

**IN THE OFFICE OF AHMAD SHUJA KHAN MEMBER (AUDIT/CRM)  
FEDERAL BOARD OF REVENUE, ISLAMABAD**

**ORDER**

In pursuance of the directions of the Honorable Lahore High Court, Lahore in the Writ Petition No. 4025 of 2017 titled M/s. Shahraj Fabrics Pvt. Ltd Vs Federation of Pakistan etc vide Court's order dated 31.10.2023 to Member (Audit) to decide the representation of the petitioner afresh in terms mentioned in connected Writ Petition No. 15473 of 2016 for determination of the applicability of audit parameters, whether selected rightly or otherwise. Relevant portion of Para-4 of the Court's order in connected Writ Petition is reproduced below:

*"The deficiency in the impugned order is also not denied by all the learned counsels for the parties, therefore, with their concurrence, the impugned order dated 31-12-2015 is, hereby set aside, and the case is again remanded to the present incumbent Member (Taxpayer audit) for his decision afresh in terms of Para 9 of the Order of this Court passed in W.P. No. 30253 of 2014."*

2. The relevant excerpt from the decision dated 26.06.2015 in W.P. No. 30253 of 2014 titled Defence Housing Authority Vs CIR, etc [2015LHC5856] gives mandate to the undersigned to examine and decide the issue of selection of cases for audit for Tax Year 2011 is given below for ease of comprehension: -

*"9. These cases are referred to Syed Ijaz Hussain Shah, Member (Audit) for his examination and decision in his personal capacity. All the petitioners shall send their representations alongwith supported documents to the Member. The Member (Audit) shall examine each case at his end and in case he forms an opinion that taxpayer was wrongly selected, he shall pass order accordingly. If his opinion is otherwise, he shall summon the taxpayer and shall provide an opportunity of being heard and thereafter a speaking order shall be passed. The needful shall be done within 60 days. If in his opinion, after hearing the taxpayer a parameter is not highly risk based, he shall drop the selection, on such parameter."*

3. A brief description of the facts leading up to the aforementioned Judgment of the Honorable, Lahore High Court is that for the Tax Year, 2011, FBR selected cases for audit through computer balloting on the basis of certain parameters under Section 214C of the Income Tax Ordinance, 2001. This selection was challenged by M/s Premier Industrial Chemical Manufacturing Co before the Honorable Lahore High Court, Lahore [(2013) 107 Tax 21]. The Honorable Court set aside the selection of cases for audit for Tax Year 2011 with the direction that FBR should initiate the process of selection for audits afresh, by framing separate sets of parameters for each tax type. Accordingly, the selection of audit for the Tax Year 2011 was done afresh under the Courts guidelines by the FBR through Computer Ballots on the basis of following parameters:-

**PARAMETERS – INCOME TAX – CORPORATE.**

- 1) Value of imports in Customs differ from declared Imports in Income Tax returns by 5%
- 2) Sales decline >10% over last year
- 3) Refund Claim >Rs.10 million
- 4) Persistent decrease in net profit over last three years by more than 5%
- 5) Cases claiming credit under sections 65B & 65C exceeding Rs.10(M)
- 6) Cases indicating addition in plant and machinery exceeding Rs.200(M)
- 7) Cases showing addition in machinery and plant / depreciable fixed assets in Tax Year 2009 without corresponding increase in turnover for Tax Year 2011.
- 8) Tax deducted u/s 233A (cash withdrawal) without business related cost of sales / P&L expenses
- 9) Deduction of tax on services rendered above 50(M)
- 10) Adjustment of BF losses / unabsorbed depreciation above 500(M)
- 11) Exempt income –other sources, capital gain, business and property >5(M)
- 12) Where addition or deletion to / from assets or transfer from Capital Work-in-Progress to assets in >100(M)
- 13) Increase in turnover does not reflect proportionate increase in income (with a margin of 5 percent)
- 14) Financial cost is more than 5% of turnover

4. This selection was again challenged in the case M/s. Ittefaq Rice Mills Vs FOP, etc [2013 PTD 1274] before the Honorable Lahore High Court, Lahore. The said case was dismissed by the Honorable Court with the following observations: -

23. *For the above reasons, we find no illegality or error in the selection for audit of the appellant for the tax year, 2011 through letter dated 20-03-2013 issued by respondent No.3. For the same reasons, the order of the learned Judge in chambers does not call for any interference. This appeal is, therefore, dismissed with no order as to costs.*

24. *Appellant is, however, free to approach the Review Panel or the Regional Review panel as case may be, in case the appellant aggrieved with the application of any risk parameter to the case of the appellant on merits."*

5. In compliance of the Hon'ble Court's above decision, the petitioners approached the Review Panels, who disposed of the applications. Not satisfied with the decisions of the Review Panels, the selection was again challenged before the Honorable Lahore High Court, Lahore. The Hon'ble Court referred the matter back to FBR in the case of M/s JDW Sugar Mills Ltd Vs Federation of Pakistan, etc (Writ Petition No. 19084/13) with the directions that FBR may constitute a High Powered Audit Commission for resolution of disputes regarding selection of audit cases.

6. The "High Powered Commission" in its meetings / deliberations held on 09.09.2014 reviewed all the cases, referred to in the aforesaid Order of the Honorable Lahore High Court, and arrived at the following conclusions:

AHMED SHUJA KHAN  
Member (AUDIT/CRM)  
Federal Board of Revenue  
Islamabad



"i. Selection of all the aforesaid cases for audit for Tax Year 2011 was IT based and were conducted in a transparent manner.

ii. Selection of all the aforesaid cases for audit for Tax Year 2011 was judicious and non-discriminatory and thus in line with the directions of the Honourable Lahore High Court in W.P No. 30786/2012 (M/s Premier Industrial Chemical Manufacturing Co)."

7. On the basis of above findings, the "High Powered Commission" decided that in order to maintain uniformity and to ensure non-discrimination amongst taxpayers who were selected for audit for Tax Year 2011, the Audit Policy should apply equally to all such cases including those specified in the Schedule-A to the Judgment of Hon'ble Lahore High Court dated 13.03.2014 in W.P. 19084/13 and all cases be audited accordingly.

8. Being aggrieved with the decision of the "High Powered Commission", M/s Defense Housing Authority and others filed petitions before the Honorable Lahore High Court Lahore. After listening to the views of both the parties, the Hon'ble Court issued directions as afore-mentioned to Syed Ijaz Hussain (Member TPA) in person.

9. The then Member TPA, Syed Ijaz Hussain as per directions of the Honourable Lahore High Court, Lahore decided all the representations filed before him on 31.12.2015, and held that, *"It is quite evident from the arguments advanced by the petitioners as discussed about that no empirical or clear evidence has been put forth to establish the inapplicability of most of the parameters. The mandate given to the undersigned by the Honorable Lahore High Court, Lahore strictly defined the contours of the final determination to be made by the undersigned in the representations filed as a consequence of the Court's above said decision. The objections filed by the taxpayers in their respective representations touch upon issues such as the propriety, fairness, neutrality, reasonability, compatibility with national policies etc.; which the undersigned has not been mandated to adjudicate upon"*.

10. Consequently, the then Member (Audit), FBR observed that, *"From the above referred Judgment of the Honorable Court, it is crystal clear that the applicability of even a single parameter constitutes "High Risk". As is evident from Table II, at least one or more parameters are attracted in every case. I have therefore no doubt that cases of taxpayers were rightly selected by the Board for audit for Tax Year 2011."*

11. Aggrieved from the then Member (Audit) decision dated 31.12.2015, M/s. JDW Sugar Mills Ltd and others including instant petitioner filed petition again in the Hon'ble Lahore High Court who remanded the case back to the present Member (Audit), FBR for deciding the issue

afresh in the light of the Para 9 of W.P. No. 30253 of 2014 titled Defence Housing Authority Vs CIR, etc [2015LHC5856].

12. In compliance to the directions of Honourable Lahore High Court referred at Para-1 above, letters were issued to M/s. Shahraj Fabrics Pvt. Ltd to file their representations before Member (Audit). Resultantly, M/s. Shahraj Fabrics Pvt. Ltd sought adjournment from Hon'ble Senior Puisne Judge, Lahore High Court till 05.01.2024 and subsequently filed their representation before the Member (Audit). The case has been examined by the undersigned and case status is given as under:

**i. W.P. No. 4025/2017 titled Shahraj Fabrics Vs FOP etc.**

a) Case of M/S Shahraj Fabrics was selected for audit on the following parameters:

Parameter No.	Parameter (Income Tax)
1	Value of imports in Customs differ from declared Imports in Income Tax returns by 5%
3	Refund Claim >Rs.10 million
6	Cases indicating addition in plant and machinery exceeding Rs.200(M)
8	Tax deducted u/s 233A (cash withdrawal without business related cost of sales / P&L expenses
13	Increase in turnover does not reflect proportionate increase in income (with a margin of 5 percent)
14	Financial cost is more than 5% of turnover.

b) Taxpayer in his representation challenged the applicability of the above parameters being "highly illogical, arbitrary, irrational and without valid reasons". Parameter bearing No. 13 has already been dropped previously in the orders of learned Member (Audit) dated 31.12.2015. Apart from the said parameter, the taxpayer failed to negate the applicability of the remaining parameters, therefore, case of the taxpayer was rightly selected as per available record.

13. Furthermore, the Honourable Supreme Court in its Judgment reported as 2018 PTD 1444 regarding devising an Audit Policy has clearly held that:

*"10. .... The power to select for audit through random or parametric balloting is provided under the law. We have repeatedly held that mere selection for audit does not cause an actionable injury to the Taxpayer....."*



14. In view of above discussion and available record including current proceedings, the whole audit selection process has been made justly, fairly and in a transparent manner in accordance with law. Hence are not ultra vires to the Constitution or law and procedure.

15. Having considered the arguments of the learned counsels for the party, departmental representative and examination of the record of the cases as mandated by the Honourable Lahore High Court, Lahore and by virtue of jurisdiction conferred upon to the Member (Audit) under the provision of 214C of the Income Tax Ordinance 2001 for selection of audit cases by the Board, the representation emanating from the Honourable Lahore High Court's order dated 31.10.2023 in the case of Writ Petition No. 4025 of 2017 titled M/s. Shahraj Fabrics Pvt. Ltd Vs FOP etc is disposed of in the manner and to the extent indicated above.

(AHMAD SHUJA KHAN)  
Member (Audit / CRM)  
Federal Board of Revenue  
Islamabad

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Member (Audit/CRM)  
Federal Board of Revenue  
Islamabad

File No. 1(33-WP)SS(TPA)/2023 Dated: 17/01/2024

Copy to:

- 1) M/s Shahraj Fabrics (Private) Limited, Plot No. 148, M Block, Quaid-e-Azam Industrial Estate Lahore.
- 2) The Chief Commissioner Inland Revenue, CTO Lahore.
- 3) Secretary (PR), FBR (HQ), Islamabad for placement on FBR official web portal.