

**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

Mr. Justice Umar Ata Bandial  
Mr. Justice Munib Akhtar

**CIVIL PETITION NO.398-L OF 2018 A/W  
CIVIL PETITIONS NOS.584-L, 671-L TO 675-L,  
774-L, 775-L, 812-L, 815-L, 911-L, 912-L, 913-L,  
919-L, 984-L, 985-L, 1005-L, 1148-L, 1684-L,  
1688-L TO 1690-L, 1729-L, 1796-L, 1812-L,  
1821-L TO 1827-L, 1850-L TO 1854-L, 1859-L,  
1860-L, 1878-L, 1887-L, 2038-L, 2085-L, 2086-L,  
2090-L, 2091-L, 2129-L AND 3480 OF 2018.**

*(On appeal from the judgments/orders passed by Lahore High Court,  
Lahore dated:*

*08.12.2017 passed in W.P. No.37295 of 2016, 77996, 113697, 92863,  
104518 of 2017  
29.03.2018 passed in W.Ps. No.187666 of 2018  
19.04.2018 passed in ICAs No.192176, 192180, 192217, 183611 of 2018  
11.05.2018 passed in W.Ps. 201969, 205022 of 2018  
11.06.2018 passed in W.P. No.212424, 218052, 215434 of 2018  
12.06.2018 passed in W.P. No.217297 of 2018  
13.12.2018 passed in W.Ps. No.89391, 97850 of 2017  
18.12.2017 passed in W.P. No.121977 of 2017  
22.12.2017 passed in W.P. No. 28023, 21680, 96042, 97089, 97184 of 2017  
22.09.2017 passed in W.P. No. 34945 of 2017  
13.02.2018 passed in W.Ps. No.158509 of 2018  
27.02.2018 passed in W.P. 123944 of 2017, 152517, 152606, 166893 of 2018  
01.03.2018 passed in W.Ps No.21606 of 2012  
12.03.2018 passed in W.P. No.122208 of 2018  
19.04.2018 passed in ICA No.183611, 192187, 192191, 201079 of 2018  
07.06.2018 passed in ICA No.218132, 218135, 218129 of 2018  
11.06.2018 passed in ICA No.218125, 218127, 217617 of 2018  
25.06.2018 passed in ICAs No.218128, 218134, 218137, 218131 of 2018  
26.06.2018 passed in ICA No. 220510 of 2018  
28.06.2018 passed in ICA No.222208, 222316 of 2018)*

The Commissioner Inland Revenue,  
Zone-III, RTO-II, Lahore

**... Petitioner**  
*(in all cases)*

**VERSUS**

M/s Hamza Nasir Wire & others

**...Respondent**  
*(in CP.398-L of 2018)*

M/s Riaz Bottlers Pvt. Ltd. & others

**...Respondent**  
*(in CP.584-L of 2018)*

M/s Allied Marketing Pvt. Ltd. & others

**...Respondent**  
*(in CP.671-L of 2018)*

M/s Sefam Pvt. Ltd. etc. & others	<b>...Respondent</b> (in CP.672-L of 2018)
M/s Benz Industries Ltd. & others	<b>...Respondent</b> (in CP.673-L of 2018)
M/s Anmol Paper Mills Pvt. Ltd. & others	<b>...Respondent</b> (in CP.674-L of 2018)
M/s Qarshi Industries Pvt. Ltd. etc.	<b>...Respondent</b> (in CP.675-L of 2018)
M/s Haleeb Foods Ltd. etc.	<b>...Respondent</b> (in CP.774-L of 2018)
Janana De Mulucho Textile Mills Ltd. etc.	<b>...Respondent</b> (in CP.775-L of 2018)
M/s Hi-Tech Edible Oils Pvt. Ltd. etc.	<b>...Respondent</b> (in CP.812-L of 2018)
M/s Faran Honda Agency, etc.	<b>...Respondent</b> (in CP.815-L of 2018)
M/s Hunza Sugar Mills Ltd. & others	<b>...Respondent</b> (in CP.911-L of 2018)
M/s Ghani Gases Ltd. & others	<b>...Respondent</b> (in CP.912-L of 2018)
M/s Service Industries Ltd., & others	<b>...Respondent</b> (in CP.913-L of 2018)
M/s Hi-Tech Edible Oils Pvt. Ltd. & others	<b>...Respondent</b> (in CP.919-L of 2018)
M/s Sui Northern Gas Pipelines Ltd. etc.	<b>...Respondent</b> (in CP.984-L of 2018)
M/s Sui Northern Gas Pipelines Ltd. etc.	<b>...Respondent</b> (in CP.985-L of 2018)
M/s Umer Packages & others	<b>...Respondent</b> (in CP.1005-L of 2018)
M/s Trade Linker Trading Co., & another	<b>...Respondent</b> (in CP.1148-L of 2018)
M/s Trade Linker Trading Co., & another	<b>...Respondent</b> (in CP.1684-L of 2018)
M/s Allied Marketing (Pvt.) Ltd.	<b>...Respondent</b> (in CP.1688-L of 2018)
M/s Qarshi Industries Pvt. Ltd. & another	<b>...Respondent</b> (in CP.1689-L of 2018)

M/s Riaz Bottlers Pvt. Ltd. & another	<b>...Respondent</b> (in CP.1690-L of 2018)
M/s Sefam Pvt. Ltd. & another	<b>...Respondent</b> (in CP.1729-L of 2018)
M/s Suntube Pvt. Ltd.	<b>...Respondent</b> (in CP.1796-L of 2018)
M/s Suntube Pvt. Ltd	<b>...Respondent</b> (in CP.1812-L of 2018)
M/s Ilyas Steel Re-Rolling Mills Ltd. & others	<b>...Respondent</b> (in CP.1821-L of 2018)
M/s Ejaz Brother Steel Furnace & others	<b>...Respondent</b> (in CP.1822-L of 2018)
M/s Crown Pottery and others	<b>...Respondent</b> (in CP.1823-L of 2018)
M/s Ghulam Rasool Steel Furnace & others	<b>...Respondent</b> (in CP.1824-L of 2018)
M/s Haq Bahu Steel Mills Ltd. & others	<b>...Respondent</b> (in CP.1825-L of 2018)
M/s Ejaz Brothers Steel Furnace & others	<b>...Respondent</b> (in CP.1826-L of 2018)
M/s Bilal Ceramics & others	<b>...Respondent</b> (in CP.1827-L of 2018)
M/s Z.A. Food Industry & others	<b>...Respondent</b> (in CP.1850-L of 2018)
M/s Dura Ceramics & others	<b>...Respondent</b> (in CP.1851-L of 2018)
M/s Al-Haram Ceramics and others	<b>...Respondent</b> (in CP.1852-L of 2018)
M/s Pakistan Ceramics and others	<b>...Respondent</b> (in CP.1853-L of 2018)
M/s Tayyab Pottery & others	<b>...Respondent</b> (in CP.1854-L of 2018)
M/s Janana De Malucho Textile Mills Ltd., etc.	<b>...Respondent</b> (in CP.1859-L of 2018)
M/s Magna Textile Industries Pvt. Ltd. & others	<b>...Respondent</b> (in CP.1860-L of 2018)
M/s Trend International & another	<b>...Respondent</b> (in CP.1878-L of 2018)

M/s Punjab Beverages Co. Ltd.	<b>...Respondent</b> (in CP.1887-L of 2018)
M/s Huda Sugar Mills Ltd. & others	<b>...Respondent</b> (in CP.2038-L of 2018)
M/s Faran Honda Agency & others	<b>...Respondent</b> (in CP.2085-L of 2018)
M/s Masood Fabrics Pvt. Ltd. & others	<b>...Respondent</b> (in CP.2086-L of 2018)
M/s Kasur Corporation & others	<b>...Respondent</b> (in CP.2090-L of 2018)
M/s D.G. Khan Cement Co. Ltd. & others	<b>...Respondent</b> (in CP.2091-L of 2018)
M/s Rohi Entertainment Co. Ltd. & others	<b>...Respondent</b> (in CP.2129-L of 2018)
M/s Ejaz Spinning Mills Ltd. & another	<b>...Respondent</b> (in CP.3480 of 2018)

For the petitioners	Mr. Ibrar Ahmed, ASC. Mr. Sarfraz Ahmed Cheema, ASC. Ch. Muhammad Zafar Iqbal, ASC. Mrs. Kausar Parveen, ASC. Dr. Tariq Masood, Member Legal FBR Dr. Ishtiaq Ahmad, Director Legal
For the respondent (s) (in CPs.671-L, 672-L, 675-L & 815-L of 2018).	Mr. M. Ajmal Khan, ASC.
For the respondent (s) (in CPs.3480 of 2018)	Syed Rifaqat Hussain Shah, AOR.
For the respondent (s) (in CP.2091-L of 2018)	Mr. Imtiaz Rashid Siddiqui, ASC. Mr. Shehryar Kasuri, ASC.
Date of hearing	20.11.2018.

**JUDGMENT:**

**UMAR ATA BANDIAL, J.** Three petitions bearing CP No.398-L of 2018, CP No.584-L of 2018 and CP No.674-L of 2018 challenge a common judgment by the learned Single Judge of the Lahore High Court dated 08.12.2017

(“**impugned judgment**”) which sets aside the show cause notices, *inter alia*, dated 14.11.2016 (in some petitions) issued to the respondent-taxpayers under Section 11(3) of the Sales Tax Act, 1990 (“**Act**”) by Officers of Inland Revenue (“**OIRs**”), namely, Deputy Commissioners of Inland Revenue (“**DCIRs**”) and Assistant Commissioners of Inland Revenue (“**ACIRs**”). The notices alleged non-payment or short payment of sales tax by the respondent-taxpayers during the tax periods mentioned therein. The remaining petitions assail other judgments that follow the aforementioned impugned judgment and the case law cited by it.

2. The impugned judgment notes that the Federal Board of Revenue (“**FBR**”) vide notification dated 21.07.2016 (“**Notification-I**”), appointed eight Commissioners of Inland Revenue heading different Zones functioning under the Corporate Regional Tax Office, Lahore to exercise powers and perform functions as conferred under the Act and the Rules made thereunder. Such authority was reposed by Notification-I in relation to specified cases or classes of cases of tax payers falling within the respective territorial jurisdictions of the Commissioners. It is observed by the impugned judgment that rather than exercising such powers themselves, *inter alia*, the CIR Zone-III, RTO-II, Lahore (“**CIR**”), vide notification dated 01.08.2016 (“**Notification-II**”) authorised his subordinate OIRs, heading twelve different units in his Zone, to exercise their powers and perform their

functions as conferred by the Act and its subordinate Rules in relation to specified cases or classes of cases of tax payers falling within their territorial jurisdictions.

3. In conclusion, the learned High Court held that Notification-II by the CIR delegated the powers that had been assigned to him by the FBR vide Notification-I. Such delegation by the CIR under the subsequent Notification-II to the OIRs constituted sub-delegation without the sanction of law. Therefore, in the presence of Notification-I whereunder the CIR was himself a delegate of the FBR, the further delegation of powers and functions by the CIR through Notification-II in favour of his nominated subordinate OIRs was unlawful and void. This rendered the latter Notification-II issued by the CIR and the impugned show cause notices issued by the OIRs (DCIRs and ACIRs) to be of no legal effect. For facility of reference the excerpts of the two Notifications that are germane to the instant controversy are produced below:

**“Notification-I**

“GOVERNMENT OF PAKISTAN  
REVENUE DIVISION  
FEDERAL BOARD OF REVENUE

\*\*\*\*\*

F.No.57(2)Jurisdiction/2016/95882-R Islamabad, the 21<sup>st</sup> July, 2016

NOTIFICATION  
(Inland Revenue Operations Wing, FBR)

Subject:- JURISDICTION OF CHIEF COMMISSIONER AND  
COMMISSIONERS INLAND REVENUE CORPORATE  
REGIONAL TAX OFFICE, LAHORE.

In exercise of the powers conferred under section 209 of  
Income Tax Ordinance, 2001, section 30 and section 31 of the Sales  
Tax Act, 1990, Section 29 of the Federal Excise Act, 2005, and in

supersession of all earlier orders and notifications of the Board in respect of jurisdiction, the Federal Board of Revenue is pleased to direct that:

- i) The Chief Commissioner Corporate RTO, Lahore shall exercise the powers and perform functions under Income Tax Ordinance, 2001, the Sales Tax Act, 1990, the Federal Excise Act, 2005 section 7 of Finance Act, 1989 (V of 1989), Wealth Tax Act, 1963 (Repealed) read with section 3 of the Finance Act, 2003 (I of 2003), and Workers Welfare Fund Ordinance, 1971, in respect of the persons or classes of persons or cases or classes of cases as mentioned in column (4) of notification; and shall perform all administrative functions and coordination with Federal Board of Revenue, and
- ii) The Commissioners of Inland Revenue specified in column (2), shall exercise the powers and functions, as specified in column (3), in respect of the persons or classes of persons or cases or classes of cases as specified in column (4) of the Table below:

This notification shall take effect from August 01, 2016.

TABLE

S.No.	Commissioner Inland Revenue	Powers & Functions	Jurisdiction
(1)	(2)	(3)	(4)
01.	Commissioner Inland Revenue (Zone-I), Corporate RTO, Lahore.	....	....
02.	Commissioner Inland Revenue (Zone-II), Corporate RTO, Lahore.	....	....
03.	Commissioner Inland Revenue (Zone-III), Corporate RTO, Lahore.	<u>The Commissioner Inland Revenue shall exercise powers and perform functions as conferred under:</u>  (a) Income Tax Ordinance, 2001 and Rules made there under;  (b) <u>The Sales Tax Act, 1990 and Rules made there under;</u>  (c) The Federal Excise Act, 2005 and Rules made there under;  (d) Section 7 of the Finance Act, 1989 (Act No. V of 1989) as amended from time to time  (e) Workers Welfare Fund Ordinance, 1971.	1. All cases or classes of cases persons or classes of persons of corporate sector falling within the limits of civil Districts of Lahore, Kasur, Okara, Sheikhupura & Nankana Sahib of the Province of Punjab other than the cases assigned to LTU Lahore RTO-II, Lahore or any other zone of Corporate RTO, Lahore whose names begin with alphabet 'R' 'S' 'T' 'U' 'V' 'W' 'X' 'Y' & 'Z'.  2. All cases of Directors of companies as specified in paragraph 1 above.  3. Monitoring and Enforcement of taxpayers under the Provisions of the laws and rules (specified in Column 3 of the table) in respect of all withholding agents existing in the jurisdiction of Zone-III of Corporate RTO, Lahore.  4. All cases of statutory agents/representatives

			assessable under sections 172 and 173 of the Income Tax Ordinance, 2001 as specified in paragraphs 1, 2 & 3 above.  5. Cases or classes of cases or persons or classes of persons or areas specifically assigned by FBR/Chief Commissioner from time to time.
04-08	Commissioner Inland Revenue in 5 other Zones of Corporate RTO, Lahore	....	....”

(emphasis supplied)

“**Notification-II**

“Commissioner Inland Revenue  
Zone-III, Regional Tax  
Office-II, Lahore.

No.01/III  
Dated: 01.08.2016

ORDER

Subject:- JURISDICTION OF OFFICERS OF INLAND REVENUE, OTHER THAN THE ADDITIONAL COMMISSIONERS, IN RESPECT OF ZONE-III, REGIONAL TAX OFFICE-II, LAHORE.

In pursuance of Federal Board of Revenue’s notification bearing No.57(2)Jurisdiction/2016/95896-R dated 21<sup>st</sup> July, 2016 and in exercise of the powers conferred under sub-section (1) of section 210 of Income Tax Ordinance, 2001, sub-section (3) of section 30 of the Sales Tax Act, 1990, sub-section (1B) of section 29 of the Federal Excise, Act, 2005, the Commissioner Inland Revenue, Zone-III, Regional Tax Officer-II, Lahore is pleased to direct that the Officers of Inland Revenue specified in column (2) of the Table-1 below, shall exercise the powers and perform the functions, under the said Laws, as specified in column (3) of the Table-I below, except the powers and functions mentioned in Table-II below, in respect of the persons of classes of persons of areas (excluding cases or classes of cases or persons or classes of persons for the areas assigned to any other officer of Inland Revenue, Regional Tax Office-II, Lahore) as specified in column (4) of the Table below.

2. This order shall take effect from 01.08.2016.

TABLE

S.No.	Officer of Inland Revenue	Powers & Functions	Jurisdiction
(1)	(2)	(3)	(4)
1.	Officer of Inland Revenue Unit-01	<u>The Inland Revenue Officer shall exercise powers and perform functions as conferred under:</u>  (a) Income Tax Ordinance, 2001 and Rules made there under;  (b) <u>The Sales Tax Act, 1990 and Rules</u>	1. All cases or classes of cases persons or classes of persons of non-corporate sector other than the cases assigned to LTU Lahore, Corporate RTO, Lahore or any other Zone of RTO-II, Lahore <u>falling within the territorial jurisdiction of the Wahga Town of the Civil District of Lahore of the Province</u>



		<u>made there under:</u> (c) The Federal Excise Act, 2005 and Rules made there under; (d) Section 7 of the Finance Act; 1989 (Act No. V of 1989) as amended from time to time (e) Workers Welfare Fund Ordinance, 1971.	of the Punjab and under: a) Wahga Town UCs/ Areas (Bhaseen, Munawan, Nihala); 2) All Cases or classes of cases, persons of non-corporate sector falling within the limits of the civil district of Lahore of the Province of Punjab, other than the cases assigned to LTU, Lahore, Corporate RTO, Lahore of any other Zone of RTO-II, Lahore which are engaged in the following businesses in the following categories: a) Non Residents; 3. All cases of individuals, members of AOP as specified in paragraph 1 & 2 above. 4) All cases of statutory agents /representatives assessable under Section 172 and 173 of the Income Tax Ordinance, 2001 as specified in paragraphs 1, 2 & 3 above. 5) Cases or classes of cases or persons or classes of persons or areas specifically assigned by FBR/Chief Commissioner from time to time.
02-12	Officer of Inland Revenue Unit 02-12	...	..."

(emphasis supplied)

4. We have heard the erudite arguments of the learned counsel for the parties whose names are recorded in the title of this judgment, and have carefully perused the impugned judgment along with the available record. The substantive findings of the learned High Court are considered in our opinion that follows.

5. To our minds, the main controversy in these petitions has arisen from the interpretation assigned to Section 30 of the Act, specifically sub-sections (1) and (3), by the learned High Court. Therefore, it is reproduced below for reference:

**“30. Appointment of Authorities.—**

**(1)** For the purposes of this Act, the Board may, appoint in relation to any area, person or class of persons, any person to be:

- (a) a Chief Commissioner Inland Revenue;
- (b) a Commissioner Inland Revenue;
- (c) a Commissioner Inland Revenue (Appeals);
- (d) an Additional Commissioner Inland Revenue;
- (e) a Deputy Commissioner Inland Revenue;
- (f) an Assistant Commissioner Inland Revenue;
- (g) an Inland Revenue Officer;
- (h) a Superintendent Inland Revenue;
- (i) an Inland Revenue Audit Officer;
- (ia) an Inspector Inland Revenue; and
- (j) an officer of Inland Revenue with any other designation.

**(2)** The Chief Commissioner Inland Revenue and Commissioner Inland Revenue (Appeals) shall be subordinate to the Board and Commissioner Inland Revenue shall be subordinate to the Chief Commissioner Inland Revenue.

**(2A)** The Chief Commissioners Inland Revenue shall perform their functions in respect of such persons or classes of persons of such areas as the Board may direct.

**(2B)** The Commissioners Inland Revenue shall perform their functions in respect of such persons or classes of persons or such areas as the Chief Commissioner, to whom they are subordinate, may direct.

**(3)** Additional Commissioner Inland Revenue, Deputy Commissioners Inland Revenue, District Taxation Officer Inland Revenue, Assistant Commissioner Inland Revenue, Assistant Director Inland Revenue, Superintendent Inland Revenue, Inland Revenue Audit Officer, Inland Revenue Officer, Inspector Inland Revenue, and Officer of Inland Revenue with any other designation shall be subordinate to the Commissioner Inland Revenue and shall perform their functions in respect of such persons or classes of persons or such areas as the Commissioners, to whom they are subordinate, may direct; ...”

6. From a close reading of Section 30 *ibid*, it becomes clear that the said provision vests the FBR with the exclusive

power to appoint OIRs while also conferring a concurrent power on the FBR and CIRs to delineate the territorial (area) and personal (persons or classes of persons) jurisdiction of OIRs. Such powers are granted to the FBR by virtue of Section 30(1) of the Act and to the CIRs by Section 30(3) *ibid*. These powers of the FBR and CIRs are recognised by the learned High Court in the impugned judgment.

7. It is plain then that the primary purpose of Section 30 *ibid* is to ensure a smooth and efficient working of the OIRs operating under the Act. It does not vest the FBR or the CIRs with any authority to confer functions and powers on the OIRs as they deem fit. In fact, the powers and duties of the OIRs have been fixed by Section 31 of the Act itself which is produced below:

**“31. Powers.--** An officer of Inland Revenue appointed under Section 30 shall exercise such powers and discharge such duties as are conferred or imposed on him under this Act; and he shall also be competent to exercise all powers and discharge all duties conferred or imposed upon any officer subordinate to him:

Provided that, notwithstanding anything contained in this Act or the rules, the Board may, by general or special order, impose such limitations or conditions on the exercise of such powers and discharge of such duties as it deems fit.”

(emphasis supplied)

8. Accordingly, the scheme of the Act is that only FBR is competent to appoint OIRs in a graded hierarchy of eleven different posts and to fix their jurisdictional

parameters. Similarly, under the concurrent power [Section 30(3)], the CIRs have the authority to fix the jurisdictional parameters of OIRs who are subordinate to them in rank. However, the powers and duties of such OIRs are, pursuant to Section 31 *ibid*, specified and fixed by the Act and include the powers and duties of their subordinate officers. Significantly, Section 2(18) of the Act has defined all officers appointed by the FBR under Section 30(1) of the Act as OIRs:

**“2. Definitions.–** In this Act, unless there is anything repugnant in the subject or context, --

...

**(18) “officer of Inland Revenue”** means an officer appointed under Section 30.”

9. To reiterate, on a plain reading of Section 2(18), Section 30 and Section 31 of the Act, what becomes clear is that all OIRs appointed by the FBR can only exercise the powers and discharge the duties vested in them by the Act. These include the powers and duties of their subordinate officers. Accordingly, after designating the posts of OIRs including the respective delineation of their territorial and personal jurisdiction by the FBR and the CIRs, the appointed OIRs perform and exercise the functions, powers or duties vested in them by the Act. Neither the FBR nor the CIR have authority under the Act to select or limit the functions, powers and duties that may be exercised by their subordinate OIRs.

10. In the above background, the question arises whether the disputed show cause notices were issued by the

OIRs under Section 11(3) of the Act in the valid exercise of their powers. It would be appropriate at this stage to reproduce Section 11 *ibid*:

**“11. Assessment of Tax and recovery of tax not levied or short-levied or erroneously refunded.**

–

- (1) Where a person who is required to file a tax return fails to file the return for a tax period by the due date or pays an amount which, for some miscalculation is less than the amount of tax actually payable, an officer of Inland Revenue shall, after a notice to show cause to such person, make an order for assessment of tax, including imposition of penalty and default surcharge in accordance with sections 33 and 34:

Provided that where a person required to file a tax return files the return after the due date and pays the amount of tax payable in accordance with the tax return alongwith default surcharge and penalty, the notice to show cause and the order of assessment shall abate.

- (2) Where a person has not paid the tax due on supplies made by him or has made short payment or has claimed input tax credit or refund which is not admissible under this Act for reasons other than those specified in sub-section (1), an officer of Inland Revenue shall, after a notice to show cause to such person, make an order for assessment of tax actually payable by that person or determine the amount of tax credit or tax refund which he has unlawfully claimed and shall impose a penalty and charge default surcharge in accordance with sections 33 and 34.
- (3) Where by reason of some collusion or a deliberate act any tax or charge has not been levied or made or has been short-levied or has been erroneously refunded, the person liable to pay any amount of tax or charge or the amount of refund erroneously made shall be served with a notice requiring him to show cause for payment of the amount specified in the notice.
- (4) ...
- (4A) ...
- (5) No order under this section shall be made by an officer of Inland Revenue unless a notice to show cause is given within five years, of the relevant date, to the person in

default specifying the grounds on which it is intended to proceed against him and the officer of Sales Tax shall take into consideration the representation made by such person and provide him with an opportunity of being heard:

Provided that order under this section shall be made within on hundred and twenty days of issuance of show cause notice or within such extended period as the Commissioner may, for reasons to be recorded in writing, fix provided that such extended period shall in no case exceed ninety days:

Provided further that any period during which the proceedings are adjourned on account of a stay order or Alternative Dispute Resolution proceedings or the time taken through adjournment by the petitioner not exceeding sixty days shall be excluded from the computation of the period specified in the first proviso. ... ”

*(emphasis supplied)*

It may be noticed that, while the Act confers multiple powers on OIRs, the provisions of Section 11 *ibid* vests powers on such officers specifically in two respects, namely, the assessment and recovery of tax. Thus all OIRs of different grades appointed under Section 30(1) of the Act possess the power to issue show cause notices under Section 11 *ibid*. Consequently, the impugned show cause notices were issued by the OIRs competently under Section 11(3) *ibid* in aid of proceedings commenced for recovery of tax.

11. In the light of the above discussion, the basic issue requiring determination concerns the legal effect of the Notification-I issued by the FBR. The learned High Court in the impugned judgment has observed that by issuing Notification-I, the FBR has specifically ordered only CIRs to

exercise the powers conferred by the Act, including the issuance of show cause notices to taxpayers under Section 11(3). Therefore, by issuing Notification-II the CIR has erroneously sub-delegated these powers to his subordinate OIRs. As a result, the notices issued to the respondent taxpayers are null and void because these were issued by an unauthorised statutory authority. The relevant portion from the impugned judgment is produced below:

8. ... The tenor of Notification-I and Notification-II also shows that FBR intended for the Chief Commissioners and Commissioners of Inland Revenue to perform all administrative functions and coordination as given in the Column-4 of the Table in those notifications. Therefore, to that extent the Commissioner's power to confer those functions on officers subordinate to him stood taken away and his power to do so in respect of the subject matter of Notification-I and Notification-II has been curtailed. This effectively means that in respect of the persons or classes of persons or cases or classes of cases as specified in Notification-I only the Commissioner of Inland Revenue mentioned in these Notifications will exercise the power and those functions cannot be delegated by those Commissioners of Inland Revenue. This is the most appropriate purposive interpretation which could be placed upon a holistic consideration of the Notifications I & II and the orders made by the Commissioners Inland Revenue. Unless this is done it will be tantamount to undermining the authority and the intent of the FBR and will throw into complete disarray the hierarchycal structure of the FBR. This is also evident from the use of the term "shall" in the Notification-I by which it has been specifically stated that the Commissioners of Inland Revenue shall exercise the powers and functions as specified in column 3 of Notification-I. It is reiterated that if the Notification-I had not been issued by FBR, there was no impediment in the way of the Commissioner Inland Revenue to prescribe functions to be performed by officers of Inland Revenue subordinate to him in case sub-section(3) of section 30 of the Act, 1990. However, since a notification indeed has been issued by FBR for the exercise of powers under Section 30 of the Act, the ineluctable conclusion is that FBR intended those powers to be exercised by the Commissioners of Inland Revenue to the exclusion of all other officers of Inland Revenue

and that intent of FBR cannot be set at naught by the respective Commissioners Inland Revenue by further delegating those powers. ...”  
*(emphasis supplied)*

12. To fortify his finding, the learned Single Judge also quoted para-17 of a judgment by the Islamabad High Court reported as **Zaver Petroleum Corporation Ltd. Vs. Federal Board of Revenue** (2016 PTD 2332) which opines as follows:

“17: It is, therefore, obvious from the above definitions that the three expressions are distinct and separate. The power or jurisdiction conferred on an officer of Inland Revenue precedes the performance of functions. The conferment of power or jurisdiction is a pre-condition for the performance of functions. By no stretch of the imagination does subsection (3) of section 30 empower the Commissioner to confer power or jurisdiction. However, a Commissioner pursuant to subsection (3) can assign persons or areas in respect of the officers specified therein for the purpose of the performance of functions with regard to the scope of the power and jurisdiction already conferred on such officers. Such officers, in order to perform their respective functions, have to be vested with power or jurisdiction. In the instant case the learned counsel appearing on behalf of the Department have not been able to show any provision of the Act of 1990 which empowers the Commissioner to issue the order dated 23-01-2014 and further delegate the powers and jurisdiction conferred upon him or her by the Board pursuant to the order dated 21-01-2014. The reliance of the Commissioners on the notification dated 01.07.2010 is misplaced as the same does not confer the power of adjudication under section 11 of the Act of 1990.”

13. It may be observed that while both High Courts have arrived at the same conclusion, they have done so for reasons that are not entirely consistent. The judgment passed by the Lahore High Court held that the presence of Notification-I in the field created a bar against the issuance of Notification-II by the CIR. This is because in Column (3) of Notification-I the FBR delegated its powers and functions to



CIRs, therefore, these functions and powers could not be sub-delegated by the CIR to his subordinate OIRs. However, it was observed by the learned High Court that if Notification-I had not been in force, then the CIR had the authority under Section 30(3) of the Act to issue Notification-II prescribing functions of his subordinate OIRs subject to the limits of territorial and personal jurisdiction.

14. In our considered view, the said finding is flawed. It has wrongly been assumed that simply because the FBR in exercise of its authority under Section 30(1) of the Act has assigned territorial and personal jurisdiction to CIRs for the exercise of their functions and powers under the Act, the latter were prevented from exercising their statutory power under Section 30(3) of the Act. The impugned judgment does not give any reasons for such a reading of Section 30(1) and (3) of the Act. In fact, on a perusal of Section 30(3) it becomes clear that the said provision operates independently of Section 30(1) of the Act. Nowhere does Section 30(3) restrain the CIRs from delineating the territorial and personal jurisdiction of their subordinate OIRs. The conferment of power under Section 30(3) on the CIRs is meant to efficiently organise the team of officers subordinate to them. In the present case this includes the fixing of territorial and personal limits of each of the twelve subordinate OIRs in Zone-III.

15. By disallowing distribution of functions by the CIR, the impugned judgment expects all such functions to be performed by the CIR himself. Apart from rendering the subordinate OIRs redundant, the other immediate consequence of the impugned finding is that the CIR is disabled from exercising his administrative and supervisory functions under the Act. For instance under Section 45A(4) of the Act, the CIR can call for and examine the record of any proceedings under the Act or Rules pending before his subordinate OIRs to examine its legality or propriety. However, if the CIR is personally performing all the functions under Section 11 of the Act (as would be the case if the interpretation of the impugned judgment is adopted), then he will be prevented from exercising *his* supervisory power under Section 45A(4) of the Act. This is because the CIR cannot possibly supervise himself. Similarly under Section 25(2) of the Act, the CIR can authorise an OIR to conduct an audit. However, if the view of the learned High Court is accepted then there is no competent statutory authority specified in the Act to authorise the conduct of an audit under Section 25(2) *ibid*. The same analysis applies to Section 47 of the Act which provides for a reference to be filed by a subordinate OIR before the High Court on the authorisation of the CIR. Upon a careful evaluation, the finding of the learned High Court for the CIR to perform all functions of the OIRs under the Act is erroneous.

16. It may also be observed that the impugned judgment assumes that by specifying the limits of the territorial and personal jurisdiction of CIRs in Notification-I, the FBR has assigned its own powers and functions to the CIRs. The distribution and assignment of functions is undertaken by the FBR in the exercise of its statutory power under Section 30(1) of the Act which provision does not contemplate the delegation of any of the FBR's own powers. We have already observed in para-8 (*supra*) that the officers that may be appointed in eleven different grades by the FBR under Section 30(1) are all OIRs under the definition given in Section 2(18) of the Act. Hence the FBR is the competent authority for appointment of OIRs and for specifying their jurisdictional limits under Section 30(1) *ibid*. But the FBR is itself neither included in the category of such officers nor thereby becomes one. Since the FBR is not an OIR it does not possess the powers of assessment and recovery of tax vested in OIRs by Section 11 of the Act. If it does not possess these powers then it cannot delegate such powers. There is a well-settled principle of Law: "*nemo dat quod non habet*" (no one can give what he does not have). There is no reason why the same rule should not apply to the delegation of functions and powers. Indeed, **Jowitt's Dictionary of English Law (5<sup>th</sup> Edn)** has defined delegation to mean:

"Delegation: Entrusting another with a power to act in the place of those who depute him."

Accordingly, the FBR does not derive its power of assessment or recovery of tax from Section 11 of the Act. Equally, the Act does not provide for the delegation of FBR's powers to CIRs nor does Notification-I expressly or impliedly delegate any powers of the FBR to the CIRs. As there has not been any delegation of its powers by FBR to CIRs, therefore, the finding of sub-delegation in the impugned judgment is merely an illusion. Consequently, the said finding in the impugned judgment is faulty.

17. In so far as the impugned judgment has quoted from the Islamabad High Court in the **Zaver Petroleum** case (*supra*), we may briefly consider that view. It is apparent from the quoted excerpt that the said decision treats the performance of a function of an office to be different from the exercise of a power and duty vested in such office. Therefore, it has been deemed necessary that conferment of power and jurisdiction upon a statutory authority must precede the assignment of functions to such an authority. The learned Judge has relied to a great extent on this distinction between functions and powers to quash the disputed show cause notices. There is no cavil with the proposition that to exercise the functions of an office a statutory functionary must possess the relevant powers. However, what was perhaps not highlighted to the learned Court was that the exercise of powers forms part of the performance of the functions of an office. Therefore, when functions of an office are allocated by

a competent instrument, the powers appurtenant thereto under the law stand vested in the appointee for exercise thereof.

18. On the point that exercise of powers by a statutory functionary form part of the functions of his office, reference is made to the following definitions:

**“Corpus Juris Secundum – Volume 37.** Page 1397: Function: it is not always clear what is meant by the use of this elastic and indefinite word. It is derived from a word which signifies to perform, and, when relating to an office, has reference to the powers and duties vested in the office by the authority creating it.

**Stroud’s Judicial Dictionary – 9<sup>th</sup> Edn.:** Function: includes a power to do anything that is calculated to facilitate, or is conducive or incidental to, the exercise of a function.”

*(emphasis supplied)*

This Court in the case of **Nazar Hussain Vs. State** (PLD 2010 SC 1021) has also interpreted the expression ‘functions’ to include the exercise of powers:

“11: The powers/actions of the President under Article 45 of the Constitution are part of his “functions” and are to be exercised in accordance with the advice of the Cabinet or the Prime Minister.”

19. There is also a more recent judgment of this Court reported as **Zahid Javed Vs. Tahir Riaz** (PLD 2016 SC 637) which has considered the expression ‘functions’ but in a different context. The question in that case was whether the quasi-judicial power of the Chancellor of the University (Governor of the Province) was exercisable independently or on the binding advice of the Chief Minister/Cabinet under

Article 105(1) of the Constitution. It was held that such quasi-judicial power could only be exercised independently by the Chancellor and not on the advice of the Executive. It was further observed that powers, functions and duties were analogous albeit that in the context of exercise of quasi-judicial power, these could neither be delegated nor be exercised on the instructions of a third party. The relevant para is produced below:

“37. ... In the foregoing paras, we have discussed that the term “Quasi Judicial Power” refers to powers which cannot be delegated and are to be exercised by the Persona Designata mentioned in the statute. Such powers, functions or duties can neither be delegated to any other person or authority nor can be exercised on the recommendation of any other authority or person. The powers, functions and duties provided under the scheme of the Act are to be performed or discharged by the person or authority designated by the statute and none other. ...”  
(emphasis supplied)

The above quoted excerpt is consistent with the ratio laid down in the **Nazar Hussain** case (*supra*) since both judgments hold that unless otherwise specified the exercise of powers form part of the functions of an office. This is also the opinion of the impugned judgment which negates the view that powers and functions of a statutory office are independent and removed from one another. Consequently, the impugned judgment has relied on an incompatible reason as the basis for its finding.

20. Therefore, in the light of our discussion that there could not have been any delegation of the power of issuance of show cause notice in relation to assessment and recovery

of tax by the FBR, which is actually conferred upon the OIRs by Section 11 of the Act, it is plain that the exercise of such powers by the OIRs forms a part of their functions under the Act. Accordingly, the opinion that Notification-I is the only source of vesting of powers in OIRs is incorrect. This view overlooks the effect of Section 31 of the Act and the proper meaning of the term 'functions' used in Section 30(2A) to (3) *ibid*. The impugned judgment has therefore failed to correctly appreciate the law discussed above. As a result, it is set aside. Accordingly, all these connected petitions are converted into appeals and allowed.

**JUDGE**

Islamabad,  
20.11.2018.  
*Irshad Hussain/Meher LC*

**JUDGE**

**APPROVED FOR REPORTING.**