

Selection of cases for audit:
LHC declares notices to taxpayers 'ultra vires'

Nov 27, 2020

Sohail Sarfraz

ISLAMABAD: The Lahore High Court (LHC) has declared that the notices issued to the taxpayers for selection of cases for audit, subsequent to the deletion of Section 214D of the Income Tax Ordinance 2001, are clearly ultra vires, and are held to be without lawful authority.

The LHC has set aside the notices issued by the FBR in the writ petitions [**WP 49412/2019**](#).

According to the LHC order, the notices purportedly issued under Section 214D, were challenged informing the case of the petitioner has been selected for audit as per Section 214D.

The only ground urged is that notices have been issued subsequent to the deletion of Section 214D through Finance Act, 2018, which took effect from July 1, 2018.

Hence, no notices subsequent to the date of repeal of Section 214D could have been issued to the petitioner since, no such powers vested in the officer, who has issued the notices.

The preposition has not been rebutted by the counsel for the respondents/department as undoubtedly through Finance Act, 2018, Section 214D was omitted.

Hence, the power was not available to be exercised by the officers subsequent to the omission.

The notices are clearly ultra vires and are held to be without lawful authority. Consequently, these petitions are allowed and the notices are set aside, the LHC added.

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Form No:HCJD/C-121
ORDER SHEET

For Private
(EXAMINER)
Copy Supply Section (Copy Branch)
Lahore High Court, Lahore.

**IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT**

W.P. No.49412/2019

Hamid Mahmood **Versus** Federation of Pakistan etc.

S.No. of Order/ Proceeding	Date of Order/ Proceeding	Order with signature of Judge, and that of Parties of counsel, where necessary
	<u>27.10.2020</u>	M/s Shakeel Ahmad Basra and Zahid Imran Gondal Advocates for petitioner. Mr. Ali Asad Gondal Advocate for respondents. Mr. Monim Sultan A.A.G.

This order shall decide the instant petition as well as connected petitions W.P.Nos.6321, 6319 and 6336 of 2020 as all these petitions involve identical question of law and facts.

2. These Constitutional petitions as well as connected petitions seek to challenge notices purportedly issued under section 214D of the Income Tax Ordinance, 2001 ("**Ordinance, 2001**") informing the petitioner that the case of the petitioner had been selected for audit in terms of section 214D of the Ordinance, 2001.

3. The only ground urged by the counsel for the petitioner is that notices have been issued subsequently to the deletion of section 214D of the Ordinance, 2001 through Finance Act, 2018 which took effect from 01.07.2018. Hence, no notices subsequent to the date of repeal of section 214-D of the Ordinance, 2001 could

have been issued to the petitioner since no such powers vested in the officer who has issued the notices.

3. This proposition has not been rebutted by the counsel for the respondents as undoubtedly through Finance Act, 2018 section 214D of the Ordinance, 2001 was omitted and hence the power was not available to be exercised by the officers subsequent to the omission. The impugned notices are clearly ultra vires and are held to be without lawful authority. Consequently, these petitions are allowed and the impugned notices are set aside.

(Signature)
(SHAHID KARIM)
JUDGE

A.KHOKHAR

TRUE COPY

13/11/2020

(HEAD EXAMINER)
Copy Supply Section (Copy Branch)
Lahore High Court, Lahore.

(EXAMINER)
Copy Supply Section (Copy Branch)
Authorized under Article 87 of
The Quota Order 1984.

Copy Petition No: 48237

Case No. _____

Submission Date: 27/10/20

No of Pages: _____

Fee (Rs. 2/- per page): _____

Urgent Fee (if any): _____

Total Fee (Rs.): _____

Date of Completion: _____

Date of Delivery: 13/11/2020

(Signature)