

JUDGMENT SHEET  
ISLAMABAD HIGH COURT  
ISLAMABAD  
W.P. No. 4792/2014

**SHABNAM ASHRAF PROPRIETOR OF PREPARATORY SCHOOL,  
ISLAMABAD.**

Versus

**THE DIRECTOR (HQ) I & I-IR, etc.**

Petitioner by: Mr. Abdul Raheem Bhatti, Advocate.

Respondents by: Mr. Saeed Ahmad Zaidi, Advocate.

Date of Hearing: 02.06.2020.

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**LUBNA SALEEM PERVEZ:** Through this writ petition, the petitioner has challenged the notice u/s 176 of the Income Tax Ordinance, 2001 [hereinafter referred to as the Ordinance] dated 18.11.2014, issued by Deputy Director (HQ), Intelligence & Investigation, Inland Revenue (*the Respondent No. 2*), to the Manager, M/s Habib Metropolitan Bank Ltd, F-7 Markaz Branch, Islamabad (*Respondent No. 5*), for provision of information regarding bank accounts of the Petitioner. The following prayer has been sought through the petition:-

*“In view of the foregoing submissions, it is respectfully prayed that the writ petition be accepted, the scrutiny/inquiry and the impugned notices to respondents No. 5 & 6 may graciously be declared illegal, malafide and without jurisdiction and of no legal effect and further, the said notice be set aside”.*

2. Documents appended with the petition revealed that a notice under section 139 of the Ordinance dated 21.10.2014 (*seems inadvertently mentioned as 2010 in the notice as compliance date is 28.10.2014*) was issued to the Petitioner by Respondent No. 4 for recovery of outstanding tax of Rs. 6,384,540/- against a private limited company in which the petitioner is serving as Chief Executive/Director. This notice was replied with, vide letter dated 27.10.2014, by the tax consultant of the Petitioner challenging legality of recovery of tax u/s 139 from the Petitioner. Thereafter, M/s. Habib Metropolitan Bank Ltd, F-7 Markaz Branch, Islamabad,

where the Petitioner was maintaining her accounts, received notice u/s 176 of the Income Tax Ordinance 2001 dated 18.11.2014 from Respondent No. 2 demanding complete statement of bank account No. 6-2-3720614-714100 maintained in the Petitioner's name. Aggrieved from this notice the petitioner filed this petition.

3. Learned Counsel for the Petitioner argued that notice dated 18.11.2014, issued u/s 176 of the Ordinance to M/s. Habib Metropolitan Bank Ltd, F-7 Markaz Branch, Islamabad, for submission of bank statements of Petitioner's account is illegal and based on malafide intentions. He in this regard placed reliance on the judgments of Hon'ble Apex Court re: *Rana Muhamad Sarwar vs. Government of Punjab* (1990 SCMR 999) and *M/s. Pakistan Synthetics Limited vs. Waqar Ahmed & Others* (2011 SCMR 11). He further submitted that the office of Director General Intelligence & Investigation has been established on 01.07.2012 u/s 230 vide Finance Act, 2012 i.e. tax year 2013 thus cannot operate retrospectively; that scrutiny/investigation are only permissible u/s 177 and admittedly no such audit proceedings u/s 177 has been initiated by the Respondents, the notice dated 18.11.2014 issued to the bank is illegal and without any lawful authority; that by issuing notice u/s 176 Respondent Nos. 1 & 2 have in fact illegally re-opened the deemed assessments; that such information that has not been called from the Petitioner cannot be demanded from the Petitioner's bank; that assessment could only be amended u/s 122(5) if the Commissioner has acquired 'definite information' from audit or otherwise; that impugned notice issued u/s 176 of the Income Tax Ordinance 2001 dated 18.11.2014 is discriminatory and violative of Articles 2A, 4, 10A, 23 and 25 of the Constitution. Learned counsel in support of his contentions also placed reliance on case titled as *M/S. Chenone Stores Ltd vs. Federal Board of Revenue* (2012 PTD 1815).

4. On the other hand, learned Counsel for the Respondent vehemently contested the petition on the ground of maintainability and while reiterating the submissions made in para-wise comments submitted that the petitioner has not come to the court with clean hands; that the petition has been filed on the basis of

mere apprehensions; that the purpose of the petition is to stop the respondent from doing their job and to cover up financial transaction which have tax consequences; that the Petitioner is not the aggrieved person under Article 199 of the Constitution as notices were issued by the Respondents to Respondent Nos. 5 & 6, who have duly complied the same, whereas, no further action has been taken against the petitioner, hence, the petitioner has no *locus standi* to file the petition as she failed to show any violation of law and infringement of any right; that there are two separate proceedings under different provisions by different tax authorities which have been initiated absolutely in accordance with the provisions of income tax law; that proceedings initiated vide notice u/s 139 have no relevance with the impugned notice dated 18.11.2014; that immunity claimed by the Petitioner from audit under SRO 1040/(I)/2013 dated 05.12.2013 does not prohibit the tax authorities from taking any other action under the law; that no proceedings for audit u/s 177 have been initiated against the petitioner for the tax year 2013; that the function of the Directorate of Intelligence & Investigation-IR is to match the taxpayers' data to investigate under reporting of income tax evasions and revenue leakages, if any, by the taxpayers. Learned counsel lastly contended that relief sought by the petitioner cannot be granted at this stage as it would be just an academic question for which a writ is not maintainable. Moreover, as no adverse action has been taken by the Respondents against the petitioner, therefore, petition is liable to dismissed for being misconceived and non-maintainable.

5. Arguments heard and record perused.

6. Perusal of the record revealed that notice dated 21.10.2014 was issued to the petitioner for recovery of tax demand of Rs. 6,384,540/-against the company in which the petitioner is one of the Directors and also acting as Chief Executive. Thus provisions of Section 139 of the Ordinance was invoked by Officer Inland Revenue, Withholding Unit-1, WHT Zone, Regional Tax Office, Islamabad, as in term of this section outstanding tax against any private limited company / association of persons can be recovered from its directors/members/partners of the AOP. Section 139 is also reproduced hereunder, for ready reference:-

**“139. Collection of tax in the case of private companies and associations of persons.—**(1) Notwithstanding anything in the Companies Ordinance, 1984 (XLVII of 1984), where any tax payable by a private company (including a private company that has been wound up or gone into liquidation) in respect of any tax year cannot be recovered from the company, every person who was, at any time in that tax year —

(a) a director of the company, other than an employed director; or

(b) a shareholder in the company owning not less than ten per cent of the paid-up capital of the company, shall be jointly and severally liable for payment of the tax due by the company.

(2) Any director who pays tax under sub-section (1) shall be entitled to recover the tax paid from the company or a share of the tax from any other director.

(3) A shareholder who pays tax under sub-section (1) shall be entitled to recover the tax paid from the company or from any other shareholder to whom clause (b) of sub-section (1) applies in proportion to the shares owned by that other shareholder.

(4) Notwithstanding anything in any law, where any tax payable by a member of an association of persons in respect of the member's share of the income of the association in respect of any tax year cannot be recovered from the member, the association shall be liable for the tax due by the member.

(5) The provisions of this Ordinance shall apply to any amount due under this section as if it were tax due under an assessment order.”.

7. The other notice u/s 176 of the Ordinance dated 18.11.2014, impugned herein, was issued to petitioner's Bank namely M/s. Habib Metropolitan Bank Ltd, F-7 Markaz Branch, Islamabad (as per prayer, a notice u/s 176 have also been served on The Manager, M/s Bank Al-Falah, Awan Arcade, Blue Area Islamabad, , therefore, the Bank has been impleaded as Respondent No.6; however no such notice have been annexed with the petition). This notice was issued by Deputy Director (HQ), Intelligence & Investigation, Inland Revenue, Islamabad. For reference Section 176 is also reproduced below:-

**“176. Notice to obtain information or evidence.—**(1) The Commissioner may, by notice in writing, require any person, whether or not liable for tax under this Ordinance —

(a) to furnish to the Commissioner or an authorised officer, any information relevant to any tax leviable under this Ordinance as specified in the notice; or

(b) to attend at the time and place designated in the notice for the purpose of being examined on oath by the Commissioner or an authorised officer concerning the tax affairs of that person or any other person and, for that purpose, the Commissioner or authorised officer may require the person

*examined to produce any accounts, documents, or computer-stored information in the control of the person; —or*

*(c) the firm of chartered accountants, as appointed by the Board or the Commissioner, to conduct audit under section 177, for any tax year, may with the prior approval of the Commissioner concerned, enter the business premises of a taxpayer, to obtain any information, require production of any record, on which the required information is stored and examine it within such premises; and such firm may if specifically delegated by the Commissioner, also exercise the powers as provided in subsection (4).*

*(2) The Commissioner may impound any accounts or documents produced under sub-section (1) and retain them for so long as may be necessary for examination or for the purposes of prosecution.*

*(3) The person from whom information is required, may at his option, furnish the same electronically in any computer readable media. Where a hard copy or computer disk of information stored on a computer is not made available as required under sub-section (1), the Commissioner may require production of the computer on which the information is stored, and impound and retain the computer for as long as is necessary to copy the information required.*

*(4) For the purposes of this section, the Commissioner shall have the same powers as are vested in a Court under the Code of Civil Procedure, 1908 (Act V of 1908), in respect of the following matters, namely: —*

*(a) enforcing the attendance of any person and examining the person on oath or affirmation;*

*(b) compelling the production of any accounts, records, computer stored information, or computer;*

*(c) receiving evidence on affidavit; or*

*(d) issuing commissions for the examination of witnesses.*

*(5) This section shall have effect notwithstanding any law or rules relating to privilege or the public interest in relation to the production of accounts, documents, or computer-stored information or the giving of information.”.*

8. Thus from the perusal of both the above said provisions of law, it is crystal clear that both the sections are independent and have different applications under different circumstances. In the present case also both the provisions have been invoked by two different officers for two separate eventualities and have no connection or nexus with each other. The contention of the Learned Counsel for the Petitioner that the Petitioner has claimed immunity from audit u/s 177 as per SRO 1040/(I)/2013 dated 05.12.2013, therefore, no notice u/s 176 can be issued to call for information, has no force as initiation of proceedings for audit is altogether a separate issue and admittedly no proceedings for audit for the tax year 2013 have

been initiated; thus reliance on Chenone Stores case **2012 PTD 1815** is irrelevant and misplaced. Moreover, it would not be out of place to mention that the Hon'ble Lahore High Court, vide judgment in case titled as ***Federal Board of Revenue vs. M/S. Chenone Stores Ltd*** reported as **(2018 PTD 208)** passed in ICA filed by the FBR has been pleased to hold that *the Explanations inserted, in the Federal Taxing Statutes, through Finance Act, 2013, have effectively obliterated binding force of the judgment in Chenone Stores' Case*. Further the contention of the Learned Counsel for the Petitioner that, since, office of the Directorate General Intelligence & Investigation has been created on 01.07.2012, vide Finance Act, 2012, therefore, cannot operate retrospectively is also misconceived as firstly when any office is established under any law, it starts function on the day it is established. There involves no issue of retrospective or prospective function of the office or that the officers of the newly created office on 01.07.2012 could not investigate the matters relating to the return already furnished with FBR; secondly, notice u/s 176 has been issued on 18.11.2014 by Deputy Director (HQ), Intelligence & Investigation, Inland Revenue, Islamabad exercising powers delegated by FBR through SRO 351(I)/ 2014 dated 07.05.2014; thus, question of any retrospective application does not arise. Regarding calling for information u/s 176 from the banks, the Hon'ble Sindh High Court in its recent judgment re: ***Bank Alfalah Limited vs. Federation of Pakistan & Others (2020 C L D 634)*** has held that:-

*"7. The next question for consideration is whether in issuing the notice in the purported exercise of the power conferred on respondent No. 3, the respondent No. 3 has acted without any jurisdiction or committed an error of law apparent on the face of the record? In this respect, the learned counsel emphasized that no such power is vested with the respondent No.3 and he can seek information under section 176(1)(a) of the Ordinance regarding the books of the petitioner only. For the sake of brevity, we would like to reproduce section 176(1)(a) of the Ordinance, as under:*

*"176. Notice to obtain information or evidence.-(1) The Commissioner may, by notice in writing, require any person, whether or not liable for tax under this Ordinance-*

*(a) to furnish to the Commissioner or an authorised officer, any information relevant to any tax leviable under this Ordinance as specified in the notice."*

8. *From the above quoted statute, it is obvious that the income tax authorities have vast powers in respect of getting information not only about a taxpayer but also a non-taxpayer in order to bring the non-filers in the tax net. Besides, the language of section 176(1)(a) of the Ordinance, itself indicates that the income tax authorities are justified in issuing "notice to obtain any information or evidence relevant to the any tax leviable under the Ordinance." In our considered view, seeking such information does not amount to getting any financial information of the clients or private account holders of the petitioner bank, as such the same is not privileged by normal banking practice as well as under any statutory obligations under which the petitioner is claiming privilege regarding their clients or to term it fishing expedition."*

9. The upshot of the above discussion is that provisions of Sections 176 & 139 of the Ordinance are separate and independent sections which have been invoked by Respondents under altogether different circumstances. It has been observed from the record that after well-reasoned reply of the petitioner's tax consultant dated 27.10.2014 no further notice was issued for recovery of tax demand of the company from the petitioner. So far as jurisdiction to issue notice under section 176 is concerned, it is held that language of Section 176 of the Ordinance, in clear and unambiguous terms, provides vast powers to Commissioner/authorized officer to obtain any information or evidence from any person through notice in respect of tax leviable under the Ordinance, thus, Respondent No. 1 validly possesses powers u/s 176 of the Ordinance through SRO 351(I)/ 2014 dated 07.05.2014.

10. In view of the above the instant petition is accordingly **dismissed**.

**(LUBNA SALEEM PERVEZ)**  
**JUDGE**

***Announced in the Open Court on \_\_\_\_\_.***

**JUDGE**

**Approved for Reporting.**

Uploaded By: Engr. Umer Rasheed Dar