

HAMID WALEED

Cases for audit, FBR urged to consult relevant law

LAHORE: The tax experts have urged Chairman Federal Board of Revenue (FBR) Shabbar Zaidi to take notice of the practice of selecting cases for income tax audit in derogation of the exemption allowed in the law, terming it not only arbitrary and against the law, but also militated against good governance.

It may be noted that the Finance Act, 2018 provides immunity to the tax payers from selection of case for audit of income tax affairs u/s 177 and 214C if the case of the taxpayer has already been audited in any of the preceding three tax years.

Talking to Business Recorder, one tax practitioner Muhammad Shahid Baig said the exemption is not only from selection of audit rather it exempts the taxpayer from all the provision of the relevant sections of the Income Tax Ordinance.

According to him, the higher courts have also declared that no case can be selected for audit of income tax affairs under Section 177 and 214C before lapse of three years if the audit of its tax affairs has already been conducted.

A few other tax experts have also pointed out that the Article 4 of the Constitution envisages that the public functionaries are duty bound to act within the mandate given under the law and if any authority or office is restrained under the law from taking any action then the authority or office shall so restrain for advancement of the purpose of the law.

It may further be noted that the relevant law itself provides the mechanism for selection of cases for audit through its proviso which provides that a taxpayer who is immune from audit under the relevant clause, can be selected by the Commissioner for audit u/s 177 but only with approval of the Board. Therefore, they added, the notices u/s 177(1) for selection of the case of the petitioner for income tax audit is patently illegal, unlawful and without jurisdiction.

According to them, the relevant clause was on statute book when the notices were issued, therefore, the exemption from provisions of relevant sections was fully applicable to the case of the petitioner.

Shahid Baig said all such notices are being issued on extraneous grounds without any approval from the Board as envisaged under the relevant clause; therefore, the all such notices are liable to be set aside and declared void. Otherwise, the concerned Commissioner is required to give reasons for selection, which should be based on some objective criteria.

He said the Supreme Court of Pakistan has declared in a case reported as 2001 SCMR 256 that discretion becomes an act of discrimination when it is improper or capricious exercise or abuse of discretionary authority and the person against whom that discretion is exercised faces certain appreciable disadvantages which he would not have faced otherwise.