

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
 C.P. No. D-1902 of 2015.

DATE	ORDER WITH SIGNATURE(S) OF JUDGE
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1. For hearing of main case.
 2. For hearing of CMA No. 8373/15.
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20 November 2015.

Mr. S. Riazuddin, advocate for the petitioner.
 Mr. Irshadur Rehman, advocate for respondents.

Mr. S. Riazuddin, advocate has filed power on behalf of the petitioner, which is taken on record.

Learned counsel for the petitioner contends that the issue involved in this petition has already been decided by this Court in a number of petitions, including C.P. No.D-1852 of 2010, vide judgment dated 2-10-2015, which reads as under:

“In the Income Tax Ordinance, 2001, the procedure for conducting audit for tax purposes is prescribed in Section 177 and the person who has to conduct such exercise is the Commissioner. The only issue agitated before us by the counsel for the petitioners in all these connected petitions is whether Commissioner’s power to conduct audit of any person under Section 120 (1A) of Income Tax Ordinance, 2001 is solely dependent upon Board of Revenue’s decision to select persons for audit under Section 214C of the Income Tax Ordinance, 2001 or under Section 120(1A) the Commissioner in his own discretion can make such a selection.

2. There may arise an occasion and always does that accounts of a particular person are required to be audited in order to ascertain his correct income. Sections 120(1A) of the Income Tax Ordinance, 2001 can be examined to ascertain whether this Section facilitates the Commissioner to select persons for audit in his own discretion. In this regard, Sections 120(1), 120(1A), 177 and 214C of the Income Tax Ordinance, 2001 need to be examined and for the sake of convenience, these provisions are reproduced below:-

“120.(1) Where a taxpayer has furnished a complete return of income other than a revised return under sub-section (6) of section 114 for a tax year ending on or after the 1st day of July, 2002,--

- (a) the Commissioner shall be taken to have made an assessment of taxable income for that tax year, and the tax due thereon, equal to those respective amounts specified in the return; and
- (b) the return shall be taken for all purposes of this Ordinance to be an assessment order issued to the taxpayer by the Commissioner on the day the return was furnished.”

120 (1A) Notwithstanding the provisions of sub-section (1), the Commissioner may conduct audit of the income tax affairs of a person] under section 177 and all the provisions of that section shall apply accordingly.

(2) A return of income shall be taken to be complete if it is in accordance with the provisions of sub-section (2) of section 114.

- (3)
- (4).....
- (5).....
- (6).....

177 Audit.-(1) The Commissioner may call for any record or documents including books of accounts maintained under this Ordinance or any other law for the time being in force for conducting audit of the income tax affairs of the person and where such record or documents have been kept on electronic data, the person shall allow access to the Commissioner or the officer authorized by the Commissioner for use of machine and software on which such data is kept and the Commissioner or the officer may have access to the required information and data and duly attested hard copies of such information or data for the purpose of investigation and proceedings under this Ordinance in respect of such person or any other person:

Provided that—

- (a) the Commissioner may, after recording reasons in writing call for record or documents including books of accounts of the taxpayer; and
- (b) the reasons shall be communicated to the taxpayer while calling record or documents including books of accounts of the taxpayer:

Provided further that the Commissioner shall not call for record or documents of the taxpayer after expiry of six years from the end of the tax year to which they relate.

- (2)
- (3) omitted.
- (4) omitted.
- (5) omitted.
- (6) After completion of the audit the Commissioner may, if considered necessary, after obtaining taxpayer’s explanation on all the issues raised in the audit, amend the assessment under sub-section

(1) or sub-section (4) of section 122, as the case may be.

(7) The fact that a person has been audited in a year shall not preclude the person from being audited again in the next and following years where there are reasonable grounds for such audits.

- (8)
- (9).....
- (10).....
- (11).....
- (12).....
- (13).....
- (14).....
- (15).....
- (16).....
- (17).....

214C. Selection for audit by the Board.—(1) The Board may select persons or classes of persons for audit of Income Tax affairs through computer ballot which may be random or parametric as the Board may deem fit.

(2) Audit of Income Tax affairs of persons selected under sub-section (1) shall be conducted as per procedure given in section 177 and all the provisions of the Ordinance, except the first proviso to sub-section (1) of section 177, shall apply accordingly.

(3) For the removal of doubt it is hereby declared that Board shall be deemed always to have had the power to select any person or classes of persons for audit of Income Tax affairs.

(underlining is ours)

3. Section 177 and Section 214C when read together by no means suggest that the power of the Board to select persons for audit under Section 214C is the only mode of selection of persons for audit. It can be seen that Section 120(1A) begins with non-obstante clause thereby override the provisions of Section 120(1). This means that notwithstanding the fact that a tax return filed under Section 120(1) is taken as an assessment order, the Commissioner has been empowered to conduct audit under Section 120(1A) in case he might deem fit to do so and thereby can amend a tax return. Thus under Section 120(1A), a tax return which is taken to be an assessment order, can be reassessed and amended after conducting audit. Now this object can never be achieved if the Commissioner in his own discretion is unable to select a person for audit and has to necessarily depend only on the selection made by the Board of Revenue under Section 214C. In our view, Section 120(1A) does not in any way suggest that the power of the Commissioner to conduct audit is solely dependent upon selection of persons under Section 214C. Had the authority to select persons for audit been solely vested in the Board under Section 214C then there was no need to incorporate Section 120(1A). It can

also be seen that under Section 177(7) a person can be audited again and again where there are reasonable grounds for doing so. Now the words 'where there are reasonable grounds for such audit' contained in Section 177(7) mean that through application of mind a decision is to be reached to audit a particular person. Obviously, it is the Commissioner, in whose mind, the reasonable grounds may emerge to conduct audit of a particular person. Had audit of a person been made solely dependent on Board's selection in random computer balloting then the words 'where there are reasonable grounds to such audit' contained in section 177(7) would become absolutely redundant. Thus, Section 120(1A), in our view, vests in the Commissioner, the power to select a person for audit if there exists reasonable ground for doing so, irrespective of the fact that section 120(1A) mentions the words 'conduct audit' and not 'to select a person for audit'. This power to conduct audit is granted to the Commissioner so that where he feels necessary, he can bring any assessment under scrutiny. This would be impossible to do if such power is considered to be solely dependent upon selection of persons by the Board under Section 214C. Additionally, the second proviso to Section 177 prohibits the Commissioner from conducting audit after expiry of six years, whereas, there is no such prohibition when persons are selected for audit under Section 214C. Hence the limitation contained in the second proviso of Section 177 is applicable to selection made by the Commissioner under Section 120(1A) but no such limitation is applicable when random selection is made under Section 214C. This also shows that there are two distinct provisions of the Income Tax Ordinance, 2001 on the basis of which persons can be selected for audit, one is circumscribed by period of limitation and the other is not.

4. It was also argued that where person-specific audit is required to be undertaken, Section 122(5) of the Income Tax Ordinance can be invoked and therefore invoking Section 121(1A) of the said Ordinance for selecting a taxpayer for audit was not justified. In order to address this argument, it is necessary to examine the scope of Section 122(5). For convenience sake Section 122 (5) is reproduced as under:-

“122(5) An assessment order in respect of a tax year, or an assessment year, shall only be amended under sub-section (1) and an amended assessment for that year shall only be further amended under sub-section (4) where, on the basis of definite information acquired from an audit or otherwise, the Commissioner is satisfied that-

- (i) any income chargeable to tax has escaped assessment; or
- (ii) total income has been under-assessed, or assessed at too low a rate, or has been the subject of excessive relief or refund; or
- (iii) any amount under a head of income has been misclassified.”

(underlining is ours)

5. In our view Section 122(5), when it refers to audit, does not facilitate in determining as to which authority is to make selection of persons for conducting audit. When it speaks of audit, Section 122(5) only facilitates in amending an assessment order on the basis of definite information that has been acquired from an audit that has already taken place. So power to select and conduct audit of a person does not emanate from Section 122(5). It has thus become evident that Section 122(5) by itself does not confer any power on the Commissioner in the selection of persons for audit. This can only be done, as discussed above, under Section 120(1A). If Section 120(1A) is interpreted in a manner that the Commissioner is not conferred with the power to decide on his own to conduct audit of a particular person then it means that audit has to be left to the decision of the Board of Revenue only under Section 214C.

6. The power to impose tax vests in the State. A taxpayer is accountable to the State for his incomes so that the leviable tax can be collected. State has every right to ensure that tax is properly calculated and paid. This obligation of a person to pay correct amount of tax means that a vested right has accrued to the State to examine the account books of a taxpayer. Audit of accounts is the most effective mode of determining the correct liability of tax. Right to conduct audit being absolute, it is hard to imagine that such a right could be left mainly to chance i.e. computer balloting or as and when the Board decides. The power of the Board to choose persons for audit is a general power which is in addition to the power of the Commissioner under Section 120(1A). How then could we hold that when the Commissioner wants to select a specific person to conduct audit, he does not have the discretion to do so under any provision of the Income Tax Ordinance, 2001. If the Commissioner is unable to select a person to conduct audit under Section 120(1A) then there would be no other provision in the Income Tax Ordinance, 2001, which would facilitate the taxing authority to examine a tax return and if circumstances suggest conduct person-specific audit. If we accept the interpretation of petitioner's counsel then a person-specific audit can never be possible even though a tax return may be required by the taxing authority to be scrutinized in detail. It may be true that frequent audit of the same person at times become a nuisance for him but to make such an effective tool to determine correct income inoperative just because Section 214C exists cannot be accepted. The Commissioner then would never be able to select a particular person for conducting audit though circumstances may exist where such a decision has to be taken. This can never be the intention of the legislature. Such an interpretation of Section 214C would make the provisions of Section 120(1A) utterly redundant. In this regard, following example can be quoted with considerable advantage. Example: Mr. X, a businessman is thought by the tax authorities to be involved in tax evasion. The Commissioner serves notice on him. Mr. X takes the stand

that he is running his business at a loss which claim is not accepted. The Commissioner needs to audit his accounts in order to ascertain true income of Mr. X's business. If the Commissioner had to depend on the computer balloting or on the decision of the Board under Section 214C to conduct audit and does not have discretion of his own under any provision of Income Tax Ordinance, 2001 to select a person for audit then Mr. X's account may never come under scrutiny. If the power to conduct audit under Section 177 is made contingent upon only on Board's decision exercised under Section 214C then it means that Mr. X can lawfully deny audit of his account books unless his name appears in the selection made by the Board. Such an interpretation of Section 120(1A) and 214C would lead to disastrous consequences. No provision of Income Tax Ordinance, 2001 suggests that the power to select a person for audit, only vests with the Board of Revenue. Thus after examining the provisions of Section 120(1A), 122(5), 177 and 214C of the Income Tax Ordinance, 2001, it clearly appears that the law visualizes two distinct situations for conducting audit. The first is provided under Section 120(1A) which, in our view, is based on exercise of discretion on the part of the Commissioner and the other is the power of the Board to select persons or class of persons under Section 214C. We are therefore of the view that by invoking Section 120(1A) any person can be called upon by the Commissioner in his discretion to submit accounts for audit if reasonable grounds exist for doing so. Hence no case for interference under Article 199 is made out.

7. Vide short order dated 25.08.2015 all these 47 connected petitions were dismissed and these are the reasons for the same."

Learned counsel submits that since common questions of law and facts are involved in this petition, therefore, the same may also be decided on the same lines so that in case the petitioner intends to seek remedy of appeal before the Supreme Court, he may do so. Order accordingly.

Chief Justice

Judge

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

C.P. No. D-6757 of 2015.

DATE	ORDER WITH SIGNATURE(S) OF JUDGE
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1. For hearing of Misc. No. 33771/15.
 2. For hearing of main case.
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20 November 2015.

Mr. Abdul Baqi Lone, advocate for the petitioner.
Mr. Bashir Ahmed, advocate for respondents 1-2.
Mr. Ovais Jamal, advocate for respondent No.3.

Counsel for the petitioner and respondents jointly request that Collective Bargaining Agent (CBA), Karachi Dock Labour Board, may also be joined as a party to this petition. Order accordingly.

Learned counsel for the petitioner is also directed to join the student who will be affected in case this petition is allowed, as a party to this petition.

Let amended title be filed by the petitioner within one week and, thereafter, notice be issued to the newly added parties.

Adjourned to 27.11.2015.

Chief Justice

Judge

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

C.P. No. D-2930 of 2015.

DATE	ORDER WITH SIGNATURE(S) OF JUDGE
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For hearing of main case

20 November 2015.

Mr. Muhammad Arif, advocate for the petitioner.
Mr. Saifullah, AAG alongwith Dr. Asadullah and Dr. Iqbal
Nabi.

Learned AAG has filed a statement which is signed by some Focal Person on behalf of respondent No.1, which is taken on record. Alongwith this statement a letter dated 18.11.2015 of the Finance Department has been annexed which shows that certain amount has been released, which, according to the learned AAG, was to discharge the old liability for the year 2005 of the petitioner. Counsel for the petitioner is satisfied and, states that in view of such statement this petition may be disposed of. Order accordingly.

Chief Justice

Judge