

IN THE HIGH COURT OF SINDH, KARACHI

Present: Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Agha Faisal

1.	Const. P. D-412/2021	M/s. United Carpets Ltd. Vs. Pakistan & Others
2.	Const. P. D-1141 / 2021	M/s. Geo Entertainment Television Pvt. Ltd. Vs. Pakistan & Others
3.	Const. P. D-1142 / 2021	M/s Geo Entertainment Television Pvt Ltd Vs. Fed. of Pakistan and Others
4.	Const. P. D-147/2021	M/s M2 (Pvt) Ltd Vs. Fed. of Pakistan and Others
5.	Const. P. D-278/2021	International Brand Pvt Ltd Vs. Fed. of Pakistan and Others
6.	Const. P. D-279 / 2021	International Brands Pvt Ltd Vs. Fed. of Pakistan and Others
7.	Const. P. D-3266 / 2021	M/s Dynamic Logistics International Pvt Ltd Vs. Pakistan and Others
8.	Const. P. D-8009/ 2022	Farhan Pardesi Vs. Federal Board of Revenue & Others

For the Petitioners: M/s. Ovais Ali Shah & Maryam Riaz & Fizzah Bucha, Muhammad Mushtaq, Muhammad Aqeel Qureshi, Advocates.

For the Respondents: M/s. Muhammad Taseer Khan & Ayaz Sarwar Jamali, Advocates.

Federation of Pakistan: Through Mr. Qazi Ayazuddin Qureshi, Assistant Attorney General.

Date of hearing: 09.03.2023

Date of Order: 15.03.2023

J U D G M E N T

Muhammad Junaid Ghaffar, J: Through all these Petitions, the Petitioners have impugned Notices either under Section 177 or 122 of the Income Tax Ordinance, 2001 (“Ordinance”) as being unconstitutional, unlawful, and void, ab-initio.

2. Learned Counsel for the Petitioners¹ have argued that these notices have been issued under the aforesaid provisions of the Ordinance read with Section 214(D) which according to them was inserted through Finance Act, 2015 and was thereafter, deleted through Finance Act 2018, whereas, after its omission, no further audit proceedings can continue. According to them in

¹ Led by Mr. Ovais Ali Shah Advocate and adopted by others

view of the judgment passed in **Shah Nawaz (Pvt.) Ltd**² a vested right has accrued to the Petitioners after omission of Section 214D and therefore, the impugned Notices are without lawful authority. It has been further contended that Section 214-E *ibid* which was introduced by Finance Supplementary Act, 2018 and a holistic reading of this provision and the omission of Section 214D *ibid*, supports the case of the Petitioners and therefore, all these Petitions be allowed as prayed.

3. On the other hand, Respondents Counsel submit that no vested right has accrued, whereas, failure of the Petitioners in filing timely returns and deposit of tax payable has resulted in automatic selection of their cases for audit and therefore, notwithstanding the omission of Section 214D no right accrues to the Petitioners.

4. We have heard all the learned Counsel and perused the record. On perusal of the record, it appears that all but two of the cases in hand are for Tax Year 2015, whereas, C. P. No. D-142 of 2021 is for Tax Year 2016 and C. P. No. No. D-279 of 2021 is for Tax Year 2017. Before proceeding further, it would be advantageous to refer to the relevant provision of section 214D(1)(a) & (b) which was introduced by way of Finance Act, 2015 and was omitted through Finance Act, 2018. Before its omission it was as under:-

“214D. **Automatic selection for audit**(1) A person shall be automatically selected for audit of its income tax affairs for a tax year, if--

(a) the return is not filed within the date it is required to be filed as specified in section 118. or, as the case may be, not filed within the time extended by the Board under section 214A or further extended for a period not exceeding thirty days by the Commissioner under section 119; or

(b) the tax payable under sub-section (1) of section 137 has not been paid.

(2) Audit of income tax affairs of persons automatically selected under sub-section (1) shall be conducted as per procedure given in section 177 and all the provisions of this Ordinance shall apply accordingly.”

5. The above provision provides that a person shall be automatically selected for audit of its income tax affairs for a particular tax year; **(a)** *if he fails to file his tax return within the stipulated date as specified in Section 118 of the Ordinance, or within the extended time under Section 214A; or for that matter within the extended time under section 119 *ibid*; or (b) the tax payable under Section 137(1) has not been paid.* This provision remained available in the Ordinance till 30.6.2018. Therefore, it applies to the period starting from

² Shah Nawaz (Pvt.) Ltd. Vs. Pakistan (2011 P T D 1558)

01.07.2015 to 30.06.2018. The pertinent words used in Section 214D is that a person shall be automatically selected if the person falls within any of the condition(s) so provided in sub-section 1(a) & (b) *ibid*. It is neither a case of accrual of any vested right as to a particular tax-year; nor of selection for audit on the basis of any criterion; and therefore, any reliance placed on the case of *Shahnawaz (Supra)* is entirely misconceived. Admittedly, all petitioners before us failed to meet the threshold of s.214D(1)(a)(b); i.e. either failed to file their returns in the stipulated time or the extended time as the case may be; or did not pay the tax determined under Section 137; hence, they stood automatically selected for audit or one could say deemed to have been selected for audit immediately thereon when they defaulted in terms as above. The period of default will, therefore, be from 01.07.2015 to 30.6.2018. It is not in dispute that all petitioners have defaulted in the said period; hence, they deemed to have been selected for audit for respective tax-years. Any omission of the provision in question from 2018 onwards, will not have any bearing on their selection for audit which becomes past and closed on their default as per s.214(1)(a)(b). In fact, in some of the cases pertaining to Tax year 2015, audit was conducted and responded by the Petitioners and thereafter, notices to amend the assessment orders under Section 122(9) have also been issued. As to the other arguments of learned Counsel for the Petitioners are concerned, there is no question of exercising any power or authority under a repealed or omitted provision inasmuch as the Petitioners stood selected for audit by way of a deeming provision and to that extent, it is not in dispute that the Petitioners were to be selected for audit in terms thereof as they were covered by the two basic conditions provided in Section 214(1)(a) & (b). They have not been selected after omission or deletion of Section 214D *ibid* as they stood selected automatically. The subsequent action of the department on the basis of impugned notices is procedural in nature which is under the existing procedure of Section 177 (manner in which the audit has to be conducted), and thereafter, under Section 122 (amendment of a deemed assessment order). Both these provisions were very much in existence when impugned notices were issued. Mere narration of facts in the said notices as to why they had been selected for audit in terms of Section 214D of the Ordinance, would not *ipso facto* mean that any jurisdiction is now being exercised under the said provision which stands omitted. This contention of the Petitioners is totally misconceived. No right or a vested right had accrued in the facts and circumstances of the case.

6. In view of hereinabove facts and circumstances of these cases, we see no reason to entertain the objections so raised in respect of the impugned notices and therefore, all these Petitions are dismissed, whereas, Respondents shall proceed further against the Petitioners on the basis of respective notices already issued.

Dated: 15.03.2023

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