

FORM NO.HCJD/C  
**JUDGMENT SHEET**  
IN THE ISLAMABAD HIGH COURT,  
ISLAMABAD

JUDICIAL DEPARTMENT

W.P. No. 483 of 2015.

**M/S Advance Business System, etc.**

Versus

**FOP, etc.**

**Date of Hearing: 05-06-2015.**

**Petitioners by:**

***Mr Shafqat Mehmood Chohan and  
Mr Abdul Qadoos Mughal,  
advocates.***

**Respondents by:-**

***Hafiz Ahsan Ahmed Khokhar,  
advocate.  
Mr Hassan Bin Izhar, Assistant  
Director, I&I-IR.  
Mr Aamir Ilyas, Deputy Director.***

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**Athar Minallah, J:**

The petitioner No.1

is a partnership firm while petitioners No.2 to 4 are the partners in the said registered firm. As a partnership firm, the petitioner No.1 is, inter alia, engaged in the business of import and wholesale of computers, computers equipments, software, etc.

2. Through the instant petition, the petitioners have assailed order dated 09-02-2015 passed by the

respondent No.2 as well as the registration of FIR No.1 dated 18-02-2014.

3. Mr Shafqat Mehmood Chohan, ASC, appearing on behalf of the petitioners has contended that; the respondents No.2 to 4 have no jurisdiction to proceed against the petitioners as petitioner No. 1 is registered under the Sales Tax Act, 1990 within the jurisdiction of respondent No.5 and, therefore, only respondent No.6 could proceed against the petitioners; Section 37-A of the Sales Tax Act, 1990 empowers the respondents No.5 & 6 to proceed against the petitioners as the petitioner No.1 is registered under the Sales Tax Act, 1990 (hereinafter referred to as the 'Act of 1990') within their jurisdiction; under Section 37-A of the Act of 1990, the expression 'person' appears in sub-section (1), and, therefore, essentially means a 'registered person'; the respondents have no jurisdiction to proceed under Section 37-A and register a criminal case prior to completion of the proceedings on the adjudication side; reliance is placed on the judgment of a Division Bench of the Lahore High Court passed in W.P. No. 5047 of 2012 (Taj International Pvt. Ltd. etc versus The Federal Board of Revenue, etc); without determination of the tax liability the criminal proceedings cannot be initiated; the allegations mentioned in the FIR do not satisfy the ingredients of the definition of 'tax fraud' as defined under Section 2(37) of the Act of 1990; the notifications dated 09-02-2015 and 19-08-

2011, which confer powers under Section 30 and 30-E of the Act of 1990 are in respect of the territorial jurisdiction qua the registration under the Act of 1990 of a "person"; the territorial jurisdiction means the jurisdiction of officers who are competent in case of the petitioners to initiate proceedings i.e. within whose jurisdiction the principal office of the petitioners is located or within whose jurisdiction a person has been registered under the Sales Tax Act, 1990; the petitioners have been treated differently as other nine similarly placed business concerns have not been proceeded against by initiating criminal proceedings, rather to the extent of the latter the matters are pending before the respective adjudicating authorities; the petitioners' fundamental rights under Articles 9 & 25 of the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter referred to as the 'Constitution') have been violated.

4. Hafiz Ahsan Ahmed Khokhar, ASC, appearing on behalf of the respondents has argued that; an inquiry was initiated pursuant to an information received through the National Accountability Bureau; the office of the petitioner's firm is located in Islamabad and the allegations are related to the said office; pursuant to the inquiry and investigations the premises of the petitioner's office at Islamabad were searched on 10-01-2014 after obtaining prior approval from a competent Magistrate in Islamabad; during the search, documents, record and computers were

taken into custody in accordance with law and during the course of investigations material evidence regarding alleged 'tax fraud' has been collected; the data obtained pursuant to the search of the office revealed that the petitioners are allegedly operating various bank accounts under fake names; the investigation so far conducted has revealed that the petitioners are alleged to have committed 'tax fraud' involving Rs.917.007 million; the petitioners have approached this Court with undean hands as they had obtained protective bail from the Sindh High Court vide order dated 20-02-2014; the protective bail was granted to them for 14 days with the direction to approach the Special Court at Rawalpindi but they failed to comply with the said orders; on the failure of the petitioners to comply with the directions issued by the Sindh High Court in bail application No.4 of 2014, proceedings have been initiated against the sureties; the petitioners had approached the Sindh High Court and their petition bearing C.P. No. 762 of 2014 was dismissed; the petitioners are fugitive from law and, therefore, not entitled to any relief under Article 199 of the Constitution; the jurisdiction of respondents is vested under Section 37-A of the Act of 1990 as the 'tax fraud' has been committed at the office situated in Islamabad and the incriminating material and equipment has been taken into possession there from.

5. Mr Aamir Ilyas, Deputy Director appeared and stated at the Bar that there is no force in the arguments of the learned counsel for the petitioners that they have been treated differently. It has been stated that the department had registered the FIR against the petitioners while in case of other 9 business concerns who are also alleged to have committed the offence of 'tax fraud' under the Act of 1990, criminal proceedings could not be initiated due to a restraining order passed by the Sindh High Court. It has been unambiguously stated that criminal proceedings shall be initiated against others after the injunctive order passed by the Sindh High Court is vacated. He has also informed this Court that the proceedings against others are distinct qua the petitioners.

6. The learned counsels have been heard and record perused with their able assistance.

7. Two questions have been raised, firstly regarding the jurisdiction of the respondents No.2 to 4 under Section 37-A of the Act of 1990 i.e. whether the FIR could have been registered when admittedly the petitioner No.1 is registered under the Sales Tax Act, 1990 at Karachi, and, secondly, whether the petitioners have been treated differently.

8. The respondents No.2 to 4 are officers notified under Section 30 read with Section 30-E of the Act of 1990. The notification, SRO No.776(I) of 2011 dated 19-08-2011 was issued in exercise of powers conferred under the Act of 1990. The officers specified in column No.2 of the table given in the said notification are empowered to exercise powers as mentioned in column No.3 of the said table. The said notification was superseded by SRO No.116(I) of 2015 dated 09-02-2015 (hereinafter referred to as the 'SRO'). Column No.5 of the Table of the SRO specifies the jurisdiction of officers mentioned in column No.1. The Director General, i.e. respondent No.2 appears at Serial number No.1 and the jurisdiction extends to "persons or classes of persons carrying on business in areas or residing, within the territorial jurisdiction of Pakistan". Respondent No.3 appears at serial Number 10 of the SRO while respondent No.4 at serial No.23 thereof. The jurisdiction of the former has been specified as follows:

*"I. All persons or classes of persons carrying on business, falling within the territorial jurisdiction of the Regional Tax Office, Islamabad and all cases assigned to Large Taxpayers Unit, Islamabad.*

*II. All persons or classes of persons not otherwise specified if the person resides in areas mentioned at (I) above”.*

9. It is obvious from the above that the jurisdiction of the respondent No.2 extends to whole of Pakistan while respondent No.3 to “all persons or classes of persons carrying on business within the territorial jurisdiction of the Regional Tax Office, Islamabad. Likewise in case of respondent No.4, the concerned Director may assign persons or classes of persons.

10. It is also obvious from the above that officers described in column No.2 of the SRO may exercise jurisdiction as specified in column No.5 thereof. Respondent No.3, who appears at Serial No.10 of column No.1 of the SRO is vested with jurisdiction to exercise powers enumerated in column No.4, which, inter alia, includes Section 37-A of the Act of 1990. The respondent No.3, is therefore, clothed with the power and jurisdiction to exercise powers under Section 37-A of the Act of 1990, and extends to all persons or classes of persons carrying on business within the territorial jurisdiction of the Regional Tax Office, Islamabad.

11. In the instant case, it is not in dispute that the petitioners have an office in Islamabad for carrying on their

business. The said office was searched pursuant to obtaining warrants and alleged incriminating material and equipment was taken into possession there from. The office is situated within the territorial jurisdiction of the Regional Tax Office, Islamabad. The jurisdiction of respondents No.2 to 4 is, therefore, unambiguously established. There is no force in the argument of the learned counsel that the jurisdiction specified in column No.5 relates to a person "registered" under the Sales Tax Act, 1990. Column No.5 refers to "person or classes of persons" and not a "registered person". As a corollary the jurisdiction extends to all such persons who 'carry on business' within the jurisdiction of respondents no. 2 to 4 regardless of the registration under the Act of 1990.

12. The learned counsel has also raised a question regarding the scope of Section 37-A of the Act of 1990, particularly with reference to the expression "person" mentioned therein. Section 37-A confers the power to arrest and prosecute. It provides that an officer of Inland Revenue, not below the rank of an Assistant Commissioner Inland Revenue or any other officer of equal rank authorized by the Board in this behalf may proceed provided such officer, on the basis of material evidence, has reasons to believe that a person has committed a tax fraud or any other offence under the Act of 1990. 'Person' is defined in Section 2(21) of the Act of 1990 as follows:-



- "(a) an individual;*
- (b) a company or association of persons  
incorporated, formed, organized or  
established in Pakistan or elsewhere;*
- (c) the Federal Government;*
- (d) a Provincial Government;*
- (e) a local authority in Pakistan; or*
- (f) a foreign government, a political  
subdivision of a foreign government, or  
public international organization;"*

13. It may also be noted that a 'registered person' is defined in Section 2(25) of the Act of 1990. It is obvious that the expressions "person" and "registered person" have distinct meanings. The latter has restricted meanings as defined in Section 2(25) while the former has such wider meanings, which, inter alia, includes any individual, whether natural or a juridical person. Where ever the legislature intended that the application of a provision shall be to the extent of a 'registered person', then the said expression has been expressly mentioned. In case of Section 37-A, instead of using 'registered person', the expression 'person' has been used. Likewise, 'tax fraud' is also defined in Section 2(37) of the Act of 1990. The expression 'person' as defined in Section 2 (21) is by no stretch of the imaginations restricted to a 'registered person'. Any individual, company

or association of persons incorporated, formed, organized or established in Pakistan or elsewhere falls within the ambit of the definition. There is no force in the argument of the learned counsel for the petitioners that the expression 'person' as used in Section 37-A of the Act of 1990 is to be construed as a 'registered person'. Bare perusal of the contents of FIR, prima facie, reveals that the offence of 'tax fraud' as defined in Section 2(37) is made out, warranting initiation of the proceedings.

14. In the instant case, the petitioners do not deny the existence of their office in Islamabad. They were, therefore, undoubtedly carrying on business within the jurisdiction of respondents No. 2 to 4. It is also not denied that the search was carried out under Section 40 of the Act of 1990 and on the basis of alleged incriminating evidence collected as a result of the said search criminal proceedings under Section 37-A were initiated by registering the FIR. The respondents No.2 to 4 have territorial jurisdiction insofar as the offence is alleged to have been committed in Islamabad. Alleged offence of 'tax fraud' has been committed within their jurisdiction.

15. The judgment of the Division Bench of Lahore High Court delivered in W.P. No. 5047 of 2012 titled "Taj International Pvt. Ltd, etc. versus The Federal Board of

Revenue, etc”, has been relied upon by the learned counsel in support of his contention that criminal proceedings cannot be initiated unless the tax due has been determined on the adjudication side. With humility, I have not been able to persuade myself to concur with the reasoning and conclusion arrived at by the learned Division Bench of the Lahore High Court. The scheme of the Sales Tax Act of 1990 provides for two distinct proceedings, which may be initiated simultaneously. The proceedings by the departmental authorities under Section 11 of the Act of 1990 to assess the tax and the criminal proceedings under Section 37-A are not inter dependent. It is within the powers of the authorities notified under the Act of 1990 to proceed under both the provisions simultaneously and independent of each other. It is noted that “tax due” appearing under sub-section (4) of Section 37-A has reference to such amount of tax as may be determined at this stage by the relevant authorities and uncontested by the person liable to pay. It has no nexus with the assessment and recovery proceedings under Section 11 of the Act of 1990. This is obvious from the plain language of sub-section (4) of Section 37-A as the discretion vested in the Commissioner to compound the offence can be exercised at any time, “either before or after the proceedings for recovery of the tax”. The “proceedings” for recovery of the tax commences either under Section 11 or 11-A and continues till the tax due has been actually recovered under Section 48 of the Act of 1990. Section 37(4)

starts with a non-obstante clause and, therefore, further affirms that the power to compound the offence is not dependent on completion of proceedings under Section 11 of the Act of 1990.

16. The argument advanced by the learned counsel for the petitioners that the respondents could only have initiated proceedings under Section 37-A of the Act of 1990 would tantamount to reading into a fiscal statute something which has not been provided therein by the legislature. It is noted that the Act of 1990 is fiscal in nature and, therefore, has to be interpreted in the light of the principles enunciated in respect of interpretation of fiscal legislation. This Court is, therefore, of the view that notwithstanding initiation or completion of proceedings by the authorities on the adjudication side under Section 11 of the Act of 1990, proceedings under Section 37-A *ibid* shall be competent and within the jurisdiction of the officers authorized in this regard.

17. Next is the question of discrimination. The statement made at the Bar by a senior officer of the department leaves no doubt that there is no discrimination. The case of the petitioners is distinct and independent from other business concerns. The FIR has been registered and proceedings are pending. No case is made out for quashing

the FIR as the same has been registered by officers who are competent and vested with jurisdiction in this regard. The petitioners have alternate remedies available to them under the law before the learned trial court and, therefore, it also raises question regarding the maintainability of the instant petition. Moreover, the conduct of the petitioners is not in their favour for seeking relief in exercise of the extraordinary jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. They have not denied that after seeking respective protective bails from the Sindh High Court, they preferred to avoid appearing before the trial court.

18. In the light of the above discussion, there is no merit in the instant petition and the same is ***dismissed***.

**(Athar Minallah)**  
**Judge**

Approved for reporting.

*Asad K/\**