

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT

MR. JUSTICE NASIR-UL-MULK
MR. JUSTICE MUHAMMAD SAIR ALI
MR. JUSTICE TARIQ PARVEZ

C. A. NOS. 704 TO 707 & 2353-2354 OF 2006
(On appeal from the judgments of the Lahore High Court, Lahore, dated 30.6.2005, 12.7.2005 & 7.9.2005, passed in W. P. Nos. 11337, 11352, 10721, 12179, 11771/2005 & 9300 of 2004 respectively)

The Regional Commissioner of Income Tax & others Appellants
(in all appeals)

Versus

M/s ghulam Naseer Dying Respondent
(in C.A.704/06)

M/s Meer Shopping Centre Respondent
(in C.A.705/06)

M/s Harvest Topworth International Respondent
(in C.A.706/06)

Mian Muhammad Jehangir and another Respondents
(in C.A.707/06)

M/s Hamsafar TPR Sole. 1882-C & others Respondents
(in C.A.2353/06)

M/s Rapid Cargo (Pvt) Ltd & another Respondents
(in C.A.2354/06)

For the Appellants: Mr. Muhammad Ilyas Khan, ASC
(in all appeals)

For the Respondents: Ex-parte (in C.A.Nos.704 & 705/2006)

For the Respondents: Nemo (in C.A.No.706/2006)

For Respondent No.1: Nemo (in C.A.No.707/2006)

Respondent No.2: Ex-parte (in C.A.No.707/2006)

For Respondent No.1: Nemo. (in C.A.No.2353/2006)

Respondent Nos.2-3: Ex-parte (in C.A.No.2353/2006)

For Respondent No.1: Nemo. (in C.A.No.2354/2006)

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Secretary
Supreme Court of Pakistan
Islamabad

Respondent No.2: Ex-parte (in C.A.No.2354/2006)

Date of Hearing: 13.09.2011

JUDGMENT

NASIR-UL-MULK, J.- These appeals by leave by the Court filed by the Regional Commissioners of Income Tax of different Regions and others, are directed against the judgments of the Lahore High Court in a number of writ petitions of similar nature, assailing the validity of Circular dated 17.12.2002 providing guidelines/instructions for selection of cases submitted under the Self Assessment Scheme for total audit by the Regional Commissioners. The writ petitions were allowed on the basis of earlier judgment of the High Court in Writ Petition No.9979 of 2003, Para 23 whereof was reproduced which reads as under:-

"23- Although I am not in agreement with the arguments of the petitioners that a scheme once issued could neither be amended nor extended as an exercise of one time delegated power, yet I am in agreement that such change or extension cannot be detrimental to the assesses after returns had been filed and a final and decisive step had been taken by the assesses in response to the scheme notified for the year. It is correct that availing the scheme is optional for an assessee and that every assessee of the Income Tax Department can file a return under section 55 to be treated and assessed under normal law. However, that fact alone does not justify the issuance of parameters of denial of scheme to the assessee individually or collectively after filing of the returns. A glance at the

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guidelines dated 17.12.2002 makes it clear that para 9(a)(ii) of the scheme has completely been substituted. The revenue is totally silent as to why these guidelines could not be issued as part of para 9, simultaneously with the scheme or at least before the filing of the returns. The shroud of uncertainty appears to have deliberately been allowed to remain covering guidelines only in order to have unchecked discretion to select a case for total audit. The withholding of the parameters or guidelines of selection of cases out of the scheme may not necessarily be mala fide. However, withholding of the guidelines till the filing of these returns does not appear bona fide either. The State does not cheat the citizens. The revenue, therefore, is not correct in claiming that the purpose of these guidelines was to provide for impartiality and transparency."

2. The learned counsel for the appellants has produced before us a copy of the judgment of this Court in "Commissioner of Income Tax and others v Media Network and others (2006)94 TAX 293 (S.C. Pak.)", disposing of a number of appeals wherein the question in the present cases was discussed and decided in favour of Commissioner of Income Tax and others. The Court disagreed with the above reasoning of the High Court and held in Para 23 of the judgment:-

"23. Now, we have to examine whether the policy guidelines, dated 17.12.2002 were invalid for the reason of not having been issued either before or contemporaneously with the promulgation of the Self-Assessment Scheme. There was no

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requirement of section 59 or any other provision of the Ordinance or rule for issuance of guidelines either before or along with the scheme. The very object of the provisions of section 59(1-A) would have been frustrated if the income tax payers were informed, before hand of the categories of cases or persons which would be selected for total audit. If that was done, the possibility of tax evasion under the scheme at a massive scale could not be ruled out. The assesseees were required to file their true returns under the Scheme as far as possible. The previous publication of the guidelines would have been a hay-day for all the tax evaders as they would be knowing before hand that their cases were not going to be selected or scrutinized. As long as the income tax authorities acted within the four corners of section 59 of the Ordinance and the Self-Assessment Scheme and did not abuse their power or authority, the objection as to the provisional or/and final selection of cases for total audit was not sustainable. The guidelines for the selection of cases by the Regional Commissioners would not suffer from any taint of invalidity merely because certain categories had been identified for total audit based on the reasonable classification which was not violative of Article 25 of the Constitution. There was no requirement of law for issuance of the guidelines by the C.B.R. side by side with the announcement of the Scheme as they were to follow the Scheme after its announcement and not to precede it."

3. In view of the above pronouncement declaring the guidelines embodied in circular dated 17.12.2002 as valid,

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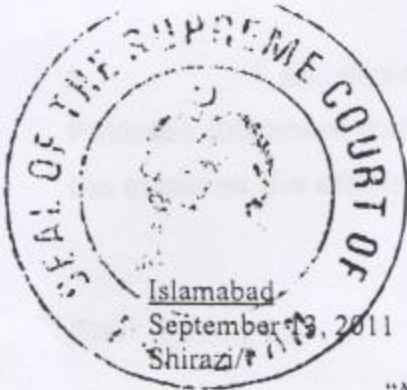
Sepp. In-charge
Supreme Court of Pakistan
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notwithstanding its promulgation after the Self-Assessment Scheme, we allow these appeals, set aside the impugned judgments of the High Court and resultantly restore the orders of the Regional Commissioners/Tax Officers impugned before the High Court.

Chief Justice
Justice
Justice

Certified to be True Copy

[Signature]
17/9/11
Superintendent
Supreme Court of Pakistan
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"NOT APPROVED FOR REPORTING"

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Case No: _____ Civil/Criminal

Date of Presentation: 12/9/11

No. of Words: _____

No. of folios: (15)

Registration Fee Rs: 5.00

Copy Fee In: 9.30

Court Fee stamps: 14.80

Date of Completion of _____

Copy: 17/9/11

Date of delivery of _____

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