

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE GULZAR AHMED
MR. JUSTICE QAZI FAEZ ISA
MR. JUSTICE FAISAL ARAB

CIVIL APPEAL NO. 1950 OF 2007

(On appeal against the judgment dated 24.09.2007
passed by the High Court of Sindh, Karachi in
Constitutional Petition No. D-2373/2006)

Government of Pakistan through Secretary Revenue Division/CBR
House, Islamabad and others

... Appellants

VERSUS

Muhammad Junaid Talat

... Respondent

For the Appellants: Mr. Muhammad Habib Qureshi, ASC
Raja Abdul Ghafoor, AOR
Ms. Sonia Anwar Rana, D.C. Income tax.

For the Respondent: Mr. Muhammad Jamshed Talat, in person

Date of Hearing: 07.05.2018

JUDGMENT

FAISAL ARAB, J.- In the year 1999, the respondent's article on non-payment of income tax by Pakistani seafarers discharging duty on foreign flagships was published in daily 'Takbeer'. Pursuant to such article the Income Tax department raised a demand against 812 seafarers for the payment of income tax to the tune of Rs.86.606 million, which was followed by ex-parte assessment orders. The respondent being the author of such an article sought recovery of reward in his capacity as informer on the amount which led to recovery proceedings against the seafarers. He calculated the reward money to be Rs.1.859 million

under Reward Order dated 14.05.1974 and lodged his claim for payment.

2. Before the reward could be paid to the respondent, the Commissioner of Income Tax, in exercise of *suo moto* powers under Section 122-A of the Income Tax, Ordinance, 2001, examined the assessment orders issued to Pakistani seafarers and set-aside the same on the ground that the resident status of a person is the prime factor in the determination of his tax liability and the same was not ascertainable with regard to Pakistani seafarers discharging their duties on high seas beyond the territorial limits of the country. Upon such denial of his claim, the respondent made a complaint to the Federal Tax Ombudsman, who vide recommendation dated 16.07.2001 directed that reward be paid to the respondent. The Commissioner of Income Tax, however, awarded Rs.3,741/- against recovery of income tax in a sum of Rs.14,910/- from only one seafarer as Reward Order dated 27.03.1980 envisaged payment of reward only upon recovery of tax. The respondent again moved the Federal Tax Ombudsman to seek recovery of his entire claim as according to him the Reward Order of 1980 was not published in the official gazette so it never came into force, the reward was, therefore, to be processed in terms of the Reward Order dated 14.05.1974 which envisaged payment upon making assessment of the evaded tax. The Tax Ombudsman accepted the respondent's argument and vide his recommendation dated 17.02.2006 directed the appellants to pay reward in terms of Reward Order dated 14.05.1974. As the department still did not pay, the respondent filed a Constitutional

Petition No.D-2373/2006 before the High Court of Sindh for a direction to the appellants to implement the recommendation of the Federal Tax Ombudsman. The High Court vide impugned judgment dated 24.09.2007 allowed the Constitutional Petition by maintaining the decision of the Tax Ombudsman and directed the appellants to compute the reward in accordance with the provisions of Reward Order of 1974 and settle the respondent's claim within a period of six months. Being aggrieved by such decision, the department filed the present appeal with leave of this Court.

3. Learned counsel for the department contended that the Reward Order dated 14.05.1974 was superseded by Reward Order No. C.No:63(88)IT-IV/75-Pt dated 27.03.1980 which was published in various tax commentaries and journals and as the claim of the respondent pertained to the year 1999 it was the Reward Order dated 27.03.1980 that was applicable and not Reward Order dated 14.05.1974. He submitted that the Reward Order of 1980 contained a proviso "*provided that reward will be paid only if the tax sought to be evaded has been recovered atleast to the extent of the amount of reward being paid*", therefore, payment of reward to an informant was contingent upon recovery of tax only. Respondent's brother, who is an advocate and upon the death of the respondent claims to be his only surviving heir appeared in person. He in rebuttal submitted that the department was not even aware that tax was not being paid by the Pakistani seafarers discharging duties on foreign flagships and it was the respondent who divulged such information, therefore, he rightly became entitled to the reward to the tune of Rs.1.859 million

under the provisions of Reward Order dated 14.05.1974 as the Reward Order of 1980 had not come into effect for the reason that it was not published in the official gazette.

4. As the whole issue revolves around the entitlement of the respondent on providing 'definite information' with regard to tax evasion, we posed a question to the respondent's brother to point out from the record what constituted definite information that justifies the respondent's claim. He was only able to point out a letter dated 19.07.1999, written by the Special Assistant to the Commissioner of Income Tax, Karachi appreciating respondent's article published in Daily '*Takbeer*' identifying non-payment of tax by Pakistani seafarers serving on foreign flagships.

5. In our view, a person can take benefit of the Reward Order only if he had supplied some definite information relating to a taxpayer who has evaded tax. So a condition precedent is 'detection of evasion of tax', which must have taken place before the question of reward arises. Merely giving general information that tax is not being paid by a person on his otherwise taxable income would not *ipso facto* entitle the informant to claim a reward as non-payment of tax is not always a case of tax evasion. The tax department knows quite very well that many people, whose incomes are taxable, do not file their tax returns. Pointing towards them would not constitute 'definite information' leading towards detection of 'tax evasion' whereas the basis for claiming reward lies in providing information that relates to an assessee who has concealed a source of income through manipulation or deceitful means that was liable to be taxed had such source been known to

the tax department at the time of making assessment. So informing the tax department generally that a person or a section of a society is not paying tax would hardly be categorized as 'definite information' leading to disclosure of evaded tax. There is a clear difference between failure to pay tax and to evade a tax. The evasion is established when a source of income of an assessee, had it been disclosed to the tax authorities, would have lead to assessing his income more than what has been assessed in absence of such information. So disclosure of an assessee's source of income, which he has concealed from the tax department through deceit or manipulation, is the key in successfully claiming the reward as only in such a situation it could be said to be a case of tax evasion. In the case of the Regional Commissioner, Income Tax Companies II Vs. S. Sultan Ali Jeoffrey (1993 SCMR 266) this Court while exploring the meaning of 'tax evasion' held as under:-

"Evasion with reference to taxation laws means to illegally manipulate things in such a manner that the tax payable under law cannot be assessed. By an act of evasion the assessee can reduce his tax liability or completely eliminate it. Evasion of tax or duty is always in breach of the applicable and binding law. In taxation law evasion will mean adoption of such deceitful mechanism and manipulation not permitted by law which may result in reduction or elimination of legal tax liability.But the moment avoidance is sought by illegal contrivance; deceitful methods and adopting a course not permissible in law it turns into evasion."

6. In the present case merely an article was published in the weekly magazine pointing out that Pakistani seafarers employed on foreign flagships are not paying income tax on their salaries. Though this was initially considered by Income Tax

Officer to be sufficient to claim reward but later this decision was reversed by the Commissioner of Income Tax albeit on an entirely different ground. The ex-parte assessment orders were set aside on the ground that the resident status of a person is the prime factor in the determination of his tax liability and the same was not ascertainable with regard to Pakistani seafarers discharging duties on high seas beyond the territorial limits of the country. On account of such reasoning, the Commissioner of Income Tax came to the conclusion that the salaries received by Pakistani seafarers outside Pakistan on foreign flagships could not be regarded as income earned on Pakistani soil and hence is not taxable in Pakistan. Resultantly, demand raised in 225 cases was withdrawn and the remaining cases were written off in accordance with the procedure laid down in the write-off of Irrecoverable Arrear Demand. The department did not examine that the key feature is detection of evasion of tax and not failure to pay tax without the element of tax evasion.

7. From what has been discussed above, it has become quite clear that where a category of persons liable to pay tax have failed to do so, merely pointing towards them would not *ipso facto* become definite information leading towards detection of tax evasion. The department already knew or was supposed to know who are liable to file their tax returns. Department's lethargy or inefficiency or whatever the reason it may be in not collecting tax from tax defaulters would not bring any benefit to an informant who points out that tax is not being collected from a person or a section of a society in absence of any element of tax evasion. So merely drawing the attention of the tax department towards a

particular person or a category of persons which has failed to pay tax on their incomes would not constitute 'definite information' falling within the ambit of 'tax evasion' as it is the evasion of tax that is key in granting of an award not failure to pay tax. The whole philosophy of awarding a reward is that if on the basis of some specific information the income of an assessee which he has concealed through manipulation or by adoption of some deceitful mechanism comes to light through an informant, whereby tax liability of an assessee increases beyond his declared income or his declared loss stands reduced, only then such information would amount to detection of tax evasion qualifying the informant to claim reward not otherwise. Such a situation does not emerge at all in the present case, what to speak of which reward order i.e. Reward Order of 1974 or of 1980 was applicable at the time when the respondent raised his claim for reward with the tax department.

8. For what has been discussed above, this appeal is allowed and the impugned judgment is set aside.

JUDGE

JUDGE

JUDGE

Islamabad, the
7th of May, 2018
Approved For Reporting
Khurram