JUDGMENT SHEET

ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

1. Writ Petition No.4191 of 2019

M/s. OPI Gas (Private) Limited
Versus
Commissioner Inland Revenue and others

2. Writ Petition No.3304 of 2020

M/s. Orient Petroleum Pty Limited
Versus
Commissioner Inland Revenue and others

3. Writ Petition No.3503 of 2020

M/s. Dana Geophysics Pakistan (Private) Limited

Versus

Federation of Pakistan and others

Petitioners by:	Mr. Salar Khan, Advocate (in W.P No. 4191/2019 & 3304/2020) Mr. Saad M. Hashmi, Advocate (in W.P No. 3503/2020)
Respondents No.1 to 3 by:	Mr. Sheikh Anwar ul Haq, Advocate (in W.P No. 4191/2019) Mr. Osama Shahid Advocate (in W.P No.3304 & 3503 of 2020)
Research Assistance by:	Muhammad Fahad Khattak
Date of Hearing:	**14.05.2025**

INAAM AMEEN MINHAS, J:- This judgment shall decide the afore-titled writ petitions as they raise common question of law pertaining to the applicability of Section 214-D of the Income Tax Ordinance, 2001 **("ITO, 2001")**, where an application for extension of time under Section 119(3) of

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the ITO, 2001, has been filed before the Commissioner. The petitioners have challenged the notices and subsequent notices issued under Section 214-D read with Section 177 of the ITO, 2001 **("Impugned Notices")** and all the proceedings initiated pursuant thereto.

2. Brief facts in Writ Petition No. 4191 of 2019 and Writ Petition No. 3304 of 2020 are that the petitioners were required to file the income tax returns for the tax year 2016 in both petitions on or before 31.12.2016, whereas the petitioners submitted applications under Section 119(1) of the ITO, 2001, seeking a thirty (30) days extension under Section 214-D(1) of the ITO, 2001 for filing the returns. However, no order either granting or rejecting the extension request was passed by respondent No.1/CIR on the said applications. Subsequently, the petitioners filed the income tax returns within the extended period as requested in applications. Owing to the late filing thereof, the petitioners' cases were automatically selected for audit under Section 214-D of the ITO, 2001 vide Impugned Notices dated 08.05.2018 and 16.05.2018 in W.P. No. 4191/2019 and W.P. No. 3304/2020 respectively.

3. The facts in Writ Petition No. 3503 of 2020 are that the petitioner was required to file the income tax returns for the tax year 2015 on or before 21.01.2016, the petitioner submitted an application under Section 119(1) of the ITO, 2001, seeking extension till 31.03.2016 for furnishing the return. However, no order either granting or rejecting the extension request was passed by respondent No.3/CIR on the said application. Subsequently, the petitioner filed the income tax return on 28.03.2016, i.e., within the extended period as requested in extension application. Owing to the late filing thereof, the petitioner's case was automatically selected for audit under Section 214-D of the ITO, 2001 vide Impugned Notice dated 14.06.2018. In pursuance, another notice dated 13.08.2018 was issued by respondent No.5/Assistant CIR (Audit) under Section 177(1) of the ITO, 2001, requiring the petitioner to furnish the relevant record in connection with the audit proceedings. Pursuant thereto, on 31.05.2019, respondent No.3/CIR issued yet another notice to the petitioner, intimating that it had been selected for audit under

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the omitted Section 214-D of the ITO, 2001. The audit proceedings continued, and on 22.10.2020, respondent No.5/Assistant CIR (Audit) issued a notice under Section 177(6) of the ITO, 2001, seeking an explanation from the petitioner on certain issues arising out of the audit. In response, the petitioner's consultant submitted a written request on 06.11.2020, seeking an extension of time to file a comprehensive reply to the said notice. However, without addressing or disposing of the request for extension, respondent No.5/Assistant CIR (Audit) proceeded to issue another notice dated 16.11.2020 under Section 122(9) of the ITO, 2001. Being aggrieved, petitioner has challenged all the notices arising out from the notice of automatic selection for audit issued under Section 214-D of ITO, 2001, primarily.

4. The learned counsel for the petitioners in all the afore-titled petitions contended that the Impugned Notices are illegal, unlawful and arbitrary as the respondents failed to exercise the authority vested in them i.e. to pass order in writing on application for extension either way in terms of Section 119 (3) and (4) of ITO, 2001, and the respondents cannot be allowed to take advantage of their own wrong i.e. non-compliance of the statutory requirement, nor the petitioners can be held responsible or allowed to be penalized for such failure, inaction and non-compliance by the respondents. The learned counsel further contended that the petitioners filed their tax returns within the requested time in their applications for extension, and requirements of Section 214-D are not satisfied and the audit proceedings initiated by the respondents under Section 177 of ITO, 2001 shall be terminated. Lastly, the learned counsel for the petitioners prayed that the Impugned Notices and the proceedings pursuant thereto are in violation of the petitioners' fundamental rights.

5. Conversely, the learned counsel for respondents submitted that the petitioners filed their tax returns after the due date and failed to comply with the mandatory requirements of Section 119 of the ITO, 2001, which allows an extension of time for filing a return only up to 15 days unless exceptional circumstances are shown and none of which were mentioned in the

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petitioners' application; that despite being fully aware of this legal requirement, as admitted in the petitions, the petitioners requested an extension of 30 days, which exceeds the statutory limit and was not supported by any valid justification, even otherwise, no written order granting the extension was issued, and under Section 119 of ITO, 2001 the absence of such an order amounts to a deemed rejection not deemed acceptance. The learned counsel further submitted that the petitioners admitted that the record was incomplete even after filing the returns, indicating that the returns were defective and justifying the initiation of audit proceedings under Section 177 of ITO, 2001, and the petitions are not maintainable as there are no violations of constitutional or vested rights, and that the petitioners have misinterpreted the applicable law, therefore, the petitions are liable to be dismissed with costs.

6. I have heard the contentions of the learned counsels for the parties and perused the record with their able assistance.

7. The cornerstone of the case put forward by the learned counsel for the respondents is that the petitioners/taxpayers defaulted in filing their returns of income for the respective tax years within due dates as stipulated under the law. The cases of taxpayers were selected for audit under Section 214-D of ITO, 2001, however, it is a matter of record that the relevant provision of law in this regard i.e. section 214-D of ITO, 2001 was omitted through Finance Act, 2018, passed by the National Assembly of Pakistan, which was to give effect to the financial proposals of the Federal Government for the year beginning on the first day of July, 2018. Section 214-D, as presently relevant, was as follows:

> *"**214-D. Automatic selection for audit.-** (1) A person shall be automatically selected for audit of its income tax affairs for a tax year, if --*
>
> *(a) the return is not filed within the date it is required to be filed as specified in section 118, or, as the case may be, not filed within the time extended by the Board under Section 214A or further extended for a period not exceeding thirty days by the Commissioner under Section 119; or*

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(b) the tax payable under subsection (1) of section 137 has not been paid.

(2) Audit of income tax affairs of persons automatically selected under subsection (1) shall be conducted as per procedure given in section 177 and all the provisions of this Ordinance shall apply accordingly:

Provided that audit proceedings shall only be initiated after the expiry of ninety days from the date as mentioned in subsection (1).

(3) ....

(a) ....

(b) .....

(4) ....

(5) ....”

8. A bare perusal of above referred Section 214-D shows that a person shall be automatically selected for audit of its income tax affairs for a tax year if, amongst others, an extension is granted by the Commissioner concerned for the filing of the return and the assesse does not file the return within the extended period of time. Admittedly, the present petitioners applied for an extension for filing of tax returns; however, the concerned CIR did not convey any order in writing for extending the time to furnish the returns or the statement to the petitioners. The petitioners however under a presumption that the extension application stands accepted, filed the returns within the requested extension time. The petitioners now contend that they were not liable to be selected for audit under Section 214-D of ITO, 2001, since it will be deemed that an extension has been granted by the Commissioner, if a Commissioner fails to grant an extension within the prescribed period of time. Such presumption of the petitioners seems to be well founded in view of express provisions of Section 119(3) and 119(4) of the ITO, 2001, which provides that a Taxation Officer is under legal obligation to pass an order in writing on the application filed by the applicant in this behalf. However, in the instant matter, after having received the applications under Section 119 of the ITO, 2001, instead of passing

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appropriate orders in writing either accepting or rejecting such requests of extension, the Taxation Officer issued Impugned Notices to the petitioners. For convenience, it is necessary to reproduce Section 119 of the ITO, 2001 as under:-

> ***"119. Extension of time for furnishing returns and other documents.***— *(1) A person required to furnish —*
>
> *(a) a return of income under section 114 or 117;*
>
> *[ ]*
>
> *[ ]*
>
> *(d) a wealth statement under section 116,*
>
> *may apply, in writing, to the Commissioner for an extension of time to furnish the return, [ ] or statement, as the case may be.*
>
> *(2) An application under sub-section (1) shall be made by the due date for furnishing the return of income, or statement to which the application relates.*
>
> *(3) Where an application has been made under sub-section (1) and the Commissioner is satisfied that the applicant is unable to furnish the return of income, or statement to which the application relates by the due date because of —*
>
> *(a) absence from Pakistan;*
>
> *(b) sickness or other misadventure; or*
>
> *(c) any other reasonable cause,*
>
> *the Commissioner may, by 8[order], in writing, grant the applicant an extension of time for furnishing the return, 9[ ] or statement, as the case may be.*
>
> *(4) An extension of time under sub-section (3) should not exceed fifteen days from the due date for furnishing the return of income, employer's certificate, or statement, as the case may be, unless there are exceptional circumstances justifying a longer extension of time*
>
> *[Provided that where the Commissioner has not granted extension for furnishing return under sub-section (3) or sub-section (4), the Chief Commissioner may on an application made by the taxpayer for extension or further extension, as the case may be, grant extension or further extension for a period not exceeding fifteen*

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> *days unless there are exceptional circumstances justifying a longer extension of time.]*
>
> *[ ]*
>
> *(6) An extension of time granted under sub-section (3) shall not [for the purpose of charge of 4[default surcharge]under sub-section (1) of section 205,]change the due date for payment of income tax under section 137."*

9. From perusal of the provision of Section 119(3) of the ITO, 2001, it transpires that if a taxpayer is not in a position to submit return of income within due date, then the taxpayer can seek extension of time for filing return up to 15 days unless there are exceptional circumstances to seek longer period of extension of time, whereas, the concerned Taxation officer is under legal obligation to consider such request of a taxpayer and to pass appropriate order in writing on such application. This Court further observes that if such request of the applicant, seeking extension of time for filing return would have been declined by the concerned Taxation Officer, the applicant would be entitled to approach to the Chief Commissioner Inland Revenue, for seeking extension of time in terms of Section 119(4) of the ITO, 2001, hence, in the present case the petitioners were prevented from seeking the statutory remedy on account of inaction on the part of the concerned Taxation Officer.

10. The provision of Section 214-D has generated much legal controversy and multiple disputes, and has been considered by the superior Courts on different occasions based on distinct facts and circumstances, the Honourable Supreme Court of Pakistan, in ***Commissioner Inland Revenue, Lahore Vs. Messrs Atta Cables (Pvt.) Ltd., Lahore And Others*** **(2024 SCMR 468)** held that:-

> *"... Section 214D, inasmuch as it applied automatically (subject to certain exceptions contained in its subsections (3) and (4)) and therefore bypassed the filters otherwise built into the Ordinance before an audit could be undertaken, had therefore to be construed and applied strictly. More particularly, the conditions that had to exist for the section to be attracted had to apply precisely. Any deviation or discrepancy, howsoever minor, slight or even*

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inconsequential it may otherwise appear to be would apply, and go, in favor of the taxpayer. In the present case, the section would have applied if the Commissioner had, under section 119, extended the period for filing the return (subject to a thirty day condition) and the return was not filed within such extended period. Now, as noted, the fact of the matter was that the Commissioner never took any action on the application, which was otherwise properly filed, for extension. It is to be noted that subsection (3) of section 119 specifically requires the Commissioner to grant the extension in writing. Since section 214D had to be applied exactly, this meant that for purposes of this provision the refusal of the Commissioner also had to be in writing. In other words, any inaction on the part of the Commissioner, or a failure to reject or refuse the application for extension in any manner other than in writing, would mean that for the purposes of section 214D the application would be regarded as pending. There could be no refusal or denial of extension by implication. That would, in effect, introduce a deeming fiction into section 214D, i.e., the section would be deemed to apply if, after a "reasonable" period had passed, the Commissioner had still not made an order on the application under section 119. For a provision as harsh and severe as section 214D to apply merely by way of implication or on a deemed basis would be incorrect. Even if the section were to be considered as merely in aid of, and ancillary to, the recovery and procedural mechanisms of the Ordinance, the severity of its application was penal in nature. At least as presently relevant, the section was hugely disproportionate measure for the "evil" it was seeking to remedy. The portions thereof now under consideration required a strict construction. Clearly therefore, until the application for extension was actually disposed of by an order in writing the section would not become applicable. Furthermore, the condition of thirty days would have to apply, in the context of section 214D, not from the due date for the filing of the return, but the date of the order made by the Commissioner granting an extension. (Of course, if the Commissioner refused the extension in writing, then the section would apply from the date of such order, subject to any remedies available to the taxpayer to challenge such refusal.) Therefore, it was our view that in the facts and circumstances presented in this case, section 214D never became applicable. The writ petition was thus rightly allowed by the learned Division Bench."

11. In view of hereinabove facts, circumstances and the legal position, which has emerged from perusal of the provisions of Section 214-D and Section 119 of the ITO, 2001, as well as the decision of the Honourable Supreme Court of Pakistan, this Court is of the considered opinion that Section 214-D is not applicable to the cases of the petitioners.

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12. Consequently, the afore-titled writ petitions are ***allowed*** and the Impugned Notices and all the proceedings initiated pursuant thereto are ***set-aside*** .

(INAAM AMEEN MINHAS)
JUDGE

Announced in open Court on 05.06.2025

JUDGE

R.Anjam.

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