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**CHIEF COMMISSIONER  
INLAND REVENUE**  
Large Taxpayers Unit,

Tax House, Syed Mauj-e-Darya Road, Lahore

Ref. No. 9577

19<sup>th</sup> April, 2015

The Member (IR-Operations),  
Federal Board of Revenue  
Islamabad

**SUBJECT: JUDGEMENT OF LAHORE HIGH COURT IN WP NO.28035 OF 2014 TITLED AS NOON SUGAR MILLS LTD ON THE ISSUE OF CALLING OF RECONCILIATION UNDER RULE 44(4) OF THE INCOME TAX RULES, 2002 READ WITH SECTION 161 OF THE INCOME TAX ORDINANCE, 2001**

Chief (L-III)  
Lit-SC)  
L&Auto)  
S(T-I)  
S(T-II)  
Chief (L-III)  
Lit-HC)  
S(Lit-HC)  
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file

Kindly refer to the subject and find enclosed judgment of honourable Lahore High Court Lahore, in WP No.28035 of 2014 titled as Noon Sugar Mills vs. Federation of Pakistan.

The issue involved in this judgment is that the petitioners challenged the issuance of notices by the departmental officers for calling reconciliation statement under Rule 44(4) of the Income Tax Rules 2002 read with Section 161 of the Income Tax Ordinance, 2001, with the contention that calling for such statement amounts to an audit of income tax affairs of the Petitioners and the proceedings initiated under the notices cannot be carried out without prior selection for audit under Section 214(C) of the Income Tax Ordinance, 2001.

The honourable Lahore High Court, Lahore, has dismissed all writ petitions with the following observation:

"In view of the aforesaid, the impugned notices have been issued in accordance with law under Rule 44(4) of the Rules. Mere filing of monthly statements will not absolve the Petitioners from their obligation to reconcile their statements with respect to the


FBR 8-044 No. 52359-R  
Received in Mr. J. Chiswick on 14/04/15

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withholding tax deducted or collected. Since the Petitioners are performing their duties as withholding agents of the Government, the Respondents are well within the statutory right to reconcile the information provided by the Petitioners for the purpose of the withholding tax."

The issue raised in this Petition was pleaded by Dr. Ishtiaq Ahmed Khan, Addl. Commissioner (Legal) LTU, Lahore, and due to valuable assistance provided to the Court as well as departmental counsels, the issue has been decided in favour of the department, which is highly appreciable.

Since an important issue has been decided in favour of revenue, it is requested that the said judgment, if deemed appropriate, may be circulated among the field formations for information and application in the similar cases.

  
(CH. SAFDAR HUSSAIN)  
Chief Commissioner

**Encl: As above**

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1. The Member (Legal) Federal Board of Revenue, Islamabad
2. S.A. to Chairman, Federal Board of Revenue, Islamabad

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Judgment Sheet  
IN THE LAHORE HIGH COURT AT LAHORE  
JUDICIAL DEPARTMENT

W. P.No.28035 of 2014

Noon Sugar Mills Limited *Versus* Federation of Pakistan etc.

J U D G M E N T

Date of Hearing	05.03.2015.
Petitioners By:	Presence of Petitioners' counsels as in Schedule-A appended with this judgment.
Respondents By:	Mr. Muhammad Zikria Sheikh, DAG. Mr. Nasar Ahmad, DAG along with Dr. Ishtiaq Ahmad, Additional Commissioner (Inland Revenue). Mr. Muhammad Ilyas Khan, Advocate for Respondents (in W.P Nos.30264, 34450, 34515, 34530, 30665, 32697, 33084, 33170, 33337, 33874 and 8815 of 2014, WP Nos. 88, 115, 180, 182, 302, 322, 419, 499, 1406, 2578, 2653, 3282, 3304, 3305, 3510, 4852 and 5622 of 2015). Mr. Liaquat Ali Chaudhry, Advocate for Respondent, CIR (in W.P Nos.32214, 32404 of 2014 and WP No.1406/2015) Mr. Sarfraz Ahmad Cheema, Advocate for the Respondents (in W.P Nos.34474, 31079, 31223, 31608, 31900, 32821, 33338, 33532 and 33569 of 2014 and WP Nos. 2648/2015). Mr. Muhammad Yahya Johar, Advocate for Respondent FBR (In WP Nos.31786/14). Mr. Ibrar Ahmad, Advocate for Respondent FBR (in W.P No.28035/2014). Mr. Shahid Sarwar Chahil, Advocate for Respondent CIR, FBR (in W.P Nos.33570, 33571, 33617 and 33874 of 2014 and WP Nos.114, 321 and 322 of 2015).

**Avesha A. Malik J.** This common judgment decides upon the issues raised in the Writ Petitions detailed in Schedule 'A', appended with this judgment. The Petitioners have impugned the Notices



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("Notices") issued by the Deputy Commissioner Inland Revenue under Section 161 of the Income Tax Ordinance, 2002 ("Ordinance") read with Rule 44(4) of the Income Tax Rules, 2002 ("Rules").

2. The case of the Petitioners is that the Notices have been issued by the Deputy Commissioner (IR) who is not authorized under Rule 44(4). It is their case that the Rules specifically provide that the Commissioner (IR) has to issue notice, so only he can issue notice under the Rules. The Petitioners are also aggrieved by the fact that proceedings under Rule 44(4) are actually an audit of the *income tax affairs* of the Petitioners which cannot be carried out by a notice simplicitor.

3. Mr. Shahid Pervez Jami, learned counsel for the Petitioners argued that the Notices issued by the Deputy Commissioner (IR) calling for reconciliation under Rule 44(4) are illegal and unlawful because the power to issue notice is vested with the Commissioner (IR) yet the Notices have been issued by the Deputy Commissioner (IR). Learned counsel argued that there is no delegation of power with respect to Rule 44(4) and only the Commissioner (IR) can issue notices under the stated Rules as the law specifically empowers him to do so. He argued that Section 210 of the Ordinance is not applicable to the Rules because if the law contemplated delegation of powers under the Rules, it would have specifically mentioned when the power could be delegated. The fact that there is no provision for delegation of power under the Rules means that the notices were issued without jurisdiction, hence liable to be declared illegal.

4. Learned counsel further argued that calling for reconciliation of statement under Rule 44(4) amounts to an audit of the *income tax affairs* of the Petitioners and that the proceedings initiated under the Notices cannot be carried out without prior selection for audit under Section 214(C) of the Ordinance. Learned counsel argued that the substantive power to call for books of accounts and the record is under

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Section 177(1) of the Ordinance for which it is necessary to first select the Petitioners for audit of their *income tax affairs*. Learned counsel also argued that even in this respect the Petitioners accounts are audited every year by the Federal Board of Revenue and as such the Respondents cannot continuously under the garb of Rule 44(4) audit the accounts of the Petitioners. Learned counsel argued that the power under Rule 44(4) of the Rules is unguided and the taxpayer is subjected to an inquiry into its tax affairs which is against the mandate of the law. Learned counsel argued that there are many accounting issues such as entries which are on accrual basis, which are totally discounted by the Respondents. He explained that withholding tax can only be collected/ deducted when the payment is made and it cannot be claimed against accrued payments which are yet to be made. He argued that the Respondents do not give consideration to this fact and discount it totally which in turn prejudices the rights of the Petitioners.

5. Mr. Khurram Shahbaz Butt, learned counsel for the Petitioner in WP No.5189/2015 stated that in addition to the arguments already made, the case of the Petitioner in this writ petition is that he has been subjected to an audit even though his accounts have not closed for that particular year. The Notice was issued for the months of July 2014 to September 2014, however, he argued that the Notice was issued during the financial year without waiting for the financial year to close. He stated that this is against the spirit of an audit and the Respondents cannot initiate audit proceedings in the middle of the tax year.

6. Mr. Sarfraz Ahmad Cheema, learned counsel for the Respondents first addressed the issue of jurisdiction. Learned counsel argued that the Commissioner (IR) can delegate his authority under Section 210 of the Ordinance by an order in writing to any officer of the Inland Revenue subordinate to him. He argued that the Commissioner can delegate all or any of his powers and functions



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subject to the provisions of Section 210(1A) of the Ordinance. He argued that in this case the relevant Commissioners (IRs) delegated their powers under Section 210 of the Ordinance. Learned counsel argued that so far as the issues raised against the Notice under Rule 161 read with Rule 44(4), the same have already been decided by this Court in WP No.9866/2014 on 12.5.2014 and WP No.9015/2011 on 5.6.2014. He said that as such no adverse order has been passed against the Petitioners and they have simply been called upon to provide documents in order to ascertain whether they have deducted the tax on payments received by them in accordance with law. He argued that every Petitioner is a withholding agent for the Government of Pakistan and is liable to file statements of withholding tax in the prescribed format within the statutory time as given under Section 165 of the Ordinance. The tax as collected or deducted by the Petitioners belongs to the Government of Pakistan and it must be deposited in the government treasury. Therefore Rule 44(4) of the Rules simply calls for reconciliation of the information provided in the statement submitted under Section 165 of the Ordinance.

7. Mr. Muhammad Yahya Johar, learned counsel for the Respondents argued that under the Ordinance, there are two types of taxable liabilities, one a taxpayer must declare his own taxable income and pay the required tax and secondly the taxpayer acts as a withholding agent of the Government of Pakistan which requires him to deduct or collect tax against payments received in terms of Section 161 of the Ordinance. The taxpayer is required to file monthly statements as well as a yearly statement under Section 165 of the Ordinance to show the total withholding tax deducted under Division III of Chapter 12 of the Ordinance and the total amount of tax collected under Division II of Chapter 12 of the Ordinance. Rule 44(4) of the Rules provides for the forms in which statements under Section 165 have to be filed and for the statutory period within which they

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have to be filed. Sub Rule 4 of Rule 44 provides that a Commissioner can call for a reconciliation statement by a taxpayer with respect to all amounts mentioned in the monthly or yearly statement filed under Section 165. Therefore, he argued that it is not an audit of the *income tax affairs* of the Petitioners but is a reconciliation statement to ensure that the Petitioners, as withholding agents of the Government, have deposited all amounts that they were required to collect or deduct of withholding tax in the government treasury.

8. Mr. Muhammad Ilyas Khan, Senior Counsel for the Respondents argued that under Rule 43 of the Rules, the Petitioners are required to make payment into the Government treasury of the taxes withheld by them within seven days. Further argued that the Petitioners are also required to e-file monthly statements of tax deduction for salary payments as well as for non-salary payments made by them, even if no tax is collected or deducted under Section 165 of the Ordinance. Further argued that the tax deducted or collected pertains to the receipt of payment and there is no impact on the taxpayer. Further argued that the Petitioners are required to disclose the names, NTN, address, particulars of payments made and reasons of non-deduction of tax in case no tax is deducted as required in columns 15 to 18 of the statement under Section 165 of the Ordinance prescribed for payments other than salary payments.

9. Heard and record perused.

10. The preliminary objection raised by the Petitioners with respect to the Notices impugned is that an illegal person has issued the Notices under Rule 44(4) of the Rules. Rule 44(4) of the Rules is reproduced below:-

**44. Annual statement of tax collected or deducted.** (1) *An annual statement required to be furnished under sub-section (1) of section 165 for a financial year shall be in the form as set out in Part VIII and Part IX of the Second Schedule to these rules.*



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*(4) A person required to furnish the statements under sub-rule (1) or (2) shall, wherever required by the Commissioner, furnish a reconciliation of the amounts mentioned in the aforesaid annual and (monthly) statements with the amounts mentioned in the return of income, statements, related annexes and other documents from time to time.*

The argument of the Petitioners is that the Commissioner is the competent authority to issue notice under Sub Rule 4. Delegation of power is provided under the Ordinance. Section 210 read with Section 211 of the Ordinance reads as under:-

***210. Delegation.** (1) The Commissioner (subject to sub-section (1A) may, by an order in writing, delegate to any (officer of Inland Revenue, subordinate to the Commissioner) all or any of the powers or functions conferred upon or assigned to the Commissioner (subject to sub-section (1A) under this Ordinance other than the power of delegation.*

***211. Power or function exercised.** (1) Where, by virtue of an order under section 210 (an officer of Inland Revenue) exercise a power or performs a function of the Commissioner, such power or function shall be treated as having been exercised or performed by the Commissioner.*

In terms of Sections 210 and 211 of the Ordinance, the Commissioner can delegate his powers to any officer subordinate to him except the powers of amendment of assessment as contained in Sub Section (5A) of Section 122 of the Ordinance. In such cases, only the power can be delegated to an officer not below the rank of Additional Commissioner Inland Revenue. The argument that the delegation of power does not apply to the Rules is totally misconceived. The Rules are framed under Section 237 of the Ordinance and are subordinate to the substantive law being the Ordinance. The Ordinance provides for delegation of power under Section 210 and 211 which is applicable to the Rules framed under the Ordinance. Therefore the Rules do not



have to specifically provide for delegation of power by the Commissioner. As per Section 210 of the Ordinance, the Commissioner can delegate his powers by an order in writing which order was admittedly issued. Hence there is no merit in this objection.

11. The substantive issue raised by the Petitioners with respect to the Notices issued under Section 161 of the Ordinance read with Rule 44 of the Rules is that calling for a reconciliation statement amounts to an audit into the *income tax affairs* of the Petitioners. Their argument is that an audit is subject to conditions under Section 214C and subject to selection under Section 177 of the Ordinance. The emphasis of the argument raised by the Petitioners is that use of the word "*income tax affairs*" under Section 177 of the Ordinance as well as under Section 214C of the Ordinance includes information pertaining to the collection and deduction of withholding tax which cannot be done separately under the garb of Rule 44(4) of the Rules. The Petitioners do not dispute the fact that they are required to deduct or collect withholding tax and they are admittedly filing returns under Section 165 of the Ordinance. They dispute the calling for the reconciliation statements under Rule 44(4) of the Rules. Under Section 165 of the Ordinance every person collecting tax under Division II of this Part (or Chapter XII) or deducting tax from a payment under Division III of this Part (or Chapter XII) shall furnish to the Commissioner a monthly statement in the prescribed form set out in the stated Section. Rule 44(4) of the Rules empowers the Commissioner to call for a reconciliation statement of the amounts mentioned in the monthly statements filed by the Petitioners. Since the monthly statement is specifically with respect to the withholding tax deducted and collected by the Petitioners, it is not an audit of the *income tax affairs* of the Petitioners. Audit under Section 214C read with Section 177 of the Ordinance is of a wider scope involving the tax affairs of the Petitioners whereas Rule 44(4) of the Rules is

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specifically with respect to the withholding tax. It is a verification of the amounts mentioned in the statements to ensure that the Petitioners have deducted or collected tax in accordance with law. The Petitioners are agents of the Government and the amounts collected and deducted by them are amounts which belong to the Government and have to be deposited into the Government treasury. Therefore reconciliation of the statements filed by the Petitioners under Rule 44(4) of the Rules cannot be equated with an audit of the *income tax affairs* of the Petitioners.

12. The Notices issued in these petitions mentioned in Schedule-A have all challenged the calling for reconciliation of amounts mentioned in the monthly statements. The requirement of furnishing a reconciliation statement is not an adverse order because it does not prejudice the Petitioners rights or interest nor does it infringe upon any right of the Petitioners. The Ordinance requires the Petitioners to file monthly statements with respect to the withholding tax collected or deducted by them and Rule 44(4) of the Rules requires the Respondents to reconcile the information provided in the statements so as to ensure that the correct tax amounts have been deducted or collected by the Petitioners. Calling for such information is the right of the Respondents Authorities duly conferred under the law. The Respondents have issued notices to the Petitioners calling upon them to furnish reconciliation statements along with evidence of deduction and payment of tax whenever such deductions or collections are made. At this stage, the Notices issued under Rule 44(4) of the Rules simply calls for certain information. There is no finding or ruling against the Petitioners meaning that there is no adverse order issued against them. For those cases pursued under Section 161 of the Ordinance read with Rule 44(4) of the Rules, no determination has been made and the matter is still pending. All accounting objections or otherwise can be made at the time when the case is heard. It was held



in the case titled Deputy Commissioner of Income Tax/Wealth Tax, Faisalabad and others v. Messrs Punjab Beverage Company (Pvt) Ltd. (2007 PTD 1347) that tendency of by-passing the remedy provided under law, and resort to Constitutional jurisdiction of High court was deprecated. In view of the contents of the notice the Department only contemplates to take action against them. The petitioner instead of rushing to the High Court and consuming sufficient time should have submitted reply before invoking the jurisdiction of the High Court. We have held in the judgment that such practice is to be deprecated because if merely on the basis of show-cause notice proceedings are started then in such position department would never be in a position to proceed with the cases particularly the recovery of revenue etc. Thus keeping in view the circumstances of the case we are of the opinion that respondent had wrongly availed remedy under Article 199 of the Constitution.

13. In view of the aforesaid, the Impugned Notices have been issued in accordance with law under Rule 44(4) of the Rules. Mere filing of monthly statements will not absolve the Petitioners from their obligation to reconcile their statements with respect to the withholding tax deducted or collected. Since the Petitioners are performing their duties as withholding agents of the Government, the Respondents are well within the statutory right to reconcile the information provided by the Petitioners for the purposes of the withholding tax.

14. Under the circumstances, all the petitions are **dismissed**.

(AYESHA A.MALIK)  
JUDGE

*Announced in an open Court on 2<sup>nd</sup> day of April, 2015.*

JUDGE

**Approved for Reporting**

JUDGE