

**GOVERNMENT OF PAKISTAN
REVENUE DIVISION
FEDERAL BOARD OF REVENUE

C.No.1(1)Chief(Legal-I)/2018

Islamabad, the 13th June, 2018

- (1) **All Chief Commissioner IR,
LTUs/CRTOs/RTOs** (2) **All Director General (I&I-IR).**
- (3) **The Directors Law, Karachi/Lahore.**

Subject:- **IMPORTANT POINT REGARDING SELECTION OF CASES FOR
AUDIT**

I am directed to refer to the subject and to say that, while disposing of CPLA, in a recent leave refusal order in CPs No.2370-L and others etc. on appeal from judgment/order of Lahore High Court, Lahore dated 18.07.2017 passed in ICAs 1263/2017 etc., following very important principles/observations have been re-iterated/made by the Honorable Supreme Court of Pakistan namely:-

(a) **Selection for Audit:-**

To a challenge to selection for audit for tax year 2014 under the Audit Policy 2015 formulated to undertake the audit, it has been held that "We have repeatedly held that mere selection for audit does not cause an actionable injury to the taxpayer", and that conducting of audit is merely to check/verify the accuracy, truthfulness and veracity of declarations made under self assessment regime. So mere selection of audit by itself is not a complete process which may or may not culminate in revision/amendment of assessment necessarily. The court has observed that a self assessment regime in which confidence is reposed in the taxpayer, audit is to provide a system of checks and balance to ensure just, fair and transparent declarations by the taxpayer.

(b) **Selection process of audit:-**

Regarding objections by the taxpayers that selection process is discriminatory for its exclusion of certain classes of taxpayers to the detriment of other classes of persons, it has been held that Board has the powers to select certain classes of persons through a computerized random ballot and that taxpayer's argument that " random ballot means that entire body of Taxpayers must be included in the ballot is misconceived and based upon erroneous and incorrect reading and understanding of the law". No irregularity has been observed in the random selection process by the Board. Rather it has been termed as transparent policy uniformly applied in accordance with law and neither any bias, arbitrariness or partially have been attributed nor a particular class of person has been targeted.

(c) **Audit without framing Rules:-**

As regards objections with respect to audit being carried out without framing rules, as required by the DHA Judgment, the Court has observed that the DHA judgment is not applicable in random ballot selection. Random and parametric selections are different in nature and methods, "Rule Applicable to one cannot be applied to other". It has been further held that no

elaborate rules were required for random selection “being pure and simple computer aided selection”.

(d) **Unstructured Discretion in Audit:-**

Another issue raised was that the audit policy gives unbridled discretion to the Audit Officers. The Court has negated the claim by observing that Policy is quite elaborate and sets out requisite methodology as well as guidelines for audit including procedure, timelines etc. The apprehension that Auditors would focus more on revenue than complying with tax law in order to meet Performance Evaluation Indicators, has also not found favor with the Court which has held that to ensure important factors for audit like uniform, standards for consistency are within the domain of FBR that must be kept in mind.

It has been observed that statutory framework u/s 177 “together with the overreaching umbrella of constitutional guarantees furnish adequate and sufficient safeguards to the taxpayer where there is possibility of overstepping by the tax authorities”

(e) **Time Limitations:-**

On the question of putting a bar by the lower fora to complete audit within a stipulated time frame and the department’s objection against putting such a bar, it has been held by the Court that questions of completion time of audit cannot be left open ended and that the audit must be completed within a reasonable timeframe as spelt out explicitly in the Audit Policy 2015. On the issue of ability of the department to conduct quality audit within short time period the Court has held that the taxpayers cannot be burdened with the ordeal of prolonged audit and that issues and problem regarding delays in conducting audit primarily are due to capacity and shortage of trained audit officers. The Board is expected to enhance the qualitative as well as quantitative capacity of the audit teams.

In the final analysis, it has been held that “general timeframe is necessary” so as to avoid abuse, misuse and hardships to the taxpayer. Timeframe of completion of audit of a tax year in the same financial year in which it is selected for audit as provided in the Audit Policy is fair and reasonable. However, in case of any eventuality beyond the control of the department, the timeframe can be extended by the Board through a reasoned order on a written request for extension explaining reasons for inability to complete the audit within the stipulated time. The extension so granted by The Board should not be casual, repeated as a matter of routine.

(f) **Directions by the Court**

While observing that certain guideline have been given by the lower fora, the Court has observed that, though the guidelines could be useful for the Board to follow, but it is not the function of the Courts to enter into the administrative domain of the Department so the guidelines have been termed as directory and not mandatory or binding in the formulation of policies by the Board.

2. The Order of refusal of the SCP along with write-up have been uploaded on FBR’s site for guidance and ready reference in all similar issues confronted by field formations in future.


(Shaukat Hayat Cheema)
Chief (Legal-I)

N THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE MIAN SAQIB NISAR, HCJ

MR. JUSTICE UMAR ATA BANDIAL

MR. JUSTICE IJAZ UL AHSAN

Civil Petitions for Leave to Appeal Nos.2370-L, 2375-L, 2425-L, 2442-L to 2445-L, 2453-L to 2455-L, 2466-L, 2467-L, 2478-L to 2481-L, 2496-L, 2504-L, 2505-L, 2511-L to 2515-L, 2521-L to 2527-L, 2541-L to 2549-L, 2551-L to 2557-L, 2567-L to 2580-L, 2584-L, 2586-L, 2587-L to 2591-L, 2597-L to 2599-L, 2638-L to 2648-L, 2657-L to 2708-L, 2711-L to 2717-L, 2725-L to 2732-L, 2736-L to 2744-L, 2749-L to 2769-L, 2777-L, 2779-L to 2806-L, 2814-L to 2826-L, 2835-L, 2844-L, 2856-L to 2865-L, 2873-L to 2879-L, 2888-L to 2916-L, 2921-L to 2949-L, 2972-L to 2983-L, 2985-L to 3055-L, 3059-L to 3068-L, 3071-L, 3084-L, 3085-L, 3136-L to 3145-L, 3153-L, 3154-L, 3180-L to 3185-L, 3201-L to 3204-L, 3251-L to 3254-L, 3322-L to 3333-L, 3345-L, 3357-L to 3360-L of 2017, 3-L to 7-L, 9-L, 10-L, 33-L to 35-L, 39-L, 40-L, 197-L to 199-L and 226-L of 2018

Against judgments dated 18.07.2017 of Lahore High Court, Lahore, passed in Intra Court Appeals No.711/2017, 845/2017, 453/2017, 1084/2017, 1087/2017, 968/2017, 1197/2017, 507/2017, 780/2017, 1154/2017, 1026/2017, 880/2017, 727/2017, 798/2017, 1055/2017, 397/2017, 604/2017, 811/2017, 603/2017, 894/2017, 790/2017, 629/2017, 426/2017, 996/2017, 732/20014, 545/2017, 748/2017, 768/2017, 823/2017, 578/2017, 926/2017, 481/2017, 1249/2017, 1160/2017, 1253/2017, 749/2017, 1209/2017, 1107/2017, 1264/2017, 546/2017, 552/2017, 914/2017, 472/2017, 615/2017, 557/2017, 618/2017, 864/2017, 929/2017, 934/2017, 1110/2017, 1263/2017, 824/2017, 853/2017, 1000/2017, 779/2017, 731/2017, 814/2017, 821/2017, 869/2017, 889/2017, 898/2017, 900/2017, 904/2017, 916/2017, 959/2017, 817/2017, 999/2017, 1011/2017, 1048/2017, 1072/2017, 1139/2017, 1140/2017, 1108/2017, 689/2017, 850/2017, 887/2017, 784/2017, 750/2017, 1025/2017, 1027/2017, 1149/2017, 966/2017, 691/2017, 936/2017, 950/2017, 930/2017, 868/2017, 693/2017, 873/2017, 1208/2017, 1158/2017, 820/2017, 957/2017, 1007/2017, 1206/2017, 635/2017, 883/2017, 1065/2017, 1142/2017, 791/2017, 994/2017, 1174/2017, 84/2017, 870/2017, 872/2017, 963/2017, 932/2017, 1182/2017, 833/2017, 753/2017, 752/2017, 699/2017, 698/2017, 1022/2017, 992/2017, 878/2017, 730/2017, 960/2017, 1207/2017, 953/2017, 694/2017, 1003/2017, 933/2017, 923/2017, 974/2017, 747/2017, 897/2017, 733/2017, 695/2017, 961/2017, 1258/2017, 874/2017, 839/2017, 1256/2017, 848/2017, 877/2017, 1204/2017, 1060/2017, 1001/2017, 490/2017, 1143/2017, 1366/2017, 1098/2017, 1195/2017, 946/2017, 624/2017, 804/2017, 787/2017, 1014/2017, 1094/2017, 918/2017, 1056/2017, 766/2017, 815/2017, 937/2017, 1103/2017, 1063/2017, 1064/2017, 1059/2017, 1096/2017, 924/2017, 881/2017, 882/2017, 793/2017, 548/2017, 395/2017, 544/2017, 1016/2017, 925/2017, 865/2017, 782/2017, 899/2017, 866/2017, 902/2017, 844/2017, 838/2017, 892/2017, 1262/2017, 954/2017, 859/2017 in W.P.No.342/2017, ICA Nos.852/2017, 896/2017, 915/2017, 938/2017, 754/2017, 875/2017, 1103/2017, 554/2017, 981/2017, 726/2017, 888/2017, 1156/2017, 978/2017, 818/2017, 1339/2017, 1202/2017, 729/2017, 466/2017, 551/2017, 1138/2017, 795/2017, 1147/2017, 690/2017, 1102/2017, 411/2017, 541/2017, 661/2017, 501/2017, 628/2017, 846/2017, 1004/2017, 410/2017, 854/2017, 826/2017, 558/2017, 987/2017, 1005/2017, 855/2017, 1046/2017, 973/2017, 1043/2017, 819/2017, 1193/2017, 901/2017, 1020/2017, 951/2017, 862/2017, 922/2017, 835/2017, 697/2017, 778/2017, 1158/2017, 783/2017, 807/2017, 1259/2017, 990/2017, 1017/2017, 802/2017,

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707/2017, 448/2017, 803/2017, 687/2017, 943/2017, 1105/2017, 630/2017, 901/2017, 1020/2017, 951/2017, 862/2017, 922/2017, 813/2017, 847/2017, 849/2017, 1058/2017, 1070/2017, 1095/2017, 1099/2017, 1106/2017, 1057/2017, 1168/2017, 725/2017, 734/2017, 773/2017, 816/2017, 832/2017, 835/2017, 965/2017, 919/2017, 1148/2017, 1170/2017, 1181/2017, 911/2017, 822/2017, 1252/2017, 340/2017, 476/2017, 626/2017, 547/2017, 342/2017, 680/2017, 917/2017, 958/2017, 471/2017, 1203/2017, 809/2017, 632/2017, 876/2017, 1260/2017, 692/2017, 1015/2017, 542/2017, 462/2017, 549/2017, 1024/2017, 831/2017, 797/2017, 977/2017, 1006/2017, 550/2017, 1044/2017, 1165/2017, 837/2017, 935/2017, 941/2017, 944/2017, 1047/2017, 1068/2017, 1111/2017, 1141/2017, 1167/2017, 1173/2017, 1200/2017, 1100/2017, 1002/2017, 970/2017, 928/2017, 1104/2017, 895/2017, 142/2017, 1093/2017, 674/2017, 620/2017, 769/2017, 1019/2017, 555/2017, 1047/2017, 1113/2017, 940/2017, 828/2017, 969/2017, 1060/2017, 1145/2017, 843/2017, 905/2017, 1146/2017, 1133/2017, 1238/2017, 810/2017, 812/2017, 1023/2017, 1192/2017, 1255/2017, 348/2017, 634/2017, 638/2017, 699/2017, 1126/2017, 1130/2017, 1237/2017, 781/2017, 886/2017, 891/2017, 952/2017, 983/2017, 473/2017, 627/2017, 1328/2017, 1331/2017, 911/2017, 945/2017, 984/2017, 986/2017, 1010/2017, 1054/2017, 1166/2017, 964/2017, 972/2017, 343/2017, 857/2017, 1198/2017, 813/2017, 927/2017, 452/2017, 1169/2017, 785/2017, 553/2017, 1053/2017, 477/2017, 971/2017, 786/2017, 988/2017, 480/2017, 1263/2017, 540/2017, 1205/2017, 341/2017, 913/2017, 956/2017, 1152/2017, 1157/2017, 1197/2017, 801/2017, 806/2017, 502/2017 and dated 09.01.2017 passed in Writ Petitions No.1462/2016, 1486/2016, 14360/2016.

Commissioner of Inland Revenue, Sialkot (in CP Nos.2370-L, 2375-L, 2425-L, 3251-L, 3252-L/2017)

Commissioner of Inland Revenue, Lahore, etc (in CP Nos.2442-L to 2445-L, 2453-L to 2455-L, 2466-L, 2467-L, 2496-L, 2504-L, 2505-L, 2511-L to 2515-L, 2521-L to 2527-L, 2547-L, 2551-L to 2557-L, 2567-L, 2568-L, 2580-L, 2584-L, 2586-L to 2588-L, 2590-L, 2591-L, 2598-L, 2599-L, 2638-L to 2640-L, 2642-L to 2644-L, 2646-L to 2648-L, 2657-L to 2662-L, 2664-L, 2667-L to 2686-L, 2690-L, 2691-L, 2693-L to 2695-L, 2697-L, 2699-L, 2701-L to 2706-L, 2711-L to 2717-L, 2725-L to 2728-L, 2732-L to, 2736-L, 2737-L, 2739-L, 2742-L to 2744-L, 2749-L, 2751-L, 2752-L, 2754-L to 2769-L, 2777-L, 2779-L to 2806-L, 2814-L to 2826-L, 2836-L to 2838-L, 2840-L, 2841-L, 2844-L, 2856-L to 2858-L, 2860-L to 2863-L, 2865-L, 2874-L, 2876-L, 2877-L, 2879-L, 2921-L to 2931-L, 2933-L to 2938-L, 2941-L, 2942-L to 2949-L, 2972-L to 2974-L, 2976-L to 2978-L, 2980-L, 2982-L, 2983-L, 2997-L, 3059-L, 3061-L to 3068-L, 3085-L, 3136-L to 3145-L, 3153-L, 3154-L, 3180-L, 3183-L, 3201-L to 3204-L, 3322-L, 3323-L, 3325-L to 3328-L, 3331-L, 3332-L, 3358-L, 3359-L/2017, 3-L to 5-L, 9-L, 10-L, 33-L to 35-L, 39-L, 40-L/2018)

Commissioner of Inland Revenue, Gujranwala (in CP Nos.2478-L to 2481-L, 2541-L to 2546-L, 2548-L, 2549-L, 2569-L to 2579-L)

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3084-L/2017)

Commissioner of Inland Revenue, Islamabad, etc (in CP Nos.2589-L/2017)

Attock Gen Limited, Rawalpindi (in CP Nos.2597-L/2017)

Commissioner of Inland Revenue, Faisalabad (in CP Nos.2611-L, 2666-L, 2689-L, 2692-L, 2698-L, 2707-L, 2708-L, 2729-L to 2731-L, 2738-L, 2740-L, 2741-L, 2750-L, 2835-L, 2864-L, 2875-L, 2932-L, 2939-L, 2975-L, 2979-L, 3060-L, 3185-L, 3333-L, 3357-L of 2017)

Commissioner of Inland Revenue, Multan (in CP Nos.2645-L, 2688-L, 2696-L, 2700-L, 3330-L/2017)

Federation of Pakistan through Secretary Revenue, Islamabad, etc (in CP Nos.2663-L, 2859-L/2017)

Federal Board of Revenue through its Chairman, etc (in CP Nos.2665-L, 2687-L, 2842-L, 3345-L, 3360-L of 2017, 6-L, 7-L, 226-L of 2018)

Federation of Pakistan through Secretary Law Division, Islamabad, etc (in CP Nos.2839-L, 3184-L, 3329-L/2017)

Federation of Pakistan through Secretary Finance, Islamabad, etc. (in CP Nos.2843-L/2017)

Federal Board of Revenue through Member (Audit), FBR House, Islamabad, etc (in CP Nos.2878-L, 3324-L/2017)

Commissioner Inland Revenue, etc (in CP No.2888-L to 2916-L of 2017/2878-L/2017)

Federation of Pakistan through Secretary Law, Justice & Parliamentary Affairs, Islamabad, etc (in CP No.2940-L/2017)

Commissioner Inland Revenue, Sargodha (in CP No.2981-L/2017)

M/s Coca Cola Beverages Pakistan Limited, Lahore (in CP Nos.3253, 3254/2017)

Commissioner of Inland Revenue, Zone-IV, Regional Tax Office-II, Lahore (in CP No.197-L/2018)

Commissioner of Inland Revenue, Audit Division-I, Zone-VIII, Regional Tax Office-II, Lahore (in CP198-L/2018)

Commissioner of Inland Revenue, Zone-VI, Regional Tax Office-I, Lahore (in CP199-L/2018)

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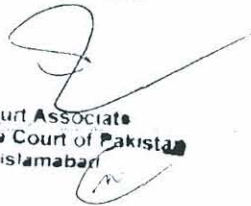
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... PETITIONERS

VERSUS

M/s Allah Din Steel & Rolling Mills, etc.	(in CP2370-L/2017)
M/s Akbar Rice Mills, etc.	(in CP2375-L/2017)
M/s Islam Steel Mills, Small Industrial Estate, etc.	(in CP2425-L/2017)
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Sajid Imran	(in CP2444-L/2017)
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Dr. Masood Ahmad	(in CP2454-L/2017)
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M/s Allied School Satellite Town Campus, Gujranwala	(in CP2479-L/2017)
Muhammad Akram	(in CP2480-L/2017)
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Muhammad Younas	(in CP2496-L/2017)
Muhammad Riaz Bhatti, etc	(in CP2504-L/2017)
M/s Murtaza Engineers Lahore	(in CP2505-L/2017)
M/s Pakistan Spring Engineering Company (Pvt.) Ltd., Lahore	(in CP2511-L/2017)
M/s Zeeshan Foot Weat (Pvt.) Ltd., Faisalabad	(in CP2512-L/2017)
M/s Five Star Textile Industries (Pvt.) Ltd., Faisalabad	(in CP2513-L/2017)
M/s Rahat Ghee Mills (Pvt.) Lahore	(in CP2514-L/2017)
M/s Akhter Saeed	(in CP2515-L/2017)
M/s Heaven Food Court, Lahore	(in CP2521-L/2017)
Muhammad Amin	(in CP2522-L/2017)
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Dr. Muhammad Jamal Nasir	(in CP2524-L/2017)
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M/s Azmat Ullah & Co. Gujranwala	(in CP2543-L/2017)
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M/s ABM Corporation, Gujranwala, etc.	(in CP2545-L/2017)
M/s Shanns Cosmetics & Chemicals, Lahore	(in CP2546-L/2017)
Muhammad Mohsin Mushtaq	(in CP2547-L/2017)
M/s Western Industries, Gujranwala, etc	(in CP2548-L/2017)
Hafiz Muhammad Azam, etc	(in CP2549-L/2017)
M/s Infotec (Pvt.) Ltd, Lahore	(in CP2551-L/2017)
M/s United Foam Industries (Pvt.) Ltd., Lahore	(in CP2552-L/2017)
M/s Ciba Enterprises (Pvt.) Ltd., Lahore	(in CP2553-L/2017)
M/s Firhaj Footwear (Pvt.) Ltd. Lahore	(in CP2554-L/2017)
M/s BBJ Pipe Industries (Pvt.) Ltd., Lahore	(in CP2555-L/2017)
M/s Diamond Products (Pvt.) Ltd. Lahore	(in CP2556-L/2017)
M/s Defence Housing Authority, Lahore etc.	(in CP2557-L/2017)
M/s Vision Developer (Pvt.) Ltd., Lahore, etc	(in CP2567-L/2017)
M/s FMC United (Pvt.) Ltd., Lahore	(in CP2568-L/2017)
M/s Jalandhar Sweets, Gujranwala	(in CP2569-L/2017)
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M/s Fayyaz Jewellers, Gujranwala	(in CP2571-L/2017)
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M/s Muhammad Awais, Sheikhupura	(in CP2575-L/2017)
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M/s Universal Poultry Farm, Gujranwala	(in CP2578-L/2017)
M/s The Educator College, Gujranwala	(in CP2579-L/2017)
M/s Info Tech (Pvt.) Ltd. Lahore	(in CP2580-L/2017)
Zaka Ullah, etc.	(in CP2584-L/2017)
Javed Iqbal Khan	(in CP2586-L/2017)
Sonia Azhar	(in CP2587-L/2017)
M/s H. Karim Baksh	(in CP2588-L/2017)
Nestle Pakistan Ltd., Lahore	(in CP2589-L/2017)
Muhammad Ayub Aftab	(in CP2590-L/2017)
M/s Noor Food Industry, Faisalabad	(in CP2591-L/2017)
Federal Board of Revenue, etc	(in CP2597-L/2017)
M/s Prime Engineering Works	(in CP2598-L/2017)
Mr. Amer Ghafoor	(in CP2599-L/2017)
M/s Suraj Fertilizer Industries (Pvt.) Ltd., Lahore	(in CP2638-L/2017)

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M/s Amir Asim Steel Re-Rolling Mills (Pvt.) Ltd.	(in CP2639-L/2017)
M/s DG Khan Cement Ltd., Lahore, etc	(in CP2640-L/2017)
M/s Al-Raheem Textile Processing, Faisalabad	(in CP2641-L/2017)
M/s Maple Leaf Cement Factory Ltd., Lahore	(in CP2642-L/2017)
M/s Treet Holding., Lahore	(in CP2643-L, 2663-L, 2674-L, 2864-L/2017)
M/s Sumaira Flour Mills (Pvt.) Ltd., etc	(in CP2644-L/2017)
M/s Allah Wasaya Textile & Fishing Mills Ltd., Multan, etc	(in CP2645-L/2017)
M/s Mehmood Mehmoob Brothers, Multan, etc	(in CP2646-L/2017)
M/s Kausar Ghce Mills Ltd., Lahore	(in CP2647-L/2017)
M/s Raazee Therapeutics (Pvt.) Ltd., Lahore	(in CP2648-L/2017)
M/s Mandiali Paper Mills (Pvt.) Ltd., Lahore	(in CP2657-L/2017)
M/s Crescent Steel & Allied Products Ltd., Lahore	(in CP2658-L/2017)
M/s Shujabad Weaving Mills Ltd., Multan	(in CP2659-L, 2696- L/2017)
M/s Imran Pipe Mills (Pvt.) Ltd., Lahore	(in CP2660-L/2017)
M/s Capital Land Developers (Pvt.) Ltd., Lahore	(in CP2661-L/2017)
M/s Shadab Textile Mills Ltd., Lahore	(in CP2662-L/2017)
M/s ALTECH International, Lahore	(in CP2664-L/2017)
M/s Monnowal Textile Ltd., Lahore	(in CP2665-L/2017)
Shabnam Naecm, etc.	(in CP2666-L/2017)
M/s Azeem Steel Re-Rolling Mills, Lahore	(in CP2667-L/2017)
M/s Ray Engineering Works, Lahore	(in CP2668-L/2017)
M/s Coca Cola Beverages Ltd., Lahore	(in CP2669-L/2017)
M/s Maple Leaf Cement Factory Ltd., Lahore	(in CP2670-L/2017)
M/s Munawar Pharma (Pvt.) Ltd., Lahore, etc	(in CP2671-L/2017)
M/s Forum Consultants, Lahore	(in CP2672-L/2017)
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M/s Synergy Resources (Pvt.) Ltd., Lahore, etc	(in CP2675-L/2017)
M/s Lyallpur Chemicals & Fertilizers (Pvt) Ltd., Lahore	(in CP2676-L/2017)
M/s Six B Foods Industry (Pvt.) Ltd., Multan, etc	(in CP2677-L/2017)
M/s Haseeb Waqas Sugar Mills Ltd., Lahore, etc	(in CP2678-L/2017)
M/s BPS (Pvt.) Ltd., Lahore	(in CP2679-L/2017)
M/s United Wire Industries (Pvt.) Ltd., Lahore, etc	(in CP2680-L/2017)

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M/s Dynamic Packaging (Pvt.) Ltd., Lahore	(in CP2681-L, 2699-L/2017)
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M/s Waheed Brothers (Pakistan) (Pvt.) Ltd., Lahore	(in CP2683-L/2017)
M/s Prix Pharmaceutical (Pvt.) Ltd., Multan, etc	(in CP2685-L/2017)
M/s Nishat Dairy (Pvt.) Ltd., Lahore, etc	(in CP2686-L/2017)
M/s Novamed Pharmaceuticals (Pvt.) Ltd	(in CP2687-L/2017)
M/s Acro Spinning & Weaving Mills Ltd., Multan, etc	(in CP2688-L/2017)
M/s Rasheeda Poly, Faisalabad	(in CP2689-L/2017)
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M/s Eden Builders, Lahore	(in CP2691-L/2017)
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M/s AFCO Steel Industries, Lahore, etc.	(in CP2694-L/2017)
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M/s Ghani Glass Ltd., Lahore, etc.	(in CP2697-L/2017)
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M/s Shamim & Company (Pvt.) Ltd., Multan	(in CP2700-L/2017)
M/s HKS Steel & Re-Rolling Mills, Gujranwala	(in CP2701-L/2017)
Mr. Moeen Bahabr	(in CP2702-L/2017)
Jamshoro Joint Venture Ltd., Lahore	(in CP2703-L/2017)
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M/s Digital World Pakistan (Pvt.) Ltd., Lahore, etc	(in CP2705-L/2017)
M/s Lub Gas (Pvt.) Ltd., Associated House, Lahore	(in CP2706-L/2017)
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M/s Aslam Textile Mills Ltd., Faisalabad	(in CP2708-L/2017)
M/s Matchless Engineering (Pvt.) Ltd., Lahore	(in CP2711-L/2017)
M/s Haier Pakistan (Pvt.) Ltd., Lahore	(in CP2712-L/2017)
M/s Spleen Manufacturing (Pvt.) Ltd. Lahore	(in CP2713-L/2017)
M/s Fazal Sons Match Industries (Pvt.) Ltd., Lahore	(in CP2714-L/2017)
M/s Selmore Pharmaceuticals (Pvt.) Ltd., Lahore	(in CP2715-L/2017)
M/s Ayesha Textiles Mills Ltd., Sheikhpura	(in CP2716-L/2017)
M/s Nishat Dairy (Pvt.) Ltd., Lahore	(in CP2717-L/2017)
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M/s Abdullah Flour Mills (Pvt.) Ltd., Lahore, etc	(in CP2727-L/2017)
The Cooperative Model Town Society (Pvt.) Ltd., Lahore	(in CP2728-L/2017)
Iftikhar Ahmed Khan	(in CP2729-L/2017)
Shahida Parveen	(in CP2730-L/2017)
Ahmad Din Textile Mills (Pvt.) Ltd., Faisalabad	(in CP2731-L/2017)
M/s Asghari Begum (Pvt.) Ltd., Lahore	(in CP2732-L/2017)
M/s Nestle Pakistan Ltd., Lahore	(in CP2736-L/2017)
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M/s Neelbar Textiles (Pvt.) Ltd., Lahore	(in CP2738-L/2017)
M/s IKAN Engineering Services (Pvt.) Ltd., Lahore	(in CP2739-L/2017)
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M/s Creative Electronics (Pvt.) Ltd.	(in CP2751-L/2017)
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M/s AKZO Nobel Pakistan Ltd., Lahore	(in CPs2753-L, 2758-L/2017)
M/s Sun Lucky Plastic Industries (Pvt.) Ltd	(in CP2754-L/2017)
M/s Jamshoro Joint Venture Ltd., Lahore	(in CP2755-L/2017)
M/s Nishat Chunian Power Ltd., Lahore	(in CP2756-L/2017)
M/s Nishat Power Ltd., Lahore	(in CP2757-L/2017)
M/s Ehsan & Co, etc	(in CP2759-L/2017)
M/s Z & J H Hygienic Products (Pvt.) Ltd.	(in CP2760-L/2017)
M/s Malik Khalid and Brother, Ghallah Mandi, etc.	(in CP2761-L/2017)
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M/s Asian Buildings System (Pvt.) Ltd.	(in CP2782-L/2017)
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M/s Sheikho Sugar Mills Ltd.	(in CP2787-L/2017)
M/s Marwat Enterprises Ltd.	(in CP2788-L/2017)
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M/s Safam (Pvt.) Ltd.	(in CP2814-L/2017)
M/s FAS Tube Mills & Engineer Industries (Pvt.) Ltd., Lahore	(in CP2815-L/2017)
M/s Asia Foam (Pvt.) Ltd., Lahore	(in CP2816-L/2017)
M/s Adsells Advertising (Pvt.) Ltd., Lahore, etc.	(in CP2817-L/2017)
Mr. Shazib Masud	(in CP2818-L/2017)
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M/s Synchro Pharmaceuticals, Lahore	(in CP2840-L/2017)
M/s Seasons Foods (Pvt.) Ltd., Lahore	(in CP2841-L/2017)
M/s Rehsam Textile Industries Ltd., Lahore	(in CP2842-L/2017)
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M/s J.S Enterprises (AOP), etc.	(in CP2914-L/2017)
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M/s Seasons Foods (Pvt.) Ltd., Lahore	(in CP2924-L/2017)
M/s Samsol International (Pvt.) Ltd., Lahore, etc.	(in CP2925-L/2017)
M/s Wak Ltd., Lahore	(in CP2926-L/2017)
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M/s Home Gas (Pvt.) Ltd., Lahore (in CP2946-L/2017)

M/s Welcon Chemicals, (Pvt.), Ltd., Lahore (in CP2947-L/2017)

M/s Eden Developers, Lahore (in CP2948-L/2017)

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M/s Rizwan Zahid & Co., Faisalabad (in CP2979-L/2017)


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M/s Zafar Commission Shop, Lahore, etc.	(in CP2992-L/2017)
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M/s Madina Industry, Gujranwala, etc.	(in CP3013-L/2017)
M/s Abid Mehmood, etc.	(in CP3014-L/2017)
M/s Siraj Traders, District Gujranwala	(in CP3015-L/2017)
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Muhammad Ayub, etc.	(in CP3017-L/2017)
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M/s Abu Bakar Rice Mills, etc.	(in CP3019-L/2017)
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M/s Chenab Trading Co., Gujranwala	(in CP3024-L/2017)
M/s Babar & Co. Hafizabad, etc.	(in CP3025-L/2017)
Muhammad Ramzan, etc.	(in CP3026-L/2017)
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M/s NAZ Co., Rice Mills, Hafizabad, etc.	(in CP3028-L/2017)
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M/s Pioneer Cement Ltd., Lahore, etc.	(in CP3066-L, 3068-L/2017)
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DG Khan Cement Co., Ltd., Lahore, etc.	(in CP3324-L/2017)
M/s Jamshoro Joint Venture, Ltd., Lahore	(in CP3325-L/2017)
M/s United Foam Industries, Lahore	(in CP3326-L/2017)

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M/s Mayfair Ltd., Lahore	(in CP3327-L/2017)
M/s Kohinoor Textile Mills, Ltd., Lahore	(in CP3328-L/2017)
M/s A. Rahim Foods (Pvt.) Ltd., Lahore	(in CP3329-L/2017)
M/s Aleem Can (Pvt.) Ltd., Multan, etc.	(in CP3330-L/2017)
M/s Service Sales Corporation (Pvt.) Ltd., Lahore	(in CP3331-L/2017)
M/s Coca Cola Beverage Ltd., Lahore	(in CP3332-L/2017)
M/s Bilal Textile Ltd., Faisalabad	(in CP3333-L/2017)
M/s Haier Pakistan (Pvt.) Ltd., Lahore	(in CP3345-L/2017)
Tariq Mehmood Ahmad	(in CP3357-L/2017)
M/s Services Industries Ltd., Lahore	(in CP3358-L/2017)
M/s Shahtaj Sugar Mills, Ltd., Lahore	(in CP3359-L/2017)
M/s Jamshoro Joint Venture, Ltd., Lahore	(in CP3360-L/2017, 3-L/2018)
M/s Bunny's Ltd., Lahore	(in CP4-L, 7-L/2018)
M/s Abdullah Flour Mills (Pvt.) Ltd., Lahore, etc.	(in CP5-L/2018)
M/s DG Khan Cement Co., Ltd., Lahore, etc.	(in CP6-L/2018)
M/s Cooperative Model Town Society (Pvt.) Ltd., Lahore	(in CP9-L/2018)
M/s Anmol Paper Mills (Pvt.) Ltd., Lahore	(in CP10-L/2018)
M/s Tara Crop. Sciences (Pvt.) Ltd., Lahore, etc.	(in CP33-L/2018)
M/s Haier Pakistan (Pvt.) Ltd., Lahore	(in CP34-L/2018)
M/s Syed Ali Hajvery University Trust, Lahore	(in CP35-L/2018)
M/s Dotcare (Pvt.) Ltd., Lahore, etc.	(in CP39-L/2018)
M/s Prime Steel Mills, Lahore	(in CP40-L/2018)
Rana Faisal Manoor, etc.	(in CP197-L/2018)
Sh. Ghulam Jaffar, etc.	(in CP198-L/2018)
Muhammad Ali Abid	(in CP199-L/2018)
M/s Anmol Paper Mills (Pvt.) Ltd., Sheikhpura	(in CP226-L/2018)

... Respondents

For the Petitioner(s): Mr. Ibrar Ahmed, ASC.
(in CPs.2370, 2375, 2425-L, 3251 and 3252-L/2017)

Mr. Irshad Ullah Chattha, ASC.
(in CPs#2442-2445, 2453, 2454, 2455, 2466, 2467,
2476, 2479, 2480, 2481, 2496, 2504, 2505, 2521-2527,
2546-2547, 2586, 2587, 2588, 2598, 2599, 2777-
L/2017, 197, 198 and 199-L/2018)

Ch. M. Zafar Iqbal, ASC.
Dr. Ishtiaq Ahmed, Commissioner,
IR, RTO, Lahore
(in CPs#2511-2515, 2567, 2568, 2584, 2589, 2590,
2591, 2638-2648, 2657-2708, 2711-2717, 2725-2732,
2736-2744, 2749-2758-L/2017, 2779-2806, 2814-2826,
2835-2844, 2856-2865, 2874-2879-L/2017, 2921-2949,
2972-2983, 3059-3068, 3085, 3136-3145, 3153, 3154,
3180-3185, 3201-3204, 3322-3333, 3345, 3357-3360-
L/17, 3-7, 9, 10, 33, 34, 35, 39, 40-L/2018 and 226-
L/2018)

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Mrs. Kausar Parveen, ASC.

(in CPs#2541-2544, 2548, 2549, 2551-2557, 2569-2579, 2584-L/2017, 2759-2769-L/17, 2873, 2888, 2889-2916, 2985-3055, 3071 and 3084-L/2017)

Sardar Ahmed Jamal Sukhera, ASC.

(in CP# 2597-L/2017)

Mr. Munawar us Salam, ASC.

(in CPs#3253 and 3254/2017)

For Respondent(s):

Ch. M. Zafar Iqbal, ASC.

Dr. Ishtiaq Ahmed, Commissioner

IR, Lahore

(in CPs.3253 and 3254/2017).

Not Represented.

(in all other cases)

Date of Hearing:

13.03.2018

JUDGMENT

IJAZ UL AHSAN, J.- Through this single judgment, we propose to decide the titled Civil Petitions for Leave to Appeal. One set of petitions has been filed by the Tax Department while the other has been instituted by the Taxpayers. All Petitions arise out of a common judgment of a Division Bench of the Lahore High Court, Lahore, and raise common questions of law and facts. The same are, therefore, being decided together.

2. The Federal Board of Revenue (*the Board*) formulated Audit Policy of 2015 (*Audit Policy*) pursuant to which random ballot for selection of Taxpayers for audit was conducted on 14.09.2015. Thereafter, notices were issued to the Taxpayers whose names were selected through such ballot. Some of the selected Taxpayers challenged the same through constitutional petitions before the Lahore High Court, Lahore. Their grievance was that the Board had carried out a random selection for the purposes of audit

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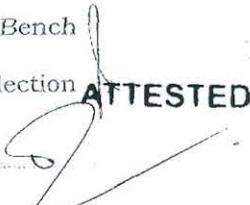
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without framing any rules. It was stated that framing of rules was mandatory on account of a judgment of the Lahore High Court dated 20.06.2015 rendered in Writ Petition No.30253 of 2014 in the case of Defence Housing Authority v. Commissioner Inland Revenue, etc (DHA Judgment). It was pointed out that through the said judgment, the Board was directed to regulate its powers for selection and conducting audit by framing appropriate rules. In view of the fact that such rules were not framed, the entire process of audit was in contravention of the said judgment.

3. It was also submitted that the Audit Policy indicated that the object of the audit was to achieve quantitative targets and revenue generation which was *ex facie* contrary to the scheme of the law and purpose of the audit. It was urged that the Audit Policy was discriminatory and the random selection was arbitrary as the Board excluded certain classes of persons from the ballot.


4. The petitions were resisted by the Tax Department and it was argued that the Board had the powers in terms of Section 214C of the Income Tax Ordinance, 2001 (*the Ordinance*); Section 72B of the Sales Tax Act, 1990 (*the Act, 1990*); and Section 42B of the Federal Excise Act, 2005 (*the Act, 2005*) to undertake an exercise of selecting Taxpayers for audit and thereafter in appropriate cases conduct such audit and proceed in accordance with law.

5. After hearing both sides, the learned Single Bench partly allowed the Writ Petitions to the extent that selection

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for audit was upheld, however, certain directions and observations were made which were to be followed by the Board in implementing the Audit Policy of 2015 and future audit policies. It was held that the State had a right to audit corresponding to taxpayer's duty to make correct declaration and comply with the statutory commands under three Federal Taxing Statutes. Selection for and conduct of audit was not detrimental to the interest of Taxpayer. However, to exercise such powers, discretion of departmental functionaries needed to be structured by framing rules and issuance of policies to ensure consistency and certainty of procedures, transparency and fairness. The learned Single Bench also held that if audit was not completed within the given timeframe, the selection shall be deemed to have been dropped. Further, it was directed that after issuance of audit report, adjudication proceedings shall be carried out by some Taxation Officer other than the one who had conducted the audit to satisfy the requirements of due process, fair trial and adhere to the command of the Constitution under Article 10A.

6. Both parties were aggrieved of the judgment of the learned Single Bench and assailed the same through Intra Court Appeals. The Appellate Bench dismissed the Appeals of the Taxpayers and partly allowed the Appeals filed by the Tax Department to the extent that the cut off date for completion of audit given in the judgment of the Single Bench i.e. 30.06.2017 was modified to 31.12.2017. It was further held that the finding of the learned Single Judge that if the audit is

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not completed by 30.06.2017 it will be deemed to have been dropped was not sustainable being contrary to the letter, spirit and policy of the law. It was accordingly modified to the effect that if the audit was not completed within the stipulated time the Audit Officer will have to explain the delay before proceeding with the matter. It was held that in such eventuality, he will have to seek an extension from the Board to complete the audit within the requested time. The Appellate Bench also held that the learned Single Bench lacked the jurisdiction to issue directions which interfered with the executive powers of the Board and that the directions given should be treated as guidelines which may be considered by the Board for inclusion in its future policies if found beneficial and deemed necessary.

7. Both parties feeling aggrieved of judgment of the learned Division Bench of the High Court, dated 18.07.2017 seek leave to appeal through the instant Civil Petitions for Leave to Appeal.

8. The learned ASC for the Taxpayers have argued that the main objective of the Audit Policy of 2015 was to meet the quantitative targets and revenue generation which was violative of the scheme, purpose and object of the law. It was vehemently argued that the Audit Policy was *ex facie* discriminatory in so far as certain classes of Taxpayers had been excluded from balloting which materially enhanced chances of being selected of those who had been included in the balloting. It was maintained that despite a categorical

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finding and direction issued by the High Court through DHA Judgment *ibid*, the Board did not frame any rules to regulate its power of selection. As such, the ballot as well as the selection which was the outcome of the ballot was contrary to the law and in violation of the afore-noted judgment. It was further pointed out that the Audit Policy gives Performance Evaluation Indicators in its Part-5. It was stated that the Performance Evaluation Indicators are all qualitative in nature which clearly showed the intention of the Board to collect and increase revenue. The learned counsel maintained that the power of selection and audit was open to abuse by the functionaries who conduct audit with a clear object of maximizing revenue generation and meeting pre-set targets. It was argued that this power impinges upon the fundamental rights of due process, to be treated in accordance with law transparency and fairness of such proceedings.

9. The learned counsel for the Tax Department by in large defended the impugned judgment. He, however, took issue with the time limit fixed by the learned Appellate Bench for completion of audit (*despite the six months extension granted*). It was submitted that where the law did not fix a time limit for completion of audit, the learned Division Bench neither had the power nor the jurisdiction to read into the Statute a time limit which had not been put in place by the Legislature. He further pointed out that in terms of Section 214C of the Ordinance, Section 72B of the Act, 1990 and Section 42B of the Act, 2005, an audit can be conducted for a

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period covering six years. As such, the finding recorded by the learned Appellate Bench that the audit needed to be completed within the same financial year in which the Taxpayer had been selected was patently erroneous, impractical and in excess of jurisdiction of the High Court.

10. We have heard the learned counsel for the parties, examined the judgments of the *fora* below and gone through the records before us. It is common ground between the parties that the Board has the power to conduct audit under the provisions of the Ordinance, the Act of 1990 and the Act of 2005. However, the Taxpayers challenged selection for audit with respect to Tax Year, 2014 and the Audit Policy of 2015 which has been formulated to undertake the exercise of audit. The power to select for audit through random or parametric balloting is provided under the law. We have repeatedly held that mere selection for audit does not cause an actionable injury to the Taxpayer. The reason and objective for conducting an audit under a scheme of self assessment, which is the regime provided by the Ordinance, is to check the accuracy, truthfulness and veracity of the returns filed by the Taxpayers. These are required to be supported by the requisite documentation and records. When a Taxpayer is selected for audit, he is called upon to explain his case where explanation is required and furnish the documents which support such explanation. In case, he satisfies the authorities that the tax returns submitted by him are truthful, reliable and supported by the necessary documentation, it may not culminate in further proceedings


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or in an amendment in the returns and enhanced tax liability may not be the outcome. This is so because mere selection for audit by itself is not a complete process. This is the beginning of a process which may or may not culminate in revision of assessment, enhanced tax liability or other adverse legal consequences. It may also be noted that once a Taxpayer is selected for audit and till such audit is completed the Taxpayer is provided ample and multiple opportunities at every step to defend his position, support his returns and offer explanations for the information provided and entries made in the tax returns. Further, even if a discrepancy is discovered he is provided yet another opportunity to explain his position before his assessment is revised. It must therefore be emphasized that the process of audit is in essence an exercise of re-verification of the truthfulness, accuracy and veracity of the returns filed by a Taxpayer in a regime of self assessment where the State reposes confidence in the Taxpayer, gives him a freehand and provides him the option to undertake his own assessment of the quantum of tax that he is liable to pay. His return automatically takes the form of a final assessment order unless it is reopened and reexamined in the circumstances provided in the law itself.

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 excluded from the ballot which has numerically increased their chances of selection. We have examined the provisions

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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


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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.

13. It has further been argued that audit for the Tax Year, 2014 was carried out without framing rules as required by the DHA Judgment. We have examined the DHA Judgment and find that it deals with parametric selection for audit and therefore proceeds on a totally different set of facts and circumstances. Random and parametric selection are two different methods of selection and the principles and rules applicable to one cannot be applied to the other. As such, the said judgment is not strictly applicable or relevant to the present case. The cases before us arise out of random ballot which as the term suggests is a random selection out of a broad class of taxpayers and is not risk based. Further, in order to conduct the audit, an Audit Policy was framed to regulate the process of audit, rationalize it, provide guidelines and streamline the process. No elaborate rules were required to be framed in this case being a pure and simple computer aided random selection. The ballot was carried through an automated process and no serious objection regarding the same has been raised. Further, we are not convinced that any elaborate regime of rules needed to be framed as all necessary regulatory requirements including methodology, standards and objectives were incorporated in the Audit Policy of 2015.

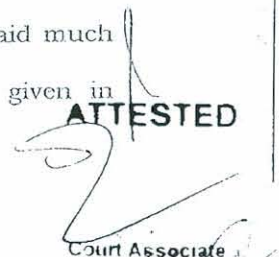
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There is no evidence that the Policy guidelines were ignored or departed from in any material manner. We are therefore inclined to agree with the finding recorded by the learned Appellate Bench that there was no real requirement for framing of specific rules for conducting the aforesaid audit and the Audit Policy provided adequate and efficient guidelines regarding the scope, parameters and methodology to be adopted and followed.

14. The learned counsel for the Taxpayers have assailed the Audit Policy on the ground that it does not settle any issue with respect to conduct of audit. Further, it gives unstructured discretion to the Audit Officer to carry out an audit. We have perused the Audit Policy and find that it sets out the aims and objectives of the audit for the Tax Year, 2014. It adequately provides the requisite methodology for selection as well as guidelines for processing audit cases. It empowers the Commissioner to assign audit cases to relevant teams to be headed by officers of appropriate levels and to ensure that all procedural requirements are followed. It also provides that discrepancies found in the documentation filed by the Taxpayer be pointed out to him before finalizing his case for audit. The Audit Policy also requires fixation of a timeframe for disposal of cases and more importantly it clearly stipulates that audit should be completed within the same financial year in which the cases are selected.

15. The learned counsel for the Taxpayers laid much stress on the Performance Evaluation Indicators given in

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part-5 of the Audit Policy. It was argued that a plain reading of the Audit Policy clearly spelt out the intention of the Board in conducting audit which unmistakably was revenue collection. It was, therefore, submitted that where Auditors and Tax Officers had to comply with and come up to the Performance Evaluation Indicators, they were bound to focus more on revenue collection rather than ensuring compliance with tax laws. Having considered the argument of the learned counsel, we find that the real purpose of conducting audit and laying parameters for the same was to ensure that uniform standards were put in place in the interest of consistency in the process of audit, the manner in which the audit is to be conducted, the standards which the Audit Officers are required to follow and consistently apply. These factors are clearly within the exclusive domain of the Board. However, in doing so, the requirements of law and due process must not be ignored.

16. A perusal of the statutory landscape makes it clear that the provisions of Sections 177 and 214 of the Ordinance; Section 25 of the Act, 1990 and Section 46 of the Act, 2005 provide a mechanism and roadmap which is required to be followed by the Taxation Officer/Auditor. In terms of Section 177 of the Ordinance, the Commissioner can call for the record or documents for conducting the audit of the tax affairs of a person, provided he furnishes reasons to do so. Such reasons must be communicated to the Taxpayer. He can also seek explanations from the Taxpayer on issues

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raised during the audit in terms of Section 177 of the Ordinance. It is only if he is convinced that the explanation furnished by the Taxpayer is not satisfactory, he may proceed to amend the assessment under Section 122 of the Ordinance, after giving the Taxpayer an opportunity to defend him. We are therefore of the view that the statutory framework together with the overarching umbrella of constitutional guarantees furnish adequate and sufficient safeguards to the Taxpayer where there is a possibility of overstepping by the Tax authorities.

17. The learned counsel for the Tax Department have vehemently argued that the date i.e. 30.06.2017 prescribed by the learned Single Bench to complete the audit was unlawful and that the extension granted by the learned Appellate Bench to 30.12.2017 was equally unsustainable. They submitted that the law did not contemplate a cut off date and the both lower *fora* erred in law in reading into the Statute what was not there. They submitted that this was not a situation where reliance could be placed on the doctrine of *casus omissus*. This was so because there was reason, rationale and background in which the Legislature intentionally omitted to set a deadline within which the audit needed to be completed. They contended that various factors beyond the control of the Tax Department traditionally hampered completion of the audit and in this regard, he pointed towards non cooperation on the part of the Taxpayers, restraining orders passed by the Courts, volume of

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work involved in the matter and lack of requisite manpower to complete audits within a specified timeframe.

18. Having considered the arguments of the learned counsel for the parties, we find that the Audit Policy itself categorically provides that the audit must be completed within the Tax Year in which a Taxpayer is selected for audit. In formulating the policy, the Board had considered all factors pointed out by the learned counsel. However, considering that delays in completion of audit not only burden the Taxpayer but also stretch the resources of the Board, it has been considered appropriate at the policy level to place a timeframe for completion of the process. While the power of the Board to conduct an audit cannot be denied, it is equally important that a Taxpayer should not be allowed to be pestered and dragged indefinitely through an unending process of scrutiny and audit of his accounts. This can have negative and disastrous effects on an ongoing and running business. We are therefore unable to agree with the argument of the learned counsel for the Tax Department that the question of time for completion of the audit can be left open ended and the Department can take as much time as it wants to complete the audit. That audit of a selected Taxpayer must be completed within a reasonable time is implicit in the Statutes and has explicitly been spelt out in the Policy guidelines of 2015 by the FBR itself which it had ample power and sufficient statutory support to do. Any other interpretation of the law, rules and the policy would not only be absurd but

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also contrary to the Policy validly and competently implemented which clearly and in no uncertain terms fixes the time for completion of audit as the financial year during which selection for such audit has been made. Further, we agree with the extension granted by the learned Appellate Bench which has considered the specific facts and circumstances brought to its notice including ongoing litigation between the parties in which restraining orders had been issued for the duration of which audit proceedings had to be stopped.

19. The learned counsel for the Tax Department vehemently argued that ability of the Department to perform its function had severely been limited and stultified by reason of placing a timeframe on completion of the audit. He submitted that on account of capacity issues it was not always possible to complete the audit within a specified time. Considering the history of audit related litigation, he submitted that completion of the audit also got delayed on account of litigation pending before the Courts of competent jurisdiction. It was also on account of time constraint issues that Taxpayers were complaining that the Taxation Officers decided the matters hastily, did not follow the mandatory processes and were more interested in meeting revenue targets rather than conducting a genuine audit. We are, however, of the opinion that long delays in concluding audit subject Taxpayers to unnecessary and repeated hearings which reflect badly on the business of the assessee as well as

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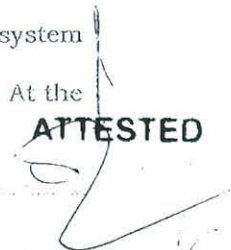
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the performance and effectiveness of the Department. We are therefore of the view that the issues and problems relating to delays in conclusion of the audits stem from shortage of capacity and non availability of adequately trained officers to conduct and complete audit in a professional and efficient manner within a reasonable time. The Board is expected to enhance and improve qualitative and quantitative aspects of its officers for the purpose of audit who are well versed with the processes, mechanisms and tools required for conducting audits effectively, efficiently and expeditiously.

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 trichotomy 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.

21. The basic requirement for any scheme of self-assessment and audit is to provide a system of checks and balances and ensure that the Taxpayer in whom the system reposes confidence acts justly, fairly and transparently. At the

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same time upon selection he must be dealt with in an evenhanded, impartial and transparent manner where-under he shall be granted ample opportunity to justify, substantiate and defend the information provided in tax returns that he voluntarily filed. In case, both sides approach this in a professional and judicious manner without unduly hampering each others work, the system would overcome the teething problems that it has been facing for the past many years. We find that the issues, objections and questions raised by the Taxpayers in their appeals questioning their selection as well as the process followed in such selection and the methodology proposed to be used for conducting audit of the tax affairs of a person have adequately been addressed by the lower *fora* and require no interference.

22. By the same token, we are also convinced that a general timeframe is necessary to be put in place in order to ensure that the tool of audit is not abused or misused to pester, torment or harass the Taxpayers on account of reasons not attributable to him. We, therefore find that the timeframe mentioned in the policy guidelines namely completion of the audit within the same financial year in which a Taxpayer is selected for audit is fair and reasonable. It must as far as possible be adhered to. However, if delays are inevitable, beyond the control of the Department and do not occur on account of any act or omission on the part of the Taxation Officers and happen on account of litigation and grant of stay orders, the Audit Officer may seek extension of time from the Federal Board of Revenue for completion of the

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audit after recording reasons in writing for seeking such extension explaining reasons for his inability to complete the audit within the stipulated time. The Board may on consideration of such reasons grant reasonable extension in order to enable completion of the audit. It is however emphasized that extension if granted should be supported by due application of mind and appropriate reasoning on the part of the Board. It should not be granted casually, repeatedly and as a matter of routine. Adherence to guidelines and timeframes would enhance confidence of the Taxpayers in the system and at the same time act as a check on lethargy and inefficiency on the part of the departmental functionaries.

23. We also find that the argument of the learned counsel for the Tax Department that timeframe for completion of the audit has to be kept flexible without capping the same is patently self defeating, unreasonable and contrary to the policy of the Department itself. Even otherwise, the Department cannot be given a free hand to keep the matters pending indefinitely which is neither in the interest of the Taxpayers nor the Department.

24. The learned counsel for the parties have not been able to convince us that the impugned judgments of the High Court suffer from any legal, procedural or jurisdictional error or flaw which may require interference by this Court. They are well reasoned and correctly interpret and apply the settled principles of law on the questions raised in these petitions.

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Associate
Judge of Pakistan
High Court

25. Above are the reasons for our short order of even date which for ease of reference is reproduced below:-

"For detailed reasons to be recorded later all these petitions are dismissed and leave to appeal is refused."



ISLAMABAD, THE
13th March, 2018

ZR/7

NOT APPROVED FOR REPORTING

Self. Mian Saqib Nisari CJ
Self. Hameed M. A. Bantial J
Self. J. Iqbal Ahsan J

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