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Judgment Sheet

IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT

Case No: W. P. 6581/2012.

M/s. Sethi and Sethi
Sons.

Versus The Federation of Pakistan,
etc.

JUDGMENT

Date of hearing:	31.05.2012.
Petitioner by:	M/s. Muhammad Ajmal Khan, Ali Sibtain Fazli, Nasar Ahmad, Hasham Ahmad Khan, Ahmad Sibtain Fazli, Omer Gill and Mohammad Raza, Rana Muhammad Afzal, Mian Abdul Ghaffar, Mian Masood Ahmad, Ch. Zahid Attique, Rana Hamad Aslm, Ch. Abdul Razzaque, Khurram Shahbaz Butt, Abdul Samil Qureshi, Muhammad Farooq Sheikh, M.M. Akram, Ch. Ishtiaq Ahmad, Hashim Aslam Butt, Shahbaz Siddique, Muhammad Mohsin Virk, Ikram-ul-Haq Sheikh, Muhammad Ejaz, Shahbaz Siddique, Advocates.
Respondents by:	M/s. Dr. Rana M. Shamim, Sarfraz Ahmad Cheema, Ch. Zafar Iqbal, Kausar Parveen, Ch. Imtiaz Elahi, Mian Yusuf Umar, Tahir Zia Mahar, Sajjad H. Rizvi, Ehsan-ur-Rehman Sheikh, Advocates. Mr. Saeed-ur-Rehman Dogar, Legal Advisor-FBR.
Amici Curiae:	Dr. Ikram ul Haq and Mr. Mansoor Usman Awan, Advocates.
Assisted by:	Mr. Nadeem Ahamd Sohail Cheema, Research Associate/Civil Judge, LHCR.

Syed Mansoor Ali Shah, J:- This consolidated judgment shall also decide writ petitions mentioned in Schedule A to this judgment as common questions of law and facts arise in these

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2. Brief facts of the titled case are that the petitioner is engaged in the business of trading and is duly registered for the purposes of Sales Tax Act, 1990 ("Act") at Lahore and the business operations of the petitioner do not extend beyond the Province of Punjab.

3. FIR no. 678/DCI/STFE/Jinnah Impex/2011 dated 09.05.2011 was lodged against M/s. Jinnah Impex and others with the Directorate General of Intelligence and Investigation-FBR 81-C, Block-6, P.E.C.H.S. Karachi under various provisions of the Act. It was alleged that the accused businesses committed "tax fraud" by issuing fake sales tax invoices and unlawfully adjusting inadmissible input tax thereby depriving the government exchequer of its legitimate revenue to the tune of Rs 10.401 billion. As a consequence, the Deputy Director of the Directorate General of Intelligence and Investigation, Karachi (respondent no.5) served the petitioner with impugned Notice/Summons dated 27.02.2012 issued under section 37 of the Act. The said summons alleged that investigation into the matter has revealed that the petitioner has obtained inadmissible input tax on account of fake sales tax invoices issued by dummy units nominated in the said FIR.

4. Instead of submitting to the jurisdiction of the said Officer, the petitioner has challenged the very assumption of

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jurisdiction by the said Officer through impugned Notice/ Summons before this Court. It is additionally prayed that the above-mentioned FIR may also be quashed. Collaterally, the petitioner also challenges the legality of SRO 56(I)/2010 dated 02.02.2010, whereby, according to the petitioner, the officers of the Directorate General of Intelligence and Investigation, FBR, have been unlawfully authorized to exercise powers under Act, especially under section 37 of the Act.

5. The primary argument of the learned counsel for the petitioner is that the Deputy Director (respondent No.5) could not have issued impugned Notice / Summons under section 37 of the Act to the petitioner as it is registered and doing business in Lahore which is outside the territorial jurisdiction of the said Officer. It is further contended that the impugned FIR (in which the petitioner has not been nominated as an accused) be quashed as it is based on *malafide*. In the end the learned counsel for the petitioner in support of his main challenge submitted that the Deputy Director (respondent no.5) does not enjoy the powers under section 37 of the Act to issue the impugned Notice as no such powers could be conferred under sections 30 and 30E of the Act on an officer of the Directorate General of Intelligence and Investigation, FBR under the Act. Main thrust of the learned counsel for the petitioner has been

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that the impugned Notice/Summons issued by Respondent no.5 be declared illegal and set aside.

6. Learned counsel for the respondent department at the very outset raised a preliminary objection regarding the maintainability of the titled petition on the ground that the impugned Notice / Summons, as well as, the FIR having been issued and registered at Karachi, respectively, hence the matter falls outside the territorial jurisdiction of this Court. He referred to Order dated 09.12.2010 issued by the Directorate General of Intelligence and Investigation, Federal Board of Revenue, Islamabad to show that the Regional Office of the Directorate General at Karachi has territorial jurisdiction limited to the Province of Sind and cannot be assumed to be performing functions in connection with the affairs of the Federation throughout the country or within the territorial jurisdiction of this Court.

7. On merits, learned counsel submitted that respondent no. 5 has the jurisdiction to issue the impugned notice/summons under section 37 of the Sales Tax Act, 1990. Cases initiated prior to 30th June, 2011 by the Directorate General of Intelligence and Investigation-FBR are to remain with the said Directorate and referred to SRO nos. 775(I)/2011 and 776(I)/2011 both dated 19.08.2011 in this regard. He continued

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to submit that the Directorate General (Intelligence and Investigation) Inland Revenue was constituted vide amendment brought about in section 30A of the Sales Tax Act, 1990 through Finance Act, 2011 dated 01.07.2011. Hence, matters under investigation prior to the said date are to continue under the jurisdiction of the Directorate General Intelligence and Investigation-FBR. He stressed, that in the absence of any statutory provision to the contrary, transfer of pending proceedings/cases to the new Directorate General (Intelligence and Investigation), Inland Revenue was not permissible. He also referred to SRO 776(I)/2011 to show that SRO 56(I)/2010 stands superseded and the new notification has not been assailed by the petitioner. He also submitted that FIR in the instant matter was lodged on 09.05.2011 and therefore the instant matter is prior to 30.06.2011. He lastly submitted, explaining the scope of section 37 of the Act that respondent no.5 can summon any person (across the country) to produce evidence regarding the matter under inquiry, as long as, the registered persons under inquiry fall within the territorial jurisdiction of Respondent no.5, which is the Province of Sind.

8. Arguments heard. The rival submissions now fall for consideration.



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9. The preliminary objection raised by the respondents is that the instant petition is not maintainable, as this Court lacks territorial jurisdiction to deal with the grievance raised by the petitioner. In order to examine this question it is essential to identify the main grievance agitated by the petitioner or the "dominant object" of the petition agitated before this Court. Contents of the petition and the arguments of the parties show that the petitioner has primarily laid challenge to Notice/Summons dated 27.02.2012 issued by the Deputy Director, Directorate of Intelligence and Investigation-FBR, Karachi (respondent no. 5) and the FIR lodged by the respondent Directorate General in Karachi on 09.05.2011 against several businesses/units operating in Karachi (excluding the petitioner) which forms the background for the issuance of the impugned Notice/Summons.

10. The petitioner, collaterally and somewhat half-heartedly, challenged vires of SRO no. 56(I)/2010 (notification) dated 02.02.2010 whereby the Deputy Director, Directorate General, Intelligence and Investigation, FBR, Karachi has been extended the powers under section 37 of the Act. In fact, the said notification stands superseded vide SRO no. 776(I)/2011 dated 19.08.2011 and is, therefore, no more in the field. The

and some units at Lahore but not including the petitioners.

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petitioner has not assailed the subsequent notification. The power enjoyed by Respondent no.5 is drawn under SRO no. 775(I)/2011 dated 19.08.2011 (for cases initiated prior to 30.06.2011) which is also not under challenge. The "dominant object" or the primary grievance and paramount purpose of the petition is unmistakably visible i.e., to seek a declaration that impugned Notice/Summons issued by Respondent no.5 at Karachi are illegal and without lawful authority, in contrast with the collateral objective of the petition i.e., laying challenge to the legality of SRO no. 56(I)/2010.

11. The requirement to determine the "dominant object" or the primary grievance of the petitioner or the paramount purpose of the petition is essential for the purposes of identifying the actual PERSON against whom writ is being sought. Which in turn becomes relevant for carrying out circumferential determination whether the PERSON falls within the territorial jurisdiction of this Court. This methodology has already received pontifical approval by the august Supreme Court of Pakistan in Sandalbar Enterprises (Pvt.) Ltd. v. Central Board of Revenue and others, (PLD 1997 SC 334). Justice Ajmal Mian speaking for the august Court held:

"We may observe that it has become a common practice to file a writ petition either at Peshawar, or

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Lahore, or Rawalpindi or Multan etc. to challenge the order of assessment passed at Karachi by adding a ground for impugning the notification under which a particular levy is imposed. This practice is to be depreciated. The court is to see, what is the dominant object of filing of the writ petition. In the present case, the dominant object was not to pay the regulatory duty assessed by a Customs official at Karachi.... (emphasis supplied)

12. A series of judgments have since followed this tradition. Reliance is placed with advantage on Dr. Zahoor Ahmed Shah v. Pakistan Medical and Dental Council through Secretary and another, (2005 MLD 718), Dr. Qaiser Rashid v. Federal Secretary, Ministry of Foreign Affairs, Government of Pakistan, Islamabad, (PLD 2006 Lahore 789), Amin Textile Mills (Pvt.) Ltd. v. Islamic Republic of Pakistan and 3 others, (1998 SCMR 2389), Sh. Abdul Sattar Lasi v. Federation of Pakistan and 6 others, (2006 CLD 18), Sohail Jute Mills (Pvt.) Ltd. Rawalpindi through Chairman v. Central Board of Revenue, C.B.R., Islamabad through Chairman, (1997 CLC 574) and LPG Association of Pakistan through Chairman v. Federation of Pakistan and 8 others, (2009 CLD 1498).

13. Having identified the "dominant object," the primary grievance or the paramount purpose of the petition, I venture to examine whether the impugned Notice/Summons issued by Deputy Director, Directorate General of Intelligence and Investigation, Karachi (Regional Office) and FIR dated

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09.05.2011 registered at Karachi by the said Directorate can be challenged before this Court.

14. Relevant portion of Article 199 of the Islamic Republic of Pakistan, 1973 is reproduced hereunder for ready reference:

Article 199: Jurisdiction of High Court.

Subject to the Constitution, a High Court may, if it is satisfied that no other adequate remedy is provided by law:---

(a) on the application of any aggrieved party, make an order:

(i) directing a person performing, within the territorial jurisdiction of the Court, functions in connection with the affairs of the Federation, a Province or a Local Authority, to refrain from doing anything he is not permitted by law to do, or to do anything he is required by law to do; or

(ii) declaring that any act done or proceeding taken within the territorial jurisdiction of the Court by a person performing functions in connection with the affairs of the Federation, a Province or a local authority has been done or taken without lawful authority and is of no legal effect; or".... (emphasis supplied)

15. The above article provides that writs in the nature of prohibition, mandamus and certiorari can be issued by this Court against a person who is: (i) performing functions; or has (ii) done an act or; (iii) has taken proceedings (iv) within the territorial jurisdiction of this Court; in connection with the

affairs of the (v) Federation; (vi) Province or; (vii) local authority.

16. The test is to ascertain whether the PERSON against whom writ is being sought is performing functions or has done an act or initiated proceedings against the petitioner within the territorial jurisdiction of this Court. Prior to applying the test, it is important to verify the extent of territorial jurisdiction enjoyed, under the law, by the PERSON itself. For this it needs to be seen if the PERSON, under the law, is performing functions in connection with the affairs of the Federation or the Province or the Local Authority.

17. The phrase "performing functions in connection with the affairs of the Federation, Province or Local Authority" has already been explained by Anwar ul Haq, J. in Salahuddin and 3 others v. Frontier Sugar Mills & Distillery Ltd. Tokht Bhai and 10 others, (PLD 1975 SC 244), which reads:

"...The primary test must always be whether the functions entrusted to the organization or person concerned are indeed functions of the State involving same exercise of sovereign or public power; whether the control of the organization vests in a substantial manner in the hands of the Government; and whether the bulk of the funds is provided by the State. If these conditions are fulfilled, then the person, including a body politic or a body corporate, may indeed be regarded as a person performing functions in connection with the affairs of the Federation or a Province; otherwise not."

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18. Reliance is also placed on a more recent judgment passed in Pakistan International Airline Corporation and others v. Tanweer-ur-Rehman and others" (PLD 2010 SC 676). FBR, therefore, under the constitution is a PERSON "performing functions in connection with the affairs of the Federation." Under Federal Board of Revenue Act, 2007 the jurisdiction of FBR extends to the whole of Pakistan. Similarly, persons performing functions in connection with the affairs of the Province or the local authority, already have a defined territorial extent, which either extends to the entire Province or is limited to an area within the Province.

19. A PERSON performing functions in connection with the affairs of the FEDERATION as compared to a Province or local authority, is a PERSON who besides carrying the attributes listed in *Salahuddin Case*² is by law vested with a territorial jurisdiction that spans across the country i.e., possessing a national or country wide territorial jurisdiction as opposed to provincial or sub provincial jurisdiction. Federal Government or any person performing functions in connection with the affairs of the Federation enjoys ubiquitous presence everywhere across the country having territorial jurisdiction all over Pakistan or in other words, within the territorial jurisdiction of

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² ibid

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every High Court in the country. In this case it will be up to the aggrieved person to choose the High Court of his convenience. Similarly, the territorial jurisdiction of a person performing functions in connection with affairs of the Province or the Local Authority enjoys presence all over the Province and within the territorial jurisdiction of the local authority.

20. Persons performing functions in connection with the Province or Local Authority have a clearly demarcated territorial jurisdiction and pose little challenge for the purposes of applying the test of territorial jurisdiction under Article 199 of the Constitution as the corresponding High Court in the Province assumes territorial jurisdiction. Assessment of territorial jurisdiction of this Court in a case where the PERSON is performing functions in connection with the affairs of the Federation is more complex. As explained above, such a PERSON under the law enjoys a nationwide territorial jurisdiction, hence, is legally everywhere in the country. This ubiquitous presence, infact, waters down the importance of territorial jurisdiction and renders it immaterial where the office or residence of such a PERSON is located. As a corollary, any act done or proceedings initiated being part of the functions performed by the said PERSON will also be considered to have been performed everywhere in Pakistan. The real test, therefore,

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is the nature of territorial jurisdiction of the PERSON against whom the writ is being sought. It is for this reason that a tax levied by FBR (an act done) or a Notice issued by FBR (proceedings initiated) can be challenged before any High Court in Pakistan even though the notification or notice is issued in Islamabad. This issue has come up before the courts earlier and the above principle, viewed in a different nuance, has been approved and has since been consistently followed. Reliance with advantage is placed on Asghar Hussain v. The Election Commission of Pakistan, etc., (PLD 1968 SC 387), Messrs Al-Iblagh Limited, Lahore v. The Copyright Board, Karachi and others, (1985 SCMR 1758), LPG Association of Pakistan through Chairman v. Federation of Pakistan through Secretary, Ministry of Petroleum and Natural Resources, Islamabad and 8 others, (2009 CLD 1498), Muhammad Idrees v. Govt. of Pakistan through Secretary, Establishment Division, Islamabad and 5 others, (1998 PLC (CS) 239), Messrs Lucky Cement Limited v. The Central Board of Revenue and others, (PLD 2001 Pesh 7), Khaista Gul v. Akbar Khan and 7 others, (PLD 1975 Pesh 146), Trading Corporation of Pakistan (Private) Limited v. Pakistan Agro Forestry Corporation (Private) Limited and another, (2000 SCMR 1703). Sh. Abdul Sattar Lasi v. Federation of Pakistan and 6 others, (2006 CLD 18). Nawabzada Muhammad Shahabuddin v. The Chairman,

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Federal Land Commission, (1996 CLC 539) and Gulzar Ahmad Khan v. The Chief Election Commissioner of Pakistan, Islamabad and 7 others, (PLD 1997 Lahore 643).

21. There is yet another dimension to the above principle. In managing its day-to-day affairs a PERSON, performing functions in connection with the affairs of the Federation may often delegate its powers to its officers. Such delegation ordinarily limits the power of the officer within a specified territorial domain. In such a situation, the all encompassing countrywide territorial jurisdiction of the PERSON is localized to a specific limited territorial jurisdiction³. For example, Collector of Customs, an officer of FBR, has specific territorial jurisdiction limited to a particular area, as opposed to the countrywide territorial jurisdiction enjoyed by FBR. Such an officer, therefore, performs a localized function in connection with the affairs of the Federation in a particular area and will be considered to be performing functions within the territorial jurisdiction of the High Court within whose territorial jurisdiction the territorial jurisdiction of the Officer/PERSON falls. In the present case the Deputy Director is an Officer of

³ In case the delegate enjoys the same powers as the delegator then there is no departure from the principle discussed above. For example in the LPG case- the officer of the Competition Commission of Pakistan who issued the Show Cause Notice was an officer enjoying countrywide jurisdiction hence the above principle applied (this is not discussed in the LPG Judgment but has been verified independently).

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the Directorate General of the Intelligence and Investigation, FBR at Karachi. As per Order dated 09.12.2010 issued by the FBR,⁴ the said Officer enjoys specific territorial jurisdiction confined to Karachi. Similarly a person having territorial jurisdiction limited to Karachi has registered the FIR at Karachi. Therefore, it cannot be said that the Deputy Director or the Directorate is performing functions all over Pakistan as compared to FBR, therefore, only the High Court with corresponding territorial jurisdiction will assume jurisdiction in the matter.

22. It is axiomatic that any act done or proceedings taken by such an Officer/PERSON are also within the territorial jurisdiction enjoyed by the said Officer, under the law. Additionally, "act done" or "proceedings taken" are closely linked with the locale of the Officer or authority doing that act or initiating the proceedings. Hence, the location of the effect of the act or order passed against the aggrieved person or the receipt of correspondence of any proceedings initiated against the aggrieved person is immaterial. What matters is the territorial jurisdiction of the PERSON and not of the "aggrieved person." I am fortified in my reasoning by the law laid down in Sandalbar Enterprises (Pvt.) Ltd. v. Central Board Of Revenue

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and others, (PLD 1997 SC 334), Messrs Ibrahim Fibres Ltd. through Secretary/Director Finance v. Federation of Pakistan through Secretary/Revenue Division and 3 others, (PLD 2009 Karachi 154), Sabir Din v. Government of Pakistan through Secretary, Ministry of Defence and others, (1979 SCMR 555), Zulfikar Ali Bhutto v. The Federation of Pakistan through the Secretary, Ministry of Interior, Government of Pakistan Islamabad and 4 others, (PLD 1980 Karachi 113), Sh. Abdul Sattar Lasi v. Federation of Pakistan through Secretary, Ministry of Law, Justice and Parliamentary Affairs, Islamabad and 6 others, (2006 CLD 18), Muhammad Shoaib v. Project Director, National ICT Scholarship Program, Ministry of Information Technology, Islamabad and another, (2011 CLD 23), Sohail Jute Mills (Pvt.) Ltd. Rawalpindi through Chairman v. Central Board of Revenue, C.B.R., Islamabad through Chairman, (1997 CLC 574), Amin Textile Mills (Pvt) Ltd. v. Islamic Republic of Pakistan and 3 others, (1988 SCMR 2389) and A. R. Khan & Sons (Pvt.) Ltd. v. Federation of Pakistan through Secretary, Ministry of Commerce, Islamabad and 3 others, (2010 CLD 1648). It is pointed out that Flying Kraft Paper Mills case⁵ does not disturb the reasoning of Sandalbar Enterprises case.⁶ First, because the objection regarding

⁵ Flying Kraft Paper Mills (Pvt) Ltd v. CBR, etc (1997 SCMR 1874)

⁶ PLD 1997 SC 334

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territorial jurisdiction was not allowed to be raised in this case and second, the order under challenge was also of the CBR (as it then was) in addition to the Collector⁷.

23. In case, where a PERSON, enjoying limited territorial jurisdiction, does an act or passes an order or initiates proceedings by locating himself outside his legally earmarked territorial jurisdiction, the High Court within whose territorial jurisdiction such an act is done or order passed or proceedings initiated will assume jurisdiction under article 199 of the Constitution. This is being pointed out for the sake of clarity and does not apply to the facts of the present case.

24. It is also clarified that the above test is to be applied strictly in terms of Article 199 of the Constitution and is not dependent on section 20 of the Civil Procedure Code, 1908

⁷ Saiduzzaman Siddiqui J held in para 6 of the Judgment reported as 1997 SCMR 1874: "...respondents failed to raise objection as to the territorial jurisdiction of Rawalpindi Bench of the Lahore High Court which was the court of first instance in this case, and there was no allegation that any prejudice was caused to the respondents by filing the petition before the High Court at Rawalpindi, we are not inclined to allow the respondents to raise the objection as to the territorial jurisdiction of Lahore High Court, Rawalpindi Bench, for the first time before this court. Apart from it, we find that besides the order of Collector of Customs and Central Excise, in the first petition filed before the High Court at Rawalpindi, the order of CBR which functions at Islamabad, was also questioned.....not only the order of Collector was challenged but relief was also claimed against CBR and as such it could not be argued that in the circumstances, the Rawalpindi Bench of the Lahore High Court has no territorial jurisdiction in the matter...."

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which cannot be relied upon to expand or interpret the Constitution. Reliance is placed on Sh. Abdul Sattar Lasi v. Federation of Pakistan through Secretary, Ministry of Law, Justice and Parliamentary Affairs, Islamabad and 6 others, (2006 CLD 18).

25. In the present case, the notice/summons have been issued by the Deputy Director of the Director General, Intelligence and Investigation, FBR, Karachi. Secondly, the FIR has been also registered with the said Directorate in Karachi. The said Directorate and its Officers enjoy a specific territorial jurisdiction, which is restricted to Karachi. Hence the said Officer is performing functions and has initiated proceedings (impugned Notice/Summons) outside the territorial jurisdiction of this Court.

26. I am of the considered view that the "dominant object" of the present petition is to challenge impugned Notice/Summons dated 27.02.2012 issued by Respondent no.5 and to seek quashment of FIR no. 678/2011 dated 09.05.2011 registered at Karachi. For the above reasons, this Court cannot entertain both these challenges. Therefore, without commenting on the merits of the case, I hold that this petition is not maintainable before this Court and is, therefore, dismissed with no order as to costs.

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Similarly, for the same reasons, all the petitions mentioned in Schedule A are also dismissed with no order as to costs.

27. Before parting with the judgment, I acknowledge with thanks the valuable assistance rendered by the *amici curiae* and the Research Assistant at the Lahore High Court Research Centre. 4

Sd-/SYED MANSOOR ALI SHAH
JUDGE.

APPROVED FOR REPORTING

TRUE COPY

In Case No.

Shan
18/11/12

Examiner: J.C.B (Copy Branch)
Lahore High Court, Lahore.

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SCHEDULE A

Sr. No.	Writ Petition Number
1.	9401/2012
2.	6791/2012
3.	7443/2012
4.	6793/2012
5.	6792/2012
6.	7174/2012
7.	7297/2012
8.	7662/2012
9.	7779/2012
10.	7905/2012
11.	7780/2012
12.	7398/2012
13.	7867/2012
14.	7901/2012
15.	8569/2012
16.	9101/2012
17.	9556/2012
18.	9573/2012
19.	9582/2012
20.	9716/2012
21.	8908/2012
22.	8909/2012
23.	8910/2012
24.	8990/2012
25.	9046/2012
26.	9156/2012
27.	10084/2012
28.	10329/2012
29.	10454/2012
30.	11593/2012
31.	12352/2012
32.	12527/2012
33.	12649/2012
34.	12821/2012
35.	13711/2012
36.	14138/2012
37.	6129/2012

Sd-/BYED MANSOOR ALI SHAH
JUDGE.

Iqbal