

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

WRIT PETITION NO.2181 OF 2015

RIZWAN FIROZ ARFEEN and another

VERSUS

THE DEPUTY COMMISSIONER OF INLAND REVENUE and others

Petitioner by: Sayyid Murtaza Ali Pirzada, Advocate.

Respondents by: Mr. Manzoor Hussain, Advocate.
(for Respondents No.1 to 3)

Date of Hearing: 10.06.2022.

SAMAN RAFAT IMTIAZ, J.:- Through the instant Writ Petition the Petitioners have prayed for a declaration that the Recovery Notices dated 20.03.2015 issued under Section 48(1)(b) of the Sales Tax Act, 1990 read with Rule 71(2)(b) of the Sales Tax Rules, 2006 (“**Impugned Notices**”) are illegal, void *ab initio* and of no legal consequence along with a direction to the Respondents No.1 to 3 to refund the amount illegally recovered from the bank accounts of the Petitioners along with compensation thereof with costs.

2. Brief facts of the case as per the Memo of Petition are that the Petitioners served as Directors of Respondent No.4 i.e. Pakcom Limited (“**Respondent No. 4 Company**”), a public limited company registered under the Companies Ordinance, 1984 till they resigned in 2008 and further that the Respondent No. 4 Company has not been in operation since March, 2008. It is further stated that Respondent No.5 i.e. the Commissioner Inland Revenue, Zone II, Large Tax payers Unit, Lahore, has been dealing with the tax matter of the Respondent No. 4 Company since March, 2011. Notwithstanding the foregoing, the Impugned Notices were issued to the banks of the Petitioners for recovery of sales tax in the amount of Rs.9,853,025/- allegedly outstanding against the Respondent No. 4 Company from the personal

bank accounts of the Petitioners purportedly by invoking Section 48(1)(b) of the Sales Tax Act, 1990 read with Rule 71(2)(b) of the Sales Tax Rules, 2006. The Petitioners approached Respondents No. 1 to 3 and informed them that they do not have jurisdiction as the Respondent No. 4 Company falls within the jurisdiction of Respondent No.5. However, the Respondents refused to withdraw the attachment notices and in fact forced the banks to issue pay orders from the personal bank accounts for the alleged sales tax liability of Company. The change of jurisdiction vide Notification No.C.No.57(2)S-DOX/2011-29530-R dated 01.03.2011 was acknowledged and notice for attachment of accounts was withdrawn vide letter of de-attachment of accounts dated 11.05.2015. Despite the foregoing withdrawal, the amount of Rs. 688,948/- already recovered from the personal bank account of the Petitioner No. 1 and Rs.1,021,597/- from that of the Petitioner No. 2 has not been refunded to-date.

3. Learned counsel for the Petitioners argued that Respondents No.1 to 3 admittedly have no jurisdiction in respect of the Respondent No. 4 Company, as such recovery of the alleged sales tax liability of the Respondent No.4 by such Respondents was without jurisdiction and therefore, illegal. In this regard he relied upon the Notification No. C.No.57(2)S-DOX/2011-29530-R dated 01.03.2011, whereby Respondent No. 6 directed that Respondent No. 5 shall exercise the powers and functions in relation to the Sales Tax Act, 1990 and rules thereunder in respect of persons mentioned in Schedule II of the said Notification, which Schedule includes the Respondent No. 4 at Serial No. 60. He further submitted that even otherwise recovery could not be made from the Petitioners simply on account of being Directors of the Respondent No. 4 Company and that too almost seven years after resignation from such Respondent No. 4 Company. He relied upon *Messrs Advance Telecom Vs. Federation of Pakistan*, 2015 PTD 462.

4. The Learned counsel for Respondents No.1 to 3 admitted that jurisdiction in respect of Respondent No.4 Company had indeed been transferred to LTU Lahore i.e. Respondent No.5, however, the

corresponding change was not made in the web portal due to which recovery proceedings were continued by Respondents No.1 to 3. Learned counsel submitted that the Order-in-Original was made in the year 2006 when the Petitioners were admittedly Directors of the Respondent No. 4 Company. In respect of whether recovery could be made from the personal accounts from the Directors of the Respondent No. 4 Company on account of alleged liability of the Respondent No.4 Company the learned counsel submitted that since the directors/shareholders are owners of the Company, such recovery can be made from their personal accounts. Lastly it was contended that the Petitioners have never sought refund from Respondents No.1 to 3 and as such they have not availed the alternate remedy available hence the instant petition is not maintainable.

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

6. It is an admitted position that Respondents No.1 to 3 had no jurisdiction in respect of the Respondent No. 4 Company on the date of issuance of the Impugned Notices as candidly admitted in the oral submissions made by the learned counsel for Respondents No.1 to 3 and also the parawise comments submitted on behalf of such Respondents. The Honorable Sindh High Court at Karachi held as follows when confronted with strikingly similar facts in the case of *Messrs Advance Telecom Vs. Federation of Pakistan*, 2015 PTD 462:

*“Therefore, we are of the view that FBR itself has specially assigned the case of the petitioner to Commissioner Inland Revenue, Zone-III, RTO-III, Karachi, through Notification dated 31-12-2012, hence, the jurisdiction over the affairs of the petitioner's business in respect of Income Tax and Sales Tax affairs would not fall under Serial No.1 (c) of Notification dated 30-6-2012. In reaching this conclusion we have also taken into account the candid admission brought before us through Para wise comments filed by the Commissioner Inland Revenue, Zone III, RTO-III, Karachi, whereby it has been admitted that the jurisdiction in respect of the petitioner's case vests with Commissioner Inland Revenue, Zone III, RTO-III, Karachi. **In view of such undisputed position we are of the view that the impugned action initiated by respondents Nos. 3 and 4, whereby notice under section 48(1) of the Sales Tax Act, 1990, dated 12-5-2014 was issued and the Bank accounts of the petitioner were attached, was without jurisdiction and any lawful authority, hence, liable to be declared as void ab-initio. It***

is trite law that exercise of jurisdiction by an authority is a mandatory requirement and its non-fulfillment would entail the entire proceedings to be coram non-judice. When the statute specifically provides and vests jurisdiction in a particular Court, forum or authority, an attempt by any other Court, forum or authority to take cognizance of the matter or to initiate any proceedings, would render such proceedings non-est in the eyes of law, void ab-initio and of no legal effect. All the authorities performing functions under any statute must conduct themselves strictly within the domain and jurisdiction vested in them under the law and not otherwise. All such actions which have been initiated on the basis of such defective jurisdiction cannot be sustained, and all subsequent actions taken purportedly on the basis of such defective jurisdiction are also liable to be declared illegal, void ab initio as if the same were never initiated. If any authority is needed, we may refer to the case of *Mansab Ali v. Amir and 3 others* reported in PLD 1971 SC 124 wherein the Hon'ble Supreme Court has observed as follows:--

“It is an elementary principle that if a mandatory condition for the exercise of jurisdiction by a Court, tribunal or authority is not fulfilled, then the entire proceedings which follow become illegal and suffers from want of jurisdiction. Any order passed in continuation of these proceedings in appeal or revision equally suffers from illegality and, are without jurisdiction. The learned Advocate General fully supported this view and asked for dismissal of the appeal.” [Emphasis added].

7. In view of the admitted position that the Respondents No.1 to 3 had no jurisdiction in respect of the Respondent No. 4 Company on the date of issuance of the Impugned Notices, the Impugned Notices dated 20.03.2015 were undoubtedly without jurisdiction and without lawful authority and are, as such, declared void *ab initio*.

8. Notwithstanding the foregoing conclusion, it is equally important to highlight that a company is a separate and distinct, juristic entity independent of its shareholders/directors meaning thereby that the shareholders/directors are not *ipso facto* liable for the alleged liabilities of the Company. The said principle is firmly entrenched in our jurisprudence and has been extensively discussed in case law including but not limited to the following judgments of the Honorable Sindh High Court at Karachi as well as this Court:

Haji Khuda Bux Nizamani Vs. Election Tribunal, 2003 MLD 607:

“13. With profound deference to our learned brothers constituting the Tribunal, we are constrained to observe that **it is one of the basic principle of Company Law that a company is a separate and distinct legal entity from its shareholders or Directors and the liability of shareholders in the liability company is limited to the extent of the unpaid amount on his shares unless otherwise provided in its memorandum.** This principle was apparently overlooked while holding the petitioner liable. At the same time

it appeared somewhat unfortunate that the learned Tribunal proceeded to apply the principles of Partnership Act, though it seems apparent from the record that it was nobody's case, that the two Textile Mills were owned by partnership firms." [Emphasis added].

Sultan-ul-Arfeen Vs. District Officer (Revenue) City Government Karachi, 2013 CLD 1280:

"8. It is now well established and entrenched in corporate parlance and jurisprudence that a company registered under the Companies Ordinance, 1984 is a separate legal entity separate and distinct from its shareholders and directors, right from the case of Salmon v. Salmon 1897 AC 22.

9. Question whether liability of a corporate entity or limited liability company could be recovered from its shareholders and/or directors came up for consideration in number of cases one may gainfully refer to;

(a) *Ikram Bux Service v. Board of Revenue (PLD 1963 SC 564)*, in cited case Court disapproved issuance of instructions to consider limited company as against individual for the grant of route permit, which instruction was found to be violative of Motor Vehicles Act, 1939.

(b) *Ayaz Durrani v. Government of Pakistan (PLD 2000 Lahore 414)*, in said case petitioner was arrested to recover the electricity dues payable by the limited liability company of which he was the Chief Executive. Court held, "it needs no gain saying that a company incorporated under the Companies Ordinance, 1984 is a separate legal and distinct juristic person quite apart from the Chief Executive, director or shareholders. **Liability of a company cannot fall upon the director or the shareholders who have no personal responsibility for the same**".

(c) *Shamsuddin v. Federation of Pakistan (1995 CLC 299)*, in referred case also director of limited company was arrested for non-payment of charges for energy supply. It was held that director cannot be arrested for the liability of limited company, recovery proceedings could be initiated against the company in accordance with law.

(d) *Ehtisham Ghazi v. Azharuddin (2001 YLR 526)*, in cited case, bailable warrants were issued against the director of a company for the recovery of liability of a limited company, were struck down by the Court. It was held that Managing Director merely acts as employee/representative of company, unless director has executed some documents acknowledging the liability of the company upon himself in his personal capacity as guarantor for the company or case is covered under section 47, C.P.C. or section 111 of the Companies Ordinance, 1984, a director cannot be held liable for the decree against the company.

(e) *A Rehman v. Tehsildar Lahore (1993 CLC 1222)*, followed similar view as in the case *Shamsuddin (1995 CLC 299)* and *Ehtisham Ghazi (2001 YLR 526)* above.

(f) *Tariq Saed Saigal v. Dist. Excise and Taxation (1982 CLC 2387)*, in cited case education cess was sought to be recovered through coercive process under the Workers Children (Education) Ordinance it was held that the provisions of the Ordinance and rules framed there under cannot be stretched to an extent to attach and dispose of the personal property of Chief Executive or directors or for that matter detain him. It was further held that the Law and Rules however empower for proceeding against the property of the company in the hands of the chief executive/director and to adopt other measures under the Companies Act, 1913,

(g) *Hamdard Dawakhana v. K.B. Joseph & Co. Ltd.* (PLD 1971 Karachi 279) cited case also resounds principle that **the limited company is separate and distinct legal person distinct from persons who owns it and further that such person cannot be held liable for the debts of the company.**

(h) *Faiz Najmuddin Abdul Ali v. Capital Development Authority* (PLD 1976 Karachi 1084) in referred case it was held that since the amount sought to be recovered by the Capital Development Authority Islamabad through City Deputy Collector, Karachi, therefore High Court of Sindh has jurisdiction in the matter. It was further held that unless amount is determined in appropriate proceedings provisions of Land Revenue Act, 1967 cannot be invoked.

(i) *Shaikh Datar Cotton Industries and Oil Mills v. Mahmood Pvt. Ltd.* 2006 CLD 191 the court examined the situation in which corporate veil could be lifted; court declined issuing execution against the director of the Company, who signed the correspondence as an authorized signatory of the company. Similar view was taken in *Nihal Chand v. Kharal Singh Sunder Singh* (1936) 6 Com. Cases 418 @ 421.

(j) *Desiraju Vankatakarishna Sarma Re*, (1955)25 Com. Cases 32 @35 and *parameshwari Das v. Collector of Bulandshahr* (1955) 25 Com. Cases 343, *G.C. Mehrotra v. Deputy Collector (Collection) Sales Tax* (1998) 93 Com. Cases 617, I was held that **individuals constituting the company cannot be held responsible for sales tax/Income tax dues of the company it is only the assets, of the company which can be proceeded against.**

(k) *Kallash Prasad Modi v. Chief General Manager Orissa Telecommunications* AIR 1994 Orissa 98, Court refused to accept the plea that the for the default in payment of company's phone Director could be held liable.

(l) In a very recent case *Arshad Saleem v. Civil Aviation Authority* 2011 CLD 1171 a bench of this court accepted the HCA against the order passed on application under section 12(2), C.P.C., where by the judgment and Decree passed jointly and severally against the company and its (paid) Director. Court set aside the judgment and Decree as against the (paid) Director, who signed the agreement on behalf of the Company and maintained the same against the(sic).

10. **From the above discussed case-laws, it is abundantly clear that the liability of the Company cannot be treated or foisted as the liability of the directors and or its shareholders...** [Emphasis added].

Saleem Shehzada Vs. Province of Sindh, 2020 CLD 894:

“7. There is an age old principle that a company is a separate juristic person, distinct from its shareholders or the directors, enunciated by the House of Lords in *Solomon v. Solomon* reported as 1897 AC 22. The aforesaid principle is duly recognized in our jurisprudence and an early manifestation of the same is apparent from a judgment of the honorable Supreme Court in case of *Ikram Bus Service and others v. Board of Revenue West Pakistan* reported as PLD 1967 SC 564. There is a preponderance of authority demarcating the distinction between a company and its shareholders / directors and it has been consistently held that the two distinct legal entities are mutually exclusive. Additional reliance is placed in such regard upon *Tariq Saeed Saigol v. District Excise and Taxation Officer Rawalpindi* reported as 1982 CLC 2387, *Shamim-ud-Din v. Federation of Pakistan and others* reported as 1995

CLC 299, Tanvir Rasool Roller Flour Mills (Private) Limited v. MAPCO and another reported as 2002 CLD 157 and a recent pronouncement of a learned Division Bench of this High Court in Muhammad Akbar v. Masood Tariq Baghpati and others reported as 2019 CLD 1.

In Sultan ul Arfeen and others v. District Officer (Revenue) City District Government of Karachi reported as 2013 CLD 1280 a Division Bench of this High Court headed by Mushir Alam, CJ (as he then was) observed that since the liability is clearly of the company and the provisions of West Pakistan Land Revenue Act, 1967 are summary in nature, hence, the said provisions cannot be invoked against the person against whom liability has not been adjudicated or established. The facts in the said case were pari materia to the present controversy as proceedings under the West Pakistan Land Revenue Act, 1967 were initiated against the directors of a company, when the dues were required to be recovered from the company itself. The learned Division Bench was pleased to strike down the impugned notice in the said circumstances.

The aforesaid judgment is squarely applicable to the present facts and circumstances and nothing is apparent from the record to justify the initiation of coercive recovery proceedings against the petitioners, in respect of dues which were prima facie not established or even alleged there against, as is apparent from the PTA Order upon which the Impugned Notices are anchored. We had specifically provided an opportunity to the learned counsel for the PTA to rebut this proposition and demonstrate the basis upon which such recovery was being sought from the petitioners, however, the learned counsel failed to do so.”

Ovex Technologies (Private) Limited Vs. PLD 2020 Islamabad 52:

*“53. It is well settled that as per company laws, a company is a separate legal entity distinct from its owners or shareholders or directors or officials or employees. A company has a perpetual existence and can sue and be sued in its own name. **Any director or employee of a company is not personally liable for the liability of the company even if he acted on behalf of the said company.** Conversely, a company is also not liable for the liability of its directors/employees arising out of an act in their individual capacity. Directors of a company are liable for misappropriation of the company's funds and other misfeasances but not for ordinary contractual liability of the company.” [Emphasis added].*

9. Therefore, the argument made by the learned counsel for the Respondents No. 1 to 3 that the Petitioners, being owners of the Respondent No. 4, are liable for the company's alleged sales tax liability is patently flawed and without merit particularly when the recovery has not been made pursuant to Section 58 of the Sales Tax Act, 1990 (amended up to 15-11-2014), which is reproduced herein below:

58. Liability for payment of tax in the case of private companies [or business enterprises].—(1) *Notwithstanding anything contained in the Companies Ordinance, 1984 (XLVII of 1984), where any private company [or business enterprise] is wound up and any tax chargeable on the company [or business enterprise], whether before, or in the course, or after its liquidation, in respect of any tax period cannot be recovered from the*

company [or business enterprise], every person who was an [owner of, or partner in, or director of,] the company [or business enterprise], during the relevant period shall, jointly and severally with such persons, be liable for the payment of such tax.

10. However, none of the conditions stipulated in such provision appear to be satisfied in the instant case. Respondent No. 4 is not a private company nor has it been established that the Respondent No. 4 is wound up or that tax cannot be recovered from the same. In any event, it is nobody's case that the Impugned Notices were sent pursuant to Section 58 of the Sales Tax Act, 1990.

11. Now I come to the provisions of Section 48 (1)(b) of the Sales Tax Act, 1990 pursuant to which the Impugned Notices were purportedly issued, which is reproduced herein below:

48. Recovery of arrears of tax.— (1) Subject to sub-section (1A) where any amount of tax is due from any person, the officer of Inland Revenue may:-

(a)...

(b) require by a notice in writing any person who holds or may subsequently hold any money for or on account of the person from whom tax may be recoverable to pay to such officer the amount specified in the notice.

(c).....

(ca).....

(d).....

(e).....

(f).....

12. Bare perusal of the said provision makes it abundantly clear that it applies to a person who holds or may subsequently hold any money for or on account of the person from whom tax may be recoverable. Therefore, the alleged sales tax liability of Respondent No. 4 Company could only be recovered pursuant to such provision of law from a person who holds or may subsequently hold any money for or on account of the Respondent No. 4 Company.

13. The learned counsel for Respondents No.1 to 3 argued that the amount in such personal accounts is derived from the income generated from the business of the Respondent No. 4 Company. First of all it

cannot be presumed that the money lying in the accounts of the shareholders/directors is entirely from the taxpayer company. Even otherwise the requirement of Section 48 (1)(b) of the Sales Tax Act, 1990 is not that recovery of arrears of tax of a taxpayer can be made from any person who is deriving income from such taxpayer. Rather the provision is very clear that it only applies to persons who are holding or may subsequent hold any money for or on account of the taxpayer from whom tax is recoverable. However, the Impugned Notices do not state as to how the money held in the personal accounts of the Petitioners is money held by them on account of the Respondent No. 4 Company who allegedly is a tax defaulter.

14. For all the foregoing reasons, I find that the Impugned Notices are not sustainable. In view of the aforesaid, instant petition is **allowed** and the Impugned Notices are set-aside. Consequently, Respondents No.1 to 3 are directed to refund the amounts recovered from the respective bank accounts of the Petitioners along with interest thereupon at the prevailing rate from the date of unlawful recovery till realization within two weeks from the date of receipt of this judgment.

(SAMAN RAFAT IMTIAZ)
JUDGE

Announced in open Court on 14th of June, 2022.

JUDGE