

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P.No.1876-2017

M/s Pak Telecom Mobile Limited

Vs.

Federation of Pakistan through Chairman, Federal Board of Revenue,
Islamabad etc.

W.P.No.1877-2017

M/s Pak Telecom Mobile Limited

Vs.

Federation of Pakistan through Chairman, Federal Board of Revenue,
Islamabad etc.

W.P.No.1879-2017

M/s Pak Telecom Mobile Limited

Vs.

Federation of Pakistan through Chairman, Federal Board of Revenue,
Islamabad etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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05.12.2022	Mr. Rashid Hafeez and Mr. M. Usman Shoukat, Advocates for petitioner. Mr. Ishfaq Hussain Naqvi, Advocate for respondents.
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This order shall decide instant petition as well as W.P. No.1877-2017 & W.P. No.1879-2017, as common questions are involved.

2. The petitioner, in all the petitions, has challenged show cause notices issued to it by the authority under section 122(9) read with section 122(5A) of the Income Tax Ordinance, 2001.

3. At the very outset, learned counsel for the petitioner contended that the ‘delegation’ made by the respondents to the officer issuing

notice is not in accordance with law. It was further contended that the matter agitated also stands decided, hence writ petitions be allowed.

4. Learned counsel for the respondents *inter alia* contended that the matter needs to be decided by the competent authority on the basis of law. It was contended that there is nothing on record to show that the 'delegation' was without lawful authority.

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

6. This Court, in somewhat similar circumstances, has already dealt with the issue and it would be appropriate that the instant petition be decided on the touchstone of the same. In case titled Attock Gen Limtied Vs. Federal Board of Revenue through its Chairman, Islamabad etc. (W.P. No.1569-2017), it was decided as follows:-

"9. In so far as the question of 'delegation' is concerned, the perusal of the order by Commissioner Inland Revenue, LTU, Islamabad dated 02.03.2015 clearly shows that Additional Commissioner Inland Revenue Audit-I as well as Additional Commissioner Inland Revenue Audit-II have been duly delegated the powers with respect to matters pertaining to clients/companies provided in Schedule-III to the Ordinance.

10. In so far as the question of maintainability of instant petitions is concerned, this Court in a recent judgment tiled 'M/s Pakistan Oilfields Limited Vs. Federation of Pakistan, etc.' (W.P. No.1951/2017), while following a recent pronouncement of Hon'ble Supreme Court, observed as follows:-

“An objection was raised as to the maintainability of the instant petition in light of the recent judgment of the Hon’ble Supreme Court of Pakistan in case reported as Commissioner Inland Revenue and others versus Jabangir Khan Tareen and others (2022 SCMR 92). The Hon’ble Supreme Court of Pakistan after discussing the case law on the subject viz. maintainability of the writ petition against a show cause notice, observed that a show cause notice is delivered to a person by an authority in order to get the reply back with a reasonable cause as to why a particular action should not be taken against him with regard to defaulting act. It was observed that the Court may take up writs to challenge the show cause notice if it is found to be barred by law or abuse of process of the Court or is coram non judice. In this behalf, abuse of process was explained as the use of legal process for an improper purpose incompatible with the lawful function of the process by one with an ulterior motive. It was observed that in its broadest sense, abuse of process may be defined as misuse or perversion of regularly issued legal process for a purpose not justified by the nature of the process. It was further observed that the word ‘coram non judice’ meant for ‘not before a judge’ is a legal term typically used to indicate a legal proceeding that is outside the presence of a judge or with improper venue or without jurisdiction.

7. *In light of the above judgment, petitions under Article 199 of the Constitution against a show cause notice is maintainable in limited circumstances as mentioned hereinabove. Notice under section 122(9) of the Ordinance would not lie if an assessment order is not erroneous so as to be prejudicial to the interest of the revenue; it is only these two factors which attract section 122 (9)ibid and would be maintainable otherwise it is not valid and hence barred by law. On the touchstone of the interpretation of erroneous so as to be prejudicial to the interest of revenue in 2004 PTD 330 supra, which in turn based its interpretation on the basis of an Indian Judgment, the Indian Supreme Court in case reported as Malabar Industrial Co. Ltd. versus Commissioner of Income-tax (20001 PTD 1106) explained the said terms. In this behalf, erroneous means an incorrect assumption of facts or an incorrect application of law; likewise, prejudicial to the interest of revenue is*

to be read in conjunction with an erroneous order and every loss of revenue in consequence of an order of the Assessing Officer could not be treated as prejudicial to the interests of revenue. As was stated in the referred Indian judgment that when an Income-tax Officer adopted one of the courses permissible in law and it has resulted in loss of revenue, or where two views are possible and the Income-tax Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interests of revenue. The reading of the impugned notice does not show that the respondents/Additional Commissioner issuing the show cause notice has elaborated the erroneous elements in the assessment order and a resultant prejudice caused to the Revenue. Both the terms cannot be segregated and apply independently. It had to be mentioned by the Additional Commissioner pointing out the erroneous assessment and the resultant prejudice which does not find mention in the impugned show cause notice”.

In view of referred judgment, a writ petition is not maintainable except for circumstances mentioned therein. The circumstances, mentioned in judgment viz barred by law, coram non judice or abuse of process of court, are not attracted, hence writ is not maintainable.

11. *In view of above position of law and facts, the legal question, which already stood settled by either the decision of the Appellate Tribunal Inland Revenue or this Court, can be looked into by respondent No.3, who is seized of the matter and the same per se does not call for setting aside of show cause notices. Likewise, on the basis of above observations, the objection as to the ‘delegation’, also stands settled. In the facts and circumstances, no interference is required to be made for setting aside show cause notices impugned in the instant petitions.*

In view of above, since the matter already stands dealt with and decided by this Court, there is nothing on record to indicate that instant petitions are to be dealt with differently.

7. For the above reasons, instant petitions are disposed of with the observation that petitioner can agitate all legal and factual objections to the impugned show-cause notice(s) and as and if it is done, the adjudicating officer shall decide the same in accordance with law.

(CHIEF JUSTICE)

Zawar