

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
(JUDICIAL DEPARTMENT)

Writ petition no. 35/ 2022

Fairdeal Exchange Company Pvt Ltd.
versus
Federation of Pakistan and others

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
5	18.04.2022	Mr. Faisal Rasheed Ghouri, Advocate for the petitioner. Mr. Sifat Ullah, Advocate proxy counsel for respondents no. 3 and 4. Ch. Muhammad Tahir Mehmood, learned A.A.G. M/s Hafiz Muhammad Idris, Syed Farid Ahmed Bukhari and Faizan Ahmed Mirza, Advocates for the petitioner in connected writ petition no. 136/ 2022. Mr. Babar Bilal, Advocate for respondent in connected writ petition no.136/2022.

Arguments further heard partly. The upshot of today’s hearings appears to be summarized in the syntactic ambiguity across the expressions ‘audit’ and the ‘calling of the records’ and also in not distinguishing between a full-fledged audit of the entire records and books of account of the taxpayer versus a limited audit confined to the record relevant to the discrepancies noted by way of the reasons given in a notice under section 177(1). A fair and equitable approach that accords with the scheme of section 177 ITO appears to be, expressed tentatively at this stage, that a much more onerous duty to give good reasons with an opportunity of hearing followed by a speaking order would meet the ends of justice where a full-fledged audit is deemed necessary by the Commissioner. On the other hand, only a duty to give reasons, but not the need to give an opportunity of hearing with a speaking order, would seem to be required, especially in view of the *Pakistan Tobacco* case, were the audit to be limited to the documents and records relevant to the discrepancies noted by way of reasons in the section 177(1) notice. Mr. Babar for the FBR was requested to confer with his clients and obtain instructions as to their approach or preference if these observations were to be followed in practice.

2 Further, Mr. Ghouri has requested to be placed on record Circular no. C. no.4(36)ITP/ 2002 dated 05.10.2009 for his submission that the selection of cases for audit for multiple years has been prohibited by the FBR. Learned counsel for FBR is directed to confirm for the purposes of this hearing whether or not the said circular is still in filed.

3 Relist on **10.05.2022**. On the said date, the matter shall be taken up at **Sr.no.1**.

4 The injunctive order passed on 06.01.2022 shall continue till the next date of hearing.

(Sardar Ejaz Ishaq Khan)
Judge