

FBR must inform taxpayers about basis of their income's audit, LHC rules

LAHORE: The Lahore High Court has ruled that the Federal Board of Revenue (FBR) is bound to inform taxpayers about the parameters, if requested, on the basis of which they are selected for audit.

“The Board shall keep the parameters confidential. However, once persons or classes of persons are selected for audit under section 214C of Income Tax Ordinance, 2001, they shall be informed about the particular risk parameter applied to them for selection of audit, if demanded by them for their information,” says a judgement announced by Justice Abid Aziz Sheikh on a set of petitions challenging the power of the FBR to keep the parameters confidential for being contrary to fundamental rights.

Advocate Mohammad Ajmal Khan, one of the counsel for the petitioners, argued that the provision of subsection (1A) of section 214C of Income Tax Ordinance, 2001, which required the FBR to keep the parameters for selection of case for audit confidential was ultra vires of provision of Articles 4,8,10-A,19 and 19-A of the Constitution.

He said the decision of the board to keep the parameters for selection of audit confidential was also against the law settled by the high court.

Another counsel, Naveed A. Andrabi, argued that the impugned section did not specifically restrain the FBR after selection from disclosing the specific parameter on the basis of which the taxpayer persons or classes were selected for audit. He said the board had been misconstruing the provision.

Advocate Liaqat Ali Chaudhry on behalf of the FBR argued that mere selection for audit did not cause any actionable injury to tax payers. He said guidelines for selection of audit were administrative in nature and meant only for internal consumption of tax authorities, therefore, no fundamental right of the petitioners had been infringed for not disclosing the guidelines.

He said the restriction through the impugned provision on right of information, was reasonable to avoid tax evasion.

A deputy attorney general representing the federation adopted the arguments of the FBR and also questioned the maintainability of the petitions.

Justice Sheikh rejected an argument of the FBR counsel as baseless that parameters for audit selection was not a “matter of public importance” and Article 19-A of the constitution was not applicable in the matter.

The judge observed that the right to information under Articles 19 and 19-A of the constitution was well entrenched fundamental right of every citizen and the people had the right to know every public act and everything done in the public way by public functionaries.

Rejecting another argument of the board, the judge ruled that the courts had already declared in number of cases that disclosure of parameters was never considered a threat resulting in evasion of

tax or frustration of Audit Policy. “Rather the courts have repeatedly held that risk parameters should be fair and publically advertised for the sake of taxpayer convenience,” added the judge.

Partially allowing the petitions, the judge declared that the impugned orders for not disclosing the specific parameters to petitioners for selection of their cases for audit were illegal and without lawful authority.

“The FBR is directed to inform the petitioners forthwith if requested by them, the specific parameters on the basis of which, their cases were selected for audit under section 214C of the Ordinance,” the judgement concluded.

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