

**ORDER SHEET.**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**JUDICIAL DEPARTMENT.**

**Income Tax Reference No. 05 of 2020**

**M/s Nimrall Farma**

**VS**

**Appellate Tribunal Islamabad, etc**

<b>S. No. of order/ proceedings</b>	<b>Date of order/ proceedings</b>	<b>Order with signature of Judge and that of parties or counsel where necessary.</b>
<b>1.</b>	<b>05.03.2020.</b>	<b>Malik Masood Riaz, Advocate for the applicant.</b>

Through present Income Tax Reference application, Applicant has proposed the following questions said to arise out of order dated 23.10.2019, passed by the learned Appellate Tribunal Inland Revenue, in ITA No. 765/IB/2018, relating to the Tax Year 2015:-

- i. Whether Assessment Order for Tax year 2015 was passed after timeframe given in the Audit Policy guidelines namely completion of the Audit within the same financial year which a taxpayer is selected for audit?*
- ii. Whether audit completed and assessment order issued after given timeframe will be invalid?*
- iii. Whether notices after 01-07-2015 under the Income Tax Ordinance, 2001 should be issued bearing system generated Bar Code?*
- iv. Whether assessment order demand notice for the Petitioner for Tax Year 2015 was issued without bearing System Generated Bar Code become invalid as per FBR policy guidelines para 3.11?*
- v. Whether a notice of hearing should be issued on the date of order to the petitioner and order become invalid if no notice is issued on the date of order?*

vi. *Whether no notice of hearing was issued to the Petitioner and the order was passed on that date which was not fixed for hearing?*

2. Facts, as per record, are that the applicant an Association of Person (AOP) filed returns under section 114 of Income Tax Ordinance, 2001 (hereinafter referred as Ordinance, 2001), for the tax year 2015. The case was selected by the Board u/s 214 C of the Ordinance, 2001, through computer random balloting for audit u/s 177 of the Ordinance, 2001. After completion of audit, the case was amended u/s 122 (1)/(5) of the Ordinance, 2001, at an income of Rs. 11,249,999/- vide order dated 07.11.2017. Applicant challenged the said amended order before the Commissioner Inland Revenue Appeals, who vide Order No. 854/2018, dated 06.02.2018, disposed of the appeal by allowing minor relief. Being aggrieved, the applicant preferred second appeal before the Appellate Tribunal Inland Revenue (hereinafter the ATIR) who vide order bearing ITA No. 765/IB/2018 (Tax year 2015) dated 23.10.2019, remanded back the case to the Assessing Officer for fresh adjudication with the direction to provide adequate and final opportunity of hearing to the tax payer/applicant. The findings of the ATIR are as reproduced as under:

*"We have heard learned DR and have perused the record available before us in Court proceedings and gone through all the grounds as well as the precedents cited before us. There is a factual controversy between both the parties and the documentary evidence required by the assessing officer which perhaps was not provided by the taxpayer at the initial stage. The main bone of contention as emerging from all the grounds*

*of the appellant/taxpayer is that no bar coded notice was issued nor any proper opportunity was provided. The statutory provisions of service of notice cannot be prevailed upon by the FBR's circular regarding issuing of Bar coded notices so this ground of the appellant carries no legal force. In the light of the foregoing discussion we vacate the orders of both the authorities below and remand case to the assessing officer with the direction to provide adequate and final opportunity of hearing to the taxpayer and record reasons for non-acceptance of the version of the taxpayer, in either case. It is further directed that in order to avoid the possibility of mere replication of the earlier the final order would be made with the written responsibility of the Commissioner IR having jurisdiction over the case as provided for in Chapter XI (Administration) of the Income Tax Ordinance, 2001."*

3. The ATIR, vide order dated 23.10.2019, impugned herein, has vacated both the orders i.e. amended order under section 122 (1) of the Ordinance, 2001, dated 07.11.2017, passed by Assessing Officer and Appellate Order dated 06.02.2018, and remanded the matter to the Assessing Officer for decision afresh. As such after vacation of the orders, there remains no order in the field wherefrom issues/question could be said to have arisen for consideration in the reference jurisdiction under section 133(1) of the Ordinance, 2001. In support, reliance is placed on decision of the Hon'ble Karachi High Court given in the case titled **The CIT Central Zone "B" Karachi versus M/s Electronic Industries Ltd.** reported as **(1988 PTD 111)**, wherein it has been held that:-

*"The Department got the above reference made against the above order. It is an admitted position that at present there is no assessment order in the field and the question in issue is to be decided by the Income-tax officer in terms of the above-quoted observation. In our view the reference is misconceived. We, therefore, dismiss the same*

*as such but there would be no order as to costs.”.*

4. For the foregoing discussion, the reference along with listed application is dismissed as being misconceived.

**(MOHSIN AKHTAR KAYANI)**  
**JUDGE**

**(LUBNA SALEEM PERVEZ)**  
**JUDGE**

**Announced in the Open Court on : 30.03.2020**

**JUDGE**

**CHIEF JUSTICE**

unaid Usman