrary power to pick and choose any taxpayer for audit of its tax affairs, which as discussed above, is ex facie discriminatory. Second, the impugned notice shows (and as admitted by the departmental representative) the power is not being used for audit but to hold a proving inquiry into the affairs of the petitioner as an investigative tool which is also offensive to the overall scheme of self assessment and the legislative policy behind the Ordinance. The first proviso, therefore, acts to efface the legislative policy of self-assessment and voluntary compliance running through the Ordinance and tries to turn back the clock of legislative history resulting in nullifying the concept of deemed assessment and reintroducing regular assessment of the erstwhile Income Tax Ordinance of 1979. The first proviso to section 177(1) of the Ordinance is, therefore, inherently discriminatory hence violative of article 25 and articles 10A, 18 and 23 of the Constitution besides being inconsistent to the scheme of the Ordinance. The first proviso to section 177(1) of the Ordinance cannot be read down, however, it can be severed from the statute in order to protect the legislative theme behind the Ordinance and to maintain the constitutionality of the remaining statute. For the above reasons, first proviso to section 177(1) of the Ordinance is struck down as being unconstitutional and illegal. With this declaration the second proviso to section 177(1) becomes practically redundant and ineffective.

It is also clarified, for the sake of completion, that section 177(8) of the Ordinance will come into operation after a person has been selected for audit by the FBR under section 214C of the Ordinance.

For the above reasons impugned Notice dated 23-11-2011 issued by the concerned Commissioner Inland Revenue is also set aside as being unconstitutional and illegal.

5. The above said judgment, however, was set aside by the Hon'ble Supreme Court of Pakistan in Civil Appeals No.1032 to 1082 of 2012, however, appeals were sent to Division Bench for the purpose of deciding them in Intra Court Appeals after issuing notice to the learned Attorney General.

6. Learned counsel for the respondent Department submitted that the State is a share holder in the income of its subjects. The State therefore, has a right to know about income of the taxpayers and determine as to whether the share of the State has been properly paid by the taxpayer or not. There is no doubt that under the self-assessment scheme, the taxpayer has the right to assess his tax, but it does not mean that the State has no authority to check and verify the correctness of assessment. In the present scheme of law, the Commissioner under Section 177(1) has been given the authority to verify the record of any person and the object of verification is to determine that the taxpayer has assessed the actual tax due. Under section 214(C), an additional power has been given to the F.B.R. to check any case and the object of that section is to determine that the Commissioner had actually performed his duty. As such, It was an additional check regarding performance of the Income Tax authorities, but in order to avoid any favouritism or nepotism, it was provided that the Board could select a person through computer ballot. Learned counsel further submitted that the powers provided under Section 214(c) were administrative in nature and object of the said Section was to keep a check on the performance of Income

Tax authorities. As such, Section 177 and 214(c) were two independent sections and it was incorrect to hold that Section 177(1) was subservient to Section 214(c) of the Income Tax Ordinance.

7. Learned Deputy Attorney General appearing for Attorney General for Pakistan submitted that interpreting the S. 177(1) of the Income Tax Ordinance, recourse to legislative history could not be made, as the section was very much clear and there was no ambiguity in the said section. There was no provision of prior selection in the said section and the authority vested in the Commissioner was neither discriminatory nor violative of any article of the Constitution. Similarly section 214(c) was an independent section, which could not be interpreted at the touchstone of section 177(1) of the Income Tax Ordinance. None of the two sections could be declared as violative of any Article of the Constitution and the writ petitions are therefore, liable to be dismissed.

8. I have heard learned counsel for the parties and have also perused the record.

9. In order to appreciate the two divergent versions, it is necessary to keep in mind the past and present assessment system. Prior to 2002, a taxpayer could be assessed either on the basis of returns filed or the evidence produced. If the Commissioner was satisfied with the returns filed, taxpayer could be assessed on the basis of those returns. On the other hand, if the Commissioner was not satisfied with the

assessment made by the taxpayer the Commissioner could make assessment of taxable income of the taxpayer.

10. Once the assessment was made, for verification and correctness of tax, the provision of audit was provided in Section 177, which was to the following effect:-

- (1) The Commissioner may select any person for an audit of the person's income tax affairs having regard to:-**
 - a. The person's history of compliance or non-compliance with this Ordinance;**
 - b. The amount of tax payable by the person;**
 - c. The class of business conducted by the person; and**
 - d. Any other matter that the Commissioner considers relevant;**
- (2) The fact that a person has been audited in a year shall not preclude the person from being audited again in the next and following years where there are reasonable grounds for such audits, particularly having regard to the factors in sub-section(1).**
- (3) The Central Board of Revenue may appoint a firm of Chartered Accountants as defined under the Chartered Accountants Ordinance, 1961 (X of 1961) to conduct an audit of the income tax affairs of any person and the scope of such audit shall be as determined by the Central Board of Revenue on a case to case basis.**
- (4) Any person employed by a firm referred to in sub-section (3) may be authorized by the Commissioner, in writing, to exercise the powers in sections 175 and 176 for the purposes of conducting an audit under that subsection.**

11. Looking at the above said Section 177, it becomes clear that the Commissioner could select any person for audit of Income Tax affairs.

12. In the year 2002, Section 120 of the Income Tax Ordinance 2001 was amended and assessment was left to the taxpayer. It was provided that the returns filed by the taxpayer shall be considered as assessment order issued by the

Commissioner. As such, the returns filed were deemed to be an assessment.

13. Since the assessment clause was amended, therefore, Section 177 was also accordingly amended and Section 1A was inserted in Section 177 of Income Tax Ordinance 2001, which was to the following effect:-

1A) After selection of a person for audit under sub-section (1), the Commissioner shall conduct an audit of the income tax affairs (including examination of accounts and records, enquiry into expenditure, assets and liabilities) of that person.

14. Through Finance Act, 2003 sub-section 1(B) was inserted in Section 177, which was to the following effect:-

1(B) After completion of the audit under sub-section (1A) or sub-section (3), the Commissioner may, if considered necessary, after obtaining taxpayer's explanation on all the issues raised in the audit, amend the assessment under sub-section (1) or sub-section (4) of section 122, as the case may be.

15. Under section 1A, the scope of audit was expanded and the power of examining the accounts and record, enquiry into the expenditure, assets and liabilities were given to the Commissioner. In other words, on one hand the taxpayer was given the facility of filing returns and on the other hand, the tax authorities were given the authority to verify the correctness of the returns filed by the taxpayer. Thus audit and extra power given by section 1A for all practical purposes was reassessment by the tax authorities, but it cannot be said that the object of verification was to frustrate the authority of self-assessment provided to the taxpayer.

16. Through Finance Act, 2004, again Section 177 was amended and the amended section was to the following effect:-

177. Audit.- (1) The [Board] may lay down criteria for selection of any person for an audit of person's income tax affairs, by the Commissioner.

(2) The Commissioner shall select a person for audit in accordance with the criteria laid down by the [Board] under sub-section (1).

(3) The [Board] shall keep the criteria confidential.

(4) In addition to the selection referred to in sub-section (2), the Commissioner may also select a person for an audit of the person's income tax affairs having regard to:-

(a) the person's history of compliance or non-compliance with this Ordinance;

(b) the amount of tax payable by the person;

(c) the class of business conducted by the person; and

(d) any other matter which in the opinion of Commissioner is material for determination of correct income.

(5) After selection of a person for audit under sub-section (2) or (4), the Commissioner shall conduct an audit of the income tax affairs (including examination of accounts and records, inquiry into expenditure, assets and liabilities) of that 2[person].

(6) After completion of the audit under sub-section (5) or sub-section (8), the Commissioner may, if considered necessary, after obtaining taxpayer's explanation on all the issues raised in the audit, amend the assessment under sub-section (1) or sub-section (4) of section 122, as the case may be.

(7) The fact that a person has been audited in a year shall not preclude the person from being audited again in the next and following years where there are reasonable grounds for such audits, particularly having regard to the factors in sub-section (4).

(8) The 3[Board] may appoint a firm of Chartered Accountants as defined under the Chartered Accountants Ordinance, 1961 (X of 1961), to conduct an audit of the income tax affairs of any person and the scope of such audit shall be as determined by the 4[Board] on a case to case basis.

(9) Any person employed by a firm referred to in sub-section (8) may be authorized by the Commissioner, in writing, to exercise the powers in sections 175 and 176 for the purposes of conducting an audit under that sub-section.]

17. The amended section shows that the powers of Commissioner in respect of audit remained the same, however, the Board was given the authority to lay down a criteria for selection of any person for audit and the Commissioner was to select a person in accordance with the criteria given by the Board. The power to conduct audit was restricted and the Commissioner could not conduct audit of every taxpayer. For this purpose, the criteria given by the Board was to be followed.

18. Through Finance Act, 2010, again Section 177 was amended, which remains the same up till now and is to the following effect:-

177. Audit— [(1) The Commissioner may call for any record or documents including books of accounts maintained under this Ordinance or any other law for the time being in force for conducting audit of the income tax affairs of the person and where such record or documents have been kept on electronic data, the person shall allow access to the Commissioner or the officer authorized by the Commissioner for use of machine and software on which such data is kept and the Commissioner or the officer may have access to the required information and data and duly attested hard copies of such information or data for the purpose of investigation and proceedings under this Ordinance in respect of such person or any other person:

Provided that—

- (a) the Commissioner may, after recording reasons in writing call for record or documents including books of accounts of the taxpayer; and***
- (b) the reasons shall be communicated to the taxpayer while calling record or documents including books of accounts of the taxpayer:***

Provided further that the Commissioner shall not call for record or documents of the taxpayer after expiry of six years from the end of the tax year to which they relate.]

[(2) After obtaining the record of a person under sub-section (1) or where necessary record is not maintained, the Commissioner shall conduct an audit of the income tax affairs (including examination of accounts and records, enquiry into expenditure, assets and liabilities) of that person or any other person and may call for such other information and documents as he may deem appropriate.]

(6) After completion of the audit 1[], the Commissioner may, if considered necessary, after obtaining taxpayer's explanation on all the issues raised in the audit, amend the assessment under sub-section (1) or sub-section (4) of section 122, as the case may be.

(7) The fact that a person has been audited in a year shall not preclude the person from being audited again in the next and following years where there are reasonable grounds for such audits 2[].

(8) The [Board] may appoint a firm of Chartered Accountants as defined under the Chartered Accountants Ordinance, 1961 (X of 1961) [or a firm of Cost and Management Accountants as defined under the Cost and Management Accountants Act, 1966 (XIV of 1966)], or a firm of Cost and Management Accountants as defined under the Cost and Management Accountants Act, 1966 (XIV of 1966) to conduct an audit of the income tax affairs of any person 5[or classes of persons 6[]] and the scope of such audit shall be as determined by the 7[Board] 8[or the Commissioner] on a case to case basis.

(9) Any person employed by a firm referred to in sub-section (8) may be authorized by the Commissioner, in writing, to exercise the powers in sections 175 and 176 for the purposes of conducting an audit under that sub-section.]

[(10) Notwithstanding anything contained in sub-sections (2) and (6) where a person fails to produce before the Commissioner or a firm of Chartered Accountants or a firm of Cost and Management Accountants appointed by the Board or the Commissioner under sub-section (8) to conduct an audit, any accounts, documents and records, required to

be maintained under section 174 or any other relevant document, electronically kept record, electronic machine or any other evidence that may be required by the Commissioner or the firm of Chartered Accountants or the firm of Cost and Management Accountants for the purpose of audit or determination of income and tax due thereon, the Commissioner may proceed to make best judgment assessment under section 121 of this Ordinance and the assessment treated to have been made on the basis of return or revised return filed by the taxpayer shall be of no legal effect.]

19. The new section shows that the Commissioner was given the authority to call for any record or documents, however, before calling for record or documents, the Commissioner was to give reasons and communicate the same to the taxpayer. It obviously means that the Commissioner after going through the returns filed by the taxpayer, if was in any doubt, he could call for the record, but he had to inform the taxpayer in advance and was also required to provide the taxpayer the reasons for calling the record or documents.

20. The amended section 177 shows that the scope of powers of Commissioner has been enlarged and through the present section, the Commissioner can reassess and verify the returned filed by any taxpayer. The power of verification, however, remained the same as it was introduced in the year 2002, but now prior selection and criteria is not required.

21. In a taxing statute, there should be no departure from the general rule that words used in a statute must first be given their ordinary and natural meaning. It is only when such an ordinary meaning does not make sense, then resort can be

made to discovering other appropriate meanings. While construing and interpreting fiscal statutes one must look to the words of the statute and interpret them in the light of what is clearly expressed and nothing can be implied which is not expressed. In this respect, I have sought guidance from PLD 1990 SC 68.

22. One of the contentions of learned counsel for the petitioners is that there is difference between assessment and audit. I do not agree with this contention. The word audit has been defined in Black's Law Dictionary, which means "*a formal examination of an individual's or organization's accounting records, financial situation, or compliance with some other set of standards*." "Tax Audit" means "*the review of a taxpayer's return by the IRS, including an examination of the taxpayer's books, vouchers, and records supporting the return.*" The meaning of word audit clearly shows that the officer conducting the audit has to make reassessment by verifying the books, voucher and record produced by the taxpayer.

23. In section 177, the same powers have been given to the Commissioner for conducting the audit, or reassessing the assessment filed by the taxpayer. The object remains the same that is verification of the assessment filed by the taxpayer.

24. Section 177, as it stands today, does not require any interpretation as the same is neither ambiguous nor vague. It must not be interpreted in the light of section 214(C), rather the intent and object of the section 177 is required to be adjudged

with reference to section 120 of the Income Tax Ordinance, 1973. By virtue of section 120, the taxpayer has been provided the facility of self-assessment. So the question is:-

- If a taxpayer submits his returns and the same is deemed to be an assessment, would that mean that return filed by the taxpayer is not required to be verified?
- Whether the State has no authority to check the returns filed by the taxpayer and verify as to whether the assessment made by the taxpayer is correct or not?

25. In my humble view, it would be incorrect to hold that the deemed assessment is to be considered as a gospel truth and by verifying the same, any right of the taxpayer would be violated. The self-assessment scheme no doubt, is a facility provided to the taxpayer but the object of the same is to save the taxpayer from agony of scrutiny, wasting time in the offices and avoiding corrupt practices of the tax authorities, if any. However, at the same time, the taxpayer is required to show the source of income, his expenditure and the tax assessed honestly and without concealing anything. In these circumstances, the self-assessment submitted by the taxpayer has to be verified. It is because of this necessity that under Section 177, the Commissioner has been given the powers to call for record or documents of any person. Any person here would mean every person and the Commissioner, therefore, will have the authority to verify the assessment filed by any

taxpayer. It would be wrong to say that since the Commissioner will be having unguided powers, therefore, he would exercise this power in discriminatory manner. Infact, there is a marked distinction between a provision of a statute, which may be expressly discriminatory and the provision which may be capable of being used in discriminatory manner. In the present case, Section 177(1) is not discriminatory, however, it can be said that it can be used in discriminatory manner. Had it been discriminatory, the same could be struck down in the constitutional jurisdiction, being violative of Article 25 of the Constitution, but if it is held that it can be used in discriminatory manner, then any act done under this provision in discriminatory manner can be struck down. Reference for the sake of guidance may be made to the case "Federation of Pakistan and Others Vs. Shaukat Ali Mian and Others" reported as PLD 1999 Supreme Court 1026.

26. Section 177 is placed in Chapter 10 of the Income Tax Ordinance, 2001, which is regarding procedure. Procedural provision in fiscal laws refers to machinery of assessment and collection. It is settled principle of law that procedural provision must be construed in a manner that will effectuate the levy of tax and advance the object behind the provision. Infact, Section 177 provides that once the assessment is made by the taxpayer, then the same is to be verified and checked by the tax authorities, but this authority of assessment has not been given to the Commissioner by new Section 177, rather the same authority was given to the Commissioner through Finance Act,

2002, which provided that the Commissioner will have the authority to conduct audit of the Income Tax affairs including examination of accounts and records, enquiry into the expenditures, assets and liabilities of the taxpayer. In other words, when the taxpayer was given the authority of self-assessment, the Commissioner was given the authority to verify the assessment. That law remained on the statute book and the same power is available with the Commissioner even today under Section 177. As such, it cannot be said that the object of Section 177 as it stands today, would be to frustrate self-assessment scheme.

27. Section 177 being clear and unambiguous, no effort is required to look at the legislative history of this Section. There is no doubt that legislative history of a fiscal statute could be traced and considered to understand its scope, but such an effort is not required to be made when there is no ambiguity in the statute itself. In the present case, if it is presumed that the Commissioner Income Tax can exercise his authority under Section 177(1), only in respect of a person, who has been selected by the Federal Board of Revenue, that would mean adding something to the section, which infact is not there. In the interpretation of statute levying taxes, it is established rule not to extend their provision by implication, beyond the clear import of the language used or to enlarge their operation so as to embrace matters not specifically pointed out. Reference for the sake of guidance may be made to PLD 1990 SC 332.

28. As far as Section 214(c) is concerned, it was inserted into the Ordinance through Finance Act, 2010 and is to the following effect:-

214C. Selection for audit by the Board.— (1) The Board may select persons or classes of persons for audit of Income Tax affairs through computer ballot which may be random or parametric as the Board may deem fit.

(2) Audit of Income Tax affairs of persons selected under sub-section (1) shall be conducted as per procedure given in section 177 and all the provisions of the Ordinance, except the first proviso to sub-section (1) of section 177, shall apply accordingly.

(3) For the removal of doubt it is hereby declared that Board shall be deemed always to have had the power to select any persons or classes of persons for audit of Income Tax affairs.

29. The perusal of above section of law clearly shows that the object of the Section is to keep an eye and check on the tax regime and does not give authority to the Board to call record of any person, so the object is not to determine as to whether the taxpayer has actually assessed tax in accordance with law, rather the object is to keep an eye over the system as to whether the tax authorities are performing their duties in accordance with law or not. Obviously for achieving the object, the requirement would be to take the case of one person and scrutinize the same. It is for this purpose that the procedure for scrutiny has been taken from Section 177 and the criteria for selection of a person has been provided in Section 214(C).

30. Sub-section 2 of section 214(C) has created a confusion and it is presumed that since the procedure provided in section 177 is to be adopted, therefore, Section 214(C) is subservient to Section 177. In my humble view, it would not be correct

interpretation, because sub-section 2 of section 214(C) is merely incorporation by reference. Instead of expressly repeating the words of Section 177(1), merely a reference has been made to the same. Such incorporation makes the section so incorporated, a part of new section and the purpose of the same is to save the trouble of repeating the same things. By incorporation of sub-section 1 of section 177, the procedure provided in the said Section is to be adopted by the Board and this incorporation by reference by no way makes Section 214(C) subservient to Section 177 of the Income Tax Ordinance.

31. Section 214(c) has been placed in Chapter 11 of the Income Tax Ordinance, 2001, which is regarding administration of tax authorities. Section 214(b) and (c) are regarding powers of Board to call for any record. The object of Section 214(c) is that the Board must keep a check upon the sub ordinate officers and must confirm that the assessments are properly made. Section 214(c) is infact check upon the tax authorities, so that they must not be left unchecked. Since it would not be possible for the Board to examine every case, so the law has provided that without any discrimination, through computer ballot, Board may select a person or class of persons and conduct the audit of those persons in accordance with the procedure provided in Section 177, in order to satisfy itself that the tax authorities had performed their duty in accordance with law and the taxpayer had made proper assessment.

32. In view of abovementioned facts, I hold that the objective criteria or prior selection is not requirement of audit to be conducted by the Commissioner. Section 177 and Section 214(c) are two independent sections. Section 214(c) is not subservient to section 177. Under section 177, the Commissioner has the authority to verify the correctness of assessment filed by the taxpayer under self-assessment scheme. The same is not violative of any article of the Constitution and cannot be treated as discriminatory. Accordingly, all these writ petitions are dismissed.

(Riaz Ahmad Khan)
Judge

Announced in the open Court on 12-3-13

Judge

Approved for Reporting

Wajid*

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