

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT,
ISLAMABAD.

Writ Petition No.2384/2017

M/s Attock Oil Company Ltd.

Versus

Federation of Pakistan, etc.

Petitioner By : Mr. Ali Sibtain Fazli, Advocate
Respondents By : Syed Ishfaq Hussain Naqvi, Advocate
Raja Khalid Mehmood Khan, DAG.
Date of Hearing : 08.07.2021.

AAMER FAROOQ, J. – The petitioner, in the instant petition, has challenged show cause notice dated 12.06.2017, whereby he has been asked to show cause as to why assessment for the tax year 2011 may not be revised.

2. Learned counsel for the petitioner, *inter alia*, contended that the impugned show cause notice is without lawful authority; that the questions raised in the show cause notice are the subject matter of litigation pending before the Division Bench of this Court with respect to depleting allowance and ancillary matters. It was further contended that the instant show cause notice deprecating an inquiry as no definite information is possessed by the respondents.

3. Learned counsel for the respondents, *inter alia*, contended that the instant petition is not maintainable inasmuch as no order has been passed and only a show cause notice has been issued which does not tantamount to any order. It was contended that the petitioner is at liberty to raise factual or legal objections in reply to the show cause notice.

4. Rebutting the arguments of the learned counsel for the respondents, it was contended that this Court has already held that a petition under Article 199 of the Constitution against a show cause notice is maintainable in certain circumstances. Reliance is placed on "M/s Pakistan Oilfields Limited versus

Federation of Pakistan and 4 others” (W.P. No. 1750/2015). It was contended that since interpretation of law and intricate matters are involved, hence writ petition is maintainable. It was also contended that on the issue of depleting allowance, the Tribunal has already rendered its opinion, hence alternate remedy before the statutory fora is illusory.

5. Arguments advanced by the learned counsel for the parties have been heard and the documents placed on record examined with their able assistance.

6. As noted above, the petitioner has assailed the show cause notice under section 122 of the Income Tax Ordinance, 2001. The thrust of the arguments by the learned counsel for the petitioner in assailing the show cause notice was that since the Appellate Tribunal Inland Revenue has already rendered its opinion with respect to the depleting allowance and other issues raised in the show cause notice, hence filing reply and pursuing statutory remedies would be an exercise in futility. This Court recently has handed down a judgment in case titled “PKP Exploration Limited versus Federal Board of Revenue through its Chairman, etc.” (W.P. No.886/2015), dated 18.06.2021, wherein principles for maintainability of a writ petition against a show cause notice were reiterated. For ease of convenience, para-29 of the judgment is reproduced:-

“The crux of the decisions above, that guide the High Court in regulating and exercising its jurisdiction in relation to challenges brought against show cause notices without first availing statutory remedies, can be restated as follows:

1. Where the impugned notice is without jurisdiction for being coram non judice or being issued by a person not vested with the authority under law to issue such notice.
2. Where the impugned notice is non-est for purporting to exercise power and jurisdiction for purposes alien to the empowering statute, thereby rendering it palpably or wholly without jurisdiction.
3. Where the impugned notice suffers from malafide for having been issued (i) for a collateral purpose that can be easily inferred from the facts and circumstances of the matter or (ii) in clear breach of procedural preconditions and pre-requisites prescribed by statute, that is tantamount to colourable exercise of jurisdiction of abuse of authority.

4. Where the alternative remedy is inadequate and illusory, because it lies before an adjudicatory forum that is conflicted or otherwise incapable of deciding the matter with an open mind in accordance with law as the authority or discretion vested in it stand fettered.
5. Where the impugned order violates the fundamental rights of the aggrieved person to due process guaranteed by the Constitution.
6. Where the controversy involves the interpretation of a statutory instrument, which makes it a case of first impression, provided that the High Court is not the repository of ultimate appellate, revisional or reference powers within the adjudicatory scheme prescribed by statute for remedying such grievance. "

Moreover, this Court, in the referred judgment, also observed that decision of the Appellate Tribunal do not have any binding force and is applicable only *inter se* the parties.

7. On the touchstone of the above judgment, alternate and efficacious remedy is available to the petitioner under the Income Tax Ordinance, 2001 and the same does not become illusory merely due to the fact that Appellate Tribunal has rendered a particular view with respect to issues raised in the show cause notice. The show cause notice issued by respondent No.1 is not without lawful authority and does not suffer from any patent illegality. In any case, the issue can be decided by the relevant fora under the Income Tax Ordinance, 2001, independently with application of mind. The petitioner is at liberty to raise any factual or legal objection to the show cause notice, impugned in the instant petition.

8. For what has been stated above, the instant petition is without merit and is accordingly **dismissed**.

(AAMER FAROOQ)
JUDGE

Announced in open Court this 06th day of October, 2021.

JUDGE