

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.2928 of 2017
M/s Wi-Tribe Pakistan Limited
Versus
Federation of Pakistan and others

Date of Hearing: 11.01.2023.
Petitioner by: Mr. Muhammad Usman Shaukat,
Advocate.
Respondents by: Mr. Adnan Haider Randhawa, Advocate.

MIANGUL HASSAN AURANGZEB, J:- Through the instant writ petition the petitioner, M/s Wi-Tribe Pakistan Limited, impugns the letter dated 30.05.2017 from the Commissioner Inland Revenue (respondent No.3), whereby the petitioner was informed of the selection of its case for audit under Section 72B of the Sales Tax Act, 1990 ("the 1990 Act") by the Federal Board of Revenue ("F.B.R.") through random computer ballot held on 05.01.2017. Furthermore, the petitioner was requested to extend maximum cooperation to the officer authorized to conduct the audit.

2. Learned counsel for the petitioner submitted that as per Taxpayers' Audit Policy of 2016, a paradigm shift was proposed whereby parametric selection instead of random selection was to be resorted to for selecting the taxpayers for audit; that the random selection through a computer ballot conducted by the F.B.R. is in violation of its own policy; that no reasons were given for selecting the petitioner's case for audit; and that the petitioner's selection for audit is in violation of the law laid down in the judgments reported as 2013 PTD 398 and 2018 PTD 1942 inasmuch as no parameters have been framed by the F.B.R. for selection of a taxpayer for audit.

3. On the other hand, learned counsel for the F.B.R. submitted that the selection of the petitioner's case for audit through random computer ballot does not suffer from any legal infirmity inasmuch as Section 72B of the 1990 Act permits the F.B.R. to select persons or classes of persons for audit of tax

affairs through computer ballot which may be random or parametric as the F.B.R. may deem fit. He also drew the attention of the Court to the law laid down by the Hon'ble Supreme Court in the judgment reported as 2018 PTD 1444 in which the selection of cases for audit through computer ballot has been endorsed; that the audit process may well result in no additional demand being raised against the petitioner provided the petitioner satisfies the F.B.R. as to the authenticity of the entries made in its tax returns during the audit process; and that since Section 72B of the 1990 Act has till date not been declared as ultra *vires* the provisions of the Constitution, the instant petition is liable to be dismissed.

4. I have heard the contentions of the learned counsel for the contesting parties and have perused the record with their able assistance.

5. It is not disputed that Section 72B of the 1990 Act is still on the statute book. Section 72B(1) undoubtedly gives the power to the F.B.R. to select persons or classes of persons for audit of tax affairs through computer ballot which may be random or parametric as the F.B.R. deems fit. This shows that the selection of a person for audit of its tax affairs through a random computer ballot is not prohibited by law. The ground on which the petitioner has challenged its selection for audit is that since through the Taxpayers' Audit Policy-2016 there had been a paradigm shift from selection for audit on random basis to a selection on parametric basis, the petitioner's case for audit could not have been selected through a random computer balloting. The provisions of a Policy made by the F.B.R. cannot override the express letter of the statute unless the statute itself subordinates itself to any policy that may be made by the F.B.R. True, the Hon'ble Lahore High Court in the case reported as 2018 PTD 1942 has observed that mere framing of an audit policy was insufficient until it was supported by clearly defined risk parameters on the basis of which computer ballot was to be held for selecting cases for audit. The Taxpayers' Audit Policy-2016 was held to have been lacking in these essential requirements

but the Hon'ble Lahore High Court did not declare the said Policy unconstitutional and held that the Audit Policy, 2016 cannot be put into effect until F.B.R. frames risk parameters on the basis of which the selection for audit of a taxpayer is to be made. Now, the petitioner's case was selected for audit under random computer ballot, therefore, it does not help his stance if the Audit policy, 2016 cannot be put into effect for deficiency in setting out risk parameters to be used for parametric balloting.

6. The impugned letter dated 30.05.2017 clearly shows that the petitioner's case for the tax period July, 2014 to June, 2015 was selected under Section 72B of the 1990 Act by the F.B.R. through random computer ballot held on 05.01.2017. Since the F.B.R. selected the petitioner's case for audit through random computer ballot which mode of selection has not been ousted by the letter of the statute under Section 72B of the 1990 Act and since the petitioner has not been able to establish *mala fide* or discrimination in selection of its case for audit through random computer ballot, the impugned selection for random auction is unexceptionable. In the case of Commissioner Inland Revenue, Sialkot Vs. Messers Allah Din Steel and Rolling Mills etc (2018 SCMR 1328), the Hon'ble Supreme Court observed as follows:-

"11. The Taxpayers have challenged the selection process through random ballot on the ground that it is discriminatory as certain classes of Taxpayers have been ran excluded from the ballot which has numerically increased their chances of selection. We have examined the provisions of section 214C of the Ordinance, section 72B of the Act, 1990 and section 42B of the Act, 2005 and find that these adequately and sufficiently empower the Board to select persons or classes of persons for audit through a computer ballot. This selection can either be random or parametric. It is therefore clear and obvious that a power vests in the Board to select persons or classes of persons for the purpose of ballot. There is no real controversy to that extent. The argument of the learned counsel for the Taxpayers that random ballot means that the entire body of Taxpayers must be included in the ballot is misconceived and based upon an erroneous and incorrect reading and understanding of the law. The same is repelled. The law explicitly empowers the Board to select "persons" or "class of persons". Where the letter of law is clear, unambiguous and explicit there is no room to interpret it in a manner that expands or shrinks its scope, meaning and tenor. The only exception being mala fides and blatant discrimination which has neither been alleged nor evident from the facts, circumstances and record before us.

12. We find that the process of balloting was conducted from amongst a pool of persons objectively determined by the Board in accordance with a transparent policy, uniformly applied in accordance with law. The process was undertaken through an automated computer aided selection process. Nothing has been placed on record that may even remotely indicate that there was any bias, arbitrariness or partiality on the part of the Board or that certain sets or classes of Taxpayers were targeted to the exclusion of others. We therefore do not subscribe to or agree with the argument of the learned counsel for the Taxpayers that there was any legal or procedural defect or error in the process of random selection undertaken by the Board.
(Emphasis added)

7. In paragraph 20 of the said judgment of Commissioner Inland Revenue, Sialkot (*supra*), the Hon'ble Supreme Court (while taking note of the measures recommended and guidelines provided by the learned Lahore High Court in its Constitutional jurisdiction for the F.B.R. to follow in formulating the Audit Policy) further explained as follows:-

“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 tracheotomy 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 in any manner encroaching the policy making domain of the executive.”

8. The present case pertains to the tax year 2015. Section 72B was inserted in the 1990 Act through the Finance Act, 2010. The said provision is in *pari materia* with Section 214C of the Income Ordinance, 2001 providing for the selection for audit through computer ballot which may be random or parametric. It has been explained by the Hon'ble High Court of Sindh in the judgment reported as 2019 PTD 903 that the Hon'ble Lahore High Court while rendering the judgment reported as 2018 PTD 1942 has placed reliance on case law which pertained to the selection for audit prior to the insertion of 214C (1A) in the Income Tax Ordinance, 2001 through the Finance Act, 2013. In this regard, paragraph 8 of the said judgment is reproduced herein below:-

“There is another aspect of the matter which has been left unanswered in the case of Treet Corporation (Supra), inasmuch

as post 2013, the law has gone into a substantial change after insertion of Section 214(C)(1A). The Court while passing the judgment Treet Corporation (Supra) has also not appreciated and considered that, even otherwise, the judgment in the case of Ittefaq Rice Mills (Supra) was dealing with the Audit Policy and Guidelines for the year 2011, and was delivered on 23.5.2013, when provision of Section 214(C)(1A) was not on the statute book and was only added through Finance Act, 2013 (XXII of 2013) assented on 29.6.2013. Accordingly it was never interpreted by the Court in that case. In such a situation, the finding of the learned Division Bench of the Lahore High Court, could not be of any assistance to the taxpayers' case, post 2013."

9. It may be explained that Section 214(C)(1A) empowers the F.B.R. to keep the parameters for selection of taxpayer's case for audit under the provisions of the Income Tax Ordinance, 2001, to be confidential. I am inclined to agree with the law laid down by the Hon'ble High Court of Sindh in the case reported as 2019 PTD 903, and therefore do not find the petitioner's selection for audit through random computer ballot to be violative of Section 72B of the 1990 Act. Consequently, the instant petition is dismissed.

(MIANGUL HASSAN AURANGZEB)
JUDGE

ANNOUNCED IN AN OPEN COURT ON 18.01.2023.

(JUDGE)