

**24th KTBA CASE LAW UPDATE
(December 06, 2023)**

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Dear Members,

A brief update on a recent judgment by the Supreme Court of Pakistan on **“Automatic Selection for Audit upon late Return Filing won’t Apply if the Extension Application was not rejected”**, is being shared with you for your knowledge. The order has been attached herewith the update.

This update is in line with the efforts undertaken by our **“CASE LAW UPDATE COMMITTEE”** to apprise our Bar members with important court decisions.

You are equally encouraged to share any important case law, which you feel that should be disseminated for the good of all members.

You may contact the Committee Convener Mr. Shams Ansari or at the Bar’s numbers 021-99212222, 99211792 or email at info@karachitaxbar.com & ktba01@gmail.com

(Zafar Ahmed)

President

December 06, 2023

(M. Mehmood Bikiya)

Hon. General Secretary

December 06, 2023

**24th KTBA CASE LAW UPDATE
(December 06, 2023)**

Automatic Selection for Audit upon late Return Filing won't Apply if the Extension Application was not rejected

Appellate Authority: Supreme Court

Appellant: Commissioner Inland Revenue, Lahore

Section: 119 & 214D of the Income Tax Ordinance, 2001 [the Ordinance].

Detailed judgment was issued on November, 02 2023 [Civil Appeal No. 247/2021].

Background: The Supreme Court has ruled against the automatic selection of cases for audit under section 214D in cases where the request for extension of time in filing income tax returns was not rejected by the Commissioner Inland Revenue. Section 214D was introduced by the Finance Act, 2015, to arrest delays in return filings and introduced compulsory tax audits as punishment deterrence for late filers. The Section was deleted by the Finance Act, 2018 but despite its deletion, late returns filed during the relevant period continued to be subjected to tax audit notices.

Decision of the Court:

First Ruling of the Court: Section 214D had an automatic application, with limited exceptions, bypassing usual audit filters in the Ordinance. The Supreme Court emphasized strict interpretation of the section that the conditions specified must precisely exist for it to be made applicable. Even minor discrepancies, no matter how slight or inconsequential, were to be viewed in favour of the taxpayer.

Second Ruling of the Court: In this case, for Section 214D to apply, the Commissioner either has to extend or not extend the return filing date under Section 119 for thirty (30) days, the return had to be filed belatedly beyond that extended period in order to be called as late filing. On the other hand the Commissioner in the instant case, after receiving the extension application, took no action at all. Inaction or failure to reject the extension application in writing would be considered as the application being pending. Importantly, the section couldn't be deemed applicable through implication; a written refusal by the Commissioner was necessary.

Third Ruling of the Court: Section 177 imposes significant and burdensome audit requirements on a taxpayer. Unlike some other provisions in the Ordinance, the selection for audit under this section is not automatic. Instead, it involves a process that includes various statutory filters and considerations outlined by the Federal Board of Revenue. These provisions have led to legal controversies and disputes, with courts addressing them on different occasions.

Fourth Ruling of the Court: Applying Section 214D, a severe provision, through implication or by deeming would be incorrect. Even if seen as supporting the recovery and procedural aspects of the Ordinance, the section's penal nature and disproportionate measures make it crucial to interpret it strictly. In this context, until the extension application is officially addressed with a written order, the section cannot be considered applicable. In the context of Section 214D, the thirty-day condition applies not from the original due date for filing the return but from the date when the Commissioner grants an extension.

Comments: Within three years of its introduction, section 214D resulted in a greater chaos than creating deterrence in late return filing: Cases, which do not require audit were also selected, merely because of late filing. This created an unnecessary workload on the Field formation as well.

In order to close the audits, section 214E was introduced by Finance Act, 2018, whereby a scheme was introduced. Instructions were issued by the Board to Field formations for conclusion of audits, which were not closed under section 214E.

In some cases, audit notices were issued after the deletion of section 214D, taxpayers approached the High Courts for relief. In a judgment passed in W.P. No. 49412/2019, the Lahore High Court accepted the petition and declared the audit as illegal.

Whereas, in a case reported as 2019 PTD 447, contrary position was taken and petitions were dismissed. The High Court of Sindh in CP D No. 412/2021 dated 15-03-2023 also rejected the contention of the taxpayer and upheld the selection due to late filing of the return.

The latest Supreme Court judgment creates an exception only for such cases where applications for extension of time were pending before the Commissioner and were not disposed of through an order in writing. The judgment of the Supreme Court shall apply only where facts as elaborated in the judgment are common. Otherwise, the judgment is silent on the vires of section 214D, which remains untouched by the Supreme Court.

DISCLAIMER:

This update has been prepared for KTBA members and carries a brief narrative on a detailed Judgment and does not contain an opinion of the Bar, in any manner or sort. It is therefore, suggested that the judgment alone should be relied upon. Any reliance on the summary in any proceedings or project would not be binding on KTBA.

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Best regards

(Zafar Ahmed)
President

(M. Mehmood Bikiya)
Hon. General Secretary

(Shams M. Ansari)
Convener: Case Law Update Committee

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE MUNIB AKHTAR
MR. JUSTICE SHAHID WAHEED
MS. JUSTICE MUSARRAT HILALI

Civil Appeal No.247 of 2021

(Against judgment dated 22.4.2019
passed by the Lahore High Court,
Lahore in ICA No. 18093/2019.)

The Commissioner Inland Revenue, Lahore ... **Appellant**

vs

M/s. Atta Cables (Pvt.) Ltd., Lahore, etc. ... **Respondents**

For the Appellant : Mr. Ibrar Ahmed, ASC
(via video-link, Lahore)

For respondent No.1 : Mr. Javed Iqbal Qazi, ASC
(via video-link, Lahore)

Date of Hearing : 02.11.2023

JUDGMENT

Munib Akhtar, J.: This appeal arises out of the Income Tax Ordinance, 2001 ("Ordinance") and relates to the tax year 2015. According to the department (i.e., the Commissioner concerned) the respondent taxpayer came within the ambit of s. 214D of the Ordinance, which had been newly added by the Finance Act, 2015 and which provided for automatic audit under s. 177 of those taxpayers that fulfilled the conditions thereof. (Section 214D has since been omitted by the Finance Act, 2018.) The exact basis on which the department so contended was that the taxpayer had not filed its return for tax year 2015 within the date required. It is common ground that, firstly, the date for filing the return was 21.01.2016; secondly, on that date the respondent properly filed an application under s. 119 for extension of time; and thirdly, that the Commissioner did not

respond to said request. On such basis, the department claimed that s. 214D applied.

2. Being aggrieved by the notices served on it in this regard, the taxpayer challenged the same by filing a writ petition in the Lahore High Court. A learned single Judge, relying on an earlier (single Bench) decision of that Court reported as *Muhammad Mujahid Qureshi and others v Federation of Pakistan and others* 2019 PTD 535 dismissed the petition. The respondent filed an intra-Court appeal, which was allowed by a learned Division Bench, which relied on a decision of the Sindh High Court reported as *Commissioner of Inland Revenue v Independent Newspaper Corp (Pvt) Ltd.* 2019 PTD 447. The department petitioned this Court for leave to appeal, which was granted vide order dated 22.03.2021.

3. Before us, the mainstay of the case put forward by learned counsel for the appellant was that the decision in *Independent Newspaper Corp* was erroneous and that the point had been correctly decided by the learned single Judge. Learned counsel for the taxpayer supported the impugned judgment. After hearing learned counsel, it was announced in Court that the appeal stood dismissed.

4. Section 214D, as presently relevant, was as follows:

"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; ...

(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. A bare perusal of s. 214D shows that it was a coercive—some might say draconian—measure to ensure, inter alia, that returns were filed within the stipulated period. A taxpayer in default automatically came within the ambit of s. 177, the

principal provision in the Ordinance relating to audit. The audit requirements of s. 177 are broadly stated and certainly impose a heavy, cumbersome and onerous burden on the taxpayer. In the ordinary course, and in terms of other provisions of the Ordinance which need not be considered in detail, selection for audit is not automatic but is a result that comes about after going through various statutory filters, including such as are set out in various circulars issued by the Federal Board of Revenue. These provisions have generated much legal controversy and many disputes, and have been considered by the Courts on different occasions. Section 214D, inasmuch as it applied automatically (subject to certain exceptions contained in its subsections (3) and (4)) and therefore bypassed the filters otherwise built into the Ordinance before an audit could be undertaken, had therefore to be construed and applied strictly. More particularly, the conditions that had to exist for the section to be attracted had to apply precisely. Any deviation or discrepancy, howsoever minor, slight or even inconsequential it may otherwise appear to be would apply, and go, in favor of the taxpayer. In the present case, the section would have applied if the Commissioner had, under s. 119, extended the period for filing the return (subject to a thirty day condition) and the return was not filed within such extended period. Now, as noted, the fact of the matter was that the Commissioner never took any action on the application, which was otherwise properly filed, for extension. It is to be noted that subsection (3) of s. 119 specifically requires the Commissioner to grant the extension in writing. Since s. 214D had to be applied exactly, this meant that for purposes of this provision the refusal of the Commissioner also had to be in writing. In other words, any inaction on the part of the Commissioner, or a failure to reject or refuse the application for extension in any manner other than in writing, would mean that for the purposes of s. 214D the application would be regarded as pending. There could be no refusal or denial of extension by implication. That would, in effect, introduce a deeming fiction into s. 214D, i.e., the section would be deemed to apply if, after a "reasonable" period had passed, the Commissioner had still not made an order on the application under s. 119. For a provision as harsh and severe as s. 214D to

apply merely by way of implication or on a deemed basis would be incorrect. Even if the section were to be considered as merely in aid of, and ancillary to, the recovery and procedural mechanisms of the Ordinance, the severity of its application was penal in nature. At least as presently relevant, the section was hugely disproportionate measure for the "evil" it was seeking to remedy. The portions thereof now under consideration required a strict construction. Clearly therefore, until the application for extension was actually disposed of by an order in writing the section would not become applicable. Furthermore, the condition of thirty days would have to apply, in the context of s. 214D, not from the due date for the filing of the return, but the date of the order made by the Commissioner granting an extension. (Of course, if the Commissioner refused the extension in writing, then the section would apply from the date of such order, subject to any remedies available to the taxpayer to challenge such refusal.) Therefore, it was our view that in the facts and circumstances presented in this case, s. 214D never became applicable. The writ petition was thus rightly allowed by the learned Division Bench.

6. We may note, in order to avoid any confusion, that a failure to file a return within the due date and the fate of an application for extension filed under s. 119 and how it is disposed of (or not, as the case may be), can have different consequences and implications depending on which provision of the Ordinance is under consideration. We are concerned only with s. 214D and therefore whatever has been said here is to be so understood and applied.

7. Insofar as the reported judgment of the Lahore High Court in *Muhammad Mujahid Qureshi* is concerned, the learned single Judge correctly regarded herself as bound by the same, and followed it. However, and quite obviously, the learned Division Bench was not so bound and could, as in fact happened, take a different view. *Muhammad Mujahid Qureshi* cannot, in light of what has been stated above, be regarded as correctly decided and it is so declared. As regards the decision of the Sindh High Court in *Independent Newspaper Corp*, that did not, as such,

involve any question relating to s. 214D and it is therefore not necessary for us to consider the correctness thereof.

8. For the foregoing reasons, this appeal was dismissed at the conclusion of the hearing by an order announced in Court.

Judge

Judge

Judge

Islamabad, the
2nd November, 2023
Naveed/*

Approved for reporting