

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE UMAR ATA BANDIAL, HACJ
MR. JUSTICE MUHAMMAD ALI MAZHAR

CIVIL PETITION NO.349-L OF 2017.

(Against the Judgment of Lahore High Court,
Lahore dated 30.12.2016 passed in W.P.
27535/2016)

Commissioner Inland Revenue etc.

... **Petitioners**

Versus

Jahangir Khan Tareen & others.

... **Respondents**

For the Petitioner : Mr. Sarfraz Ahmad Cheema, ASC
along with Mr. Naeem Hassan, Secretary
Litigation of FBR.

For the Respondent : Mr. Shahzad Ata Elahi, ASC

Date of Hearing : 15.09.2021

JUDGMENT

MUHAMMAD ALI MAZHAR, J:- This petition is directed against the judgment dated 30.12.2016, passed by learned Lahore High Court, Lahore whereby the W.P.No.27535/2016 filed by the respondent No.1 was allowed and show cause notice dated 10.8.2016 was quashed.

2. Compendiously and tersely, the facts necessary for the disposal of this appeal are delineated as under:-

The respondent No.1 filed income tax return for the tax year, 2010 on 07.10.2010 declaring agricultural income, dividend and income under the head of salary which was deemed assessed under Section 120 (1) of the Income Tax Ordinance, 2001. Subsequently, some proceedings were initiated under Section 122 (5) on various issues including the issue of unexplained agricultural income. However, while finalizing the proceedings, the respondent No.2 accepted the explanations and dropped the proceedings. Thereafter, jurisdiction of the case of respondent No.1 was transferred to Large Taxpayer Unit, Lahore vide Notification dated 13.07.2016. The assessment made by the respondent No. 2 was considered erroneous hence a show cause notice was issued on 10.08.2016 under Section 122 (5A) of the Income Tax Ordinance to explain the position. The respondent No.1 filed a writ petition in the

Lahore High Court, which was allowed and show cause notice was quashed on the ground that Additional Commissioner IR LTU, Lahore had no jurisdiction to issue show cause notice.

This petition was disposed of vide our short order dated 15.9.2021 in the following terms:

“For the reasons to be recorded later, this petition is converted into appeal and allowed. The matter is remanded to the Additional Commissioner to first establish the conditions laid down in Section 210 of the Income Tax Ordinance, 2001 regarding delegation of authority to him before he can proceed on the merits of the case.”

3. The learned counsel for the appellant argued that learned High Court had failed to consider the order/notification dated 07.08.2013 issued by the Commissioner Inland Revenue, Zone-III, LTU, Lahore in exercise of powers conferred under Section 210 (1) of the Ordinance through which the jurisdiction of Section 122 (5A) of the Ordinance was assigned to Additional Commissioner Inland Revenue (Audit) Zone-III, LTU, Lahore. The show cause notice was properly issued after delegation of power by the Commissioner Inland Revenue, Zone-III, LTU. It was further averred that the respondent No.1 was only issued a show cause notice to explain the position and no adverse action was taken but the respondent No.1 challenged the show cause in the writ petition at premature stage.

4. The learned counsel for the respondent No.1 argued that the petitioner No.2 had no authority to proceed against the respondent No.1 under Section 122 (5) on alleged unexplained income. The said powers could be exercised by the Commissioner Inland Revenue which could be only delegated in the manner specified under Section 209 of the Income Tax Ordinance. It was further contended that the transfer of jurisdiction of the respondent No.1 case from Regional Tax Office, Lahore to Large Tax Payers Unit, Lahore and issuance of the impugned Show Cause Notice by petitioner No.2 was based on mala fide intention. He further contended that Show Cause Notice was without jurisdiction therefore the learned high court rightly quashed the notice.

5. Arguments heard. The controversy set in motion or triggered when a Show Cause Notice issued to the respondent No.1 by Additional Commissioner IR, Large Taxpayer Unit, Lahore under Section 122 (5) read with Section 122 (5a)/122 (4) of the Income Tax Ordinance for tax year 2010 whereby the assessment was found erroneous and prejudicial to the interest of revenue for the reason that income of Rs.425,000,000/- was unexplained. The officer shown his intention to further amend the assessment under Section 122 (5) for the tax year 2010 invoking the provisions of Section 122 (5A) read with section 122 (4) of the Income Tax Ordinance, 2001 after providing an opportunity of hearing to the respondent No.1 as laid down under Section 122 (9) of the Income Tax Ordinance, 2001.

6. In Writ Petition, the respondent No.1 challenged the Notification dated 13th July, 2016 which is reproduced as under:-

**"GOVERNMENT OF PAKISTAN
REVENUE DIVISION
FEDERAL BOARD OF REVENUE**

**No.5(26)Jurisdiction/2016/91897-R Islamabad, the
13th,July 2016**

**NOTIFICATION
(Inland Revenue Wing, FBR)**

**SUBJECT: JURISDICTION OF COMMISSIONERS
INLAND REVENUE, LTU, LAHORE.**

In exercise of the powers conferred under sub-section (1) of section 209 of the Income Tax Ordinance, 2001, sub-section (1) of section 30 and section 31 of the Sales Tax Act, 1990, and sub-section (1) of section 29 of the Federal Excise Act, 2005, the Federal Board of Revenue is pleased to direct that following amendments/modifications shall be made in Board's Notification C.No.57(2)S-DOS/2011-29530-R dated 1st March, 2011, with immediate effect and until further orders:

- I. Against S.No.01, 02 and 03 in column (4) after the words "**persons**" words "**and directors thereof**" shall be added.
- II. For the removal of doubt it is clarified that if a director of a company being assessed at LTU, Lahore is also a director assessed in another LTU or RTO, the director shall have jurisdiction at LTU, Lahore.

**-Sd-
(Yousif Hyder Shaikh)
Chief (IR-Revenue & Operations)**

In tandem, the respondent No.1 also articulated before the high court that the Additional Commissioner Inland Revenue Large Taxpayer Unit, Lahore was not delegated powers under Section 210 of Income Tax Ordinance 2001 hence he had no authority to issue show cause notice. Section 209 of Income Tax Ordinance 2001 depicts the jurisdiction of Income Tax Authorities which inter alia provides that the Board or the Chief Commissioner as the case may be transfer jurisdiction in respect of cases or person from one Commissioner to another. The impugned judgment of the learned High Court only concentrates and accentuates the question of jurisdiction that Additional Commissioner IR could not have issued the show cause notice without delegation of power under section 210 of the Income Tax Ordinance. Neither any discussion was made on the above notification in the impugned judgment nor was it set aside. In our foresight also we do not find any illegality or impropriety with regard to transfer of jurisdiction pursuant to aforesaid Notification.

7. The chronicle of case indicates that on 1.3.2011, Member (Inland Revenue) Federal Board of Revenue, Government of Pakistan issued a Notification in respect of jurisdiction of LTU Lahore and directed that the Commissioner of Inland Revenue specified in column (2) of the table mentioned in the Notification shall exercise the powers as specified in column (3) in respect of the persons or classes of persons or cases or classes of cases as specified in column (4) of the Table. In the Table at Serial No.3 the Commissioner Inland Revenue (Zone-III), LTU, Lahore was authorized to perform functions as assigned in Income Tax Ordinance 2001, Sale Tax Act, 1990, Federal Excise Act, 2005, Wealth Tax Act, 1963 and Finance Act, 1989 as amended vide Finance Act, 2010 for all classes of persons mentioned in Schedule-III of the Notification. The attached Schedule-III at Serial No.42 put on view the name of Respondent No.1's company "J.D.W Sugar Mills Limited". In fact the Notification dated 1.3.2011 was amended vide Notification dated 13.7.2016 whereby against S.No.01, 02, and 03 in Column (4), after the words "persons" words "and directors thereof" were added, which explicates that the directors of company were also brought within the same LTU as

company. By means of Notification dated 1.3.2011, the J.D.W was made subject to Zone-III, LTU and vide Notification dated 13.7.2016, the directors were brought within the same Zone. Since the respondent is director of JDW, hence Zone III claimed to have jurisdiction pursuant to the Orders issued by FBR on 6.8.2013 and 7.8.2013 which require verification by the competent Authority.

8. The learned High Court quashed the show cause notice predominantly on the footing that the Tax Department failed to demonstrate through any credible evidence the authority of Additional Commissioner IR LTU, Lahore in terms of Section 210 of the Income Tax Ordinance. For the ease of reference, Section 210 of the Income Tax Ordinance is reproduced as under:-

“210. Delegation. —(1) The Commissioner subject to sub-section (1A), may, by an order in writing, delegate to any Officer of Inland Revenue, subordinate to the Commissioner all or any of the powers or functions conferred upon or assigned to the Commissioner subject to sub-section (1A) under this Ordinance, other than the power of delegation.

(1A) The Commissioner shall not delegate the powers of amendment of assessment contained in sub-section (5A) of section 122 and amendment of an order of recovery under sub-section (3) of section 161 to an officer of Inland Revenue below the rank of Additional Commissioner Inland Revenue.

(1B) The Commissioner may, by an order in writing, delegate to a special audit panel appointed under sub-section (11) of section 177, or to a firm of chartered accountants or a firm of Cost and Management Accountants appointed by the Board or the Commissioner to conduct an audit of person under section 177, all or any of the powers or functions to conduct an audit under this Ordinance.

(2) An order under sub-section (1) may be in respect of all or any of the persons, classes of persons or areas falling in the jurisdiction of the Commissioner.

(3) The Commissioner shall have the power to cancel, modify, alter or amend an order under sub-section (1).”

9. In the impugned judgment, the learned High Court held that the powers entrusted to Additional Commissioner Inland Revenue Zone-III in respect of Column 3, vide Notification dated 8.3.2011 was regarding the taxpayers falling within the jurisdiction of Officer of Inland Revenue (Audit-01), (Audit-02) and (Audit-03)

which was not applicable to the petitioner/respondent No.1. On the contrary, it transpired while scrutinizing the Notification issued under Section 210 of Income Tax Ordinance on 8.3.2011 that the Additional Commissioner Inland Revenue was conferred powers and functions for amendment of assessment under Section 122 (5-A) of the Income Tax Ordinance 2001 with all incidental statutory powers including rectification of mistakes under Section 221 of the Income Tax Ordinance. The High Court further observed that there was nothing on record to demonstrate that Additional Commissioner IR LTU Lahore was in fact Additional Commissioner Inland Revenue (Audit) Zone-III LTU Lahore.

10. On further scrutiny and survey of record, it came into sight vide another order dated 7.8.2013 issued by Commissioner Inland Revenue Zone-III, Large Taxpayers Unit, Lahore whereby Additional Commissioner Inland Revenue (Audit) Zone-III LTU Lahore was conferred jurisdiction under Section 210 of Income Tax Ordinance to amend the assessment and exercise the powers and functions as Officer of Inland Revenue, Audit-15, Audit-16 and Audit-17. One more order dated 6th August, 2013 is available on record which demonstrates that in supersession of previous order conferred by sub-section (2) of Section 209 of the Income Tax Ordinance 2001, the Chief Commissioner Inland Revenue Large Taxpayers Unit, Lahore was assigned supervisory jurisdiction to the Additional Commissioner Inland Revenue specified in Column (ii) of the Table. The Table at Serial No.7 shows that Additional Commissioner Inland Revenue (Audit) Zone-III LTU Lahore was assigned the supervisory jurisdiction as Officer of Inland Revenue (Audit-15), (Audit-16) and (Audit-17). The learned counsel for the petitioner articulated that while issuing show cause notice on 10th August, 2016, Farooq Azmat Chatha, Additional Commissioner IR Large Taxpayers Unit inadvertently failed to cite his full official designation. To reinforce this stance, he also referred to a posting and transfer order dated 11.01.2016 issued by Chief Commissioner Inland Revenue, Federal Board of Revenue with regard to Additional Commissioner IR, Deputy Commissioners IR and Assistant Commissioner IR. This posting and transfer order highlights the name of "Farooq Azmat Chatha" at Serial No.5 who was transferred from Additional Commissioner (OPS) to Audit

Zone-III. Seemingly, the show cause notice was issued after fulfilling and complying with requisite formalities, even so, if the respondent No.1 had any doubts in mind, the issue of jurisdiction or alleged non-existence of delegated powers should have been raised first before the Additional Commissioner IR, Large Taxpayer Unit rather than challenging show cause notice in the writ jurisdiction.

11. 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 the defaulting act. By and large, it is a well-defined and well-structured process to provide the alleged defaulter with a fair chance to respond the allegation and explain his position within reasonable timeframe. Even in case of an adverse order, the remedies are provided under the tax laws with different hierarchy or chain of command. 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. The Abuse of process is the use of legal process for an improper purpose incompatible with the lawful function of the process by one with an ulterior motive. 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. Whereas *coram non judice* is a Latin word 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. In the case of *Indus Trading and Contracting company Vs. Collector of Customs (Preventive) Karachi and others* (2016 SCMR 842), this court held that where a special law provides legal remedy for the resolution of a dispute, the intention of the legislature in creating such remedy is that the disputes falling within the ambit of such forum be taken only before it for resolution. Such bypass of the proper forum is contrary to the intention of the provisions of Article 199 (1) of the Constitution which confers jurisdiction on the High Court only and only when there is no adequate remedy is available under any law. Where adequate forum is fully functional, the High Court must deprecate such tendency at the very initial stage and relegate the parties to

seek remedy before the special forum created under the special law to which the controversy relates.

12. At this point in time, the respondent has only been issued a show cause notice to submit the reply which does not mean or pre-empt that the issuance of show cause will entail or lead to an adverse order or action against the respondent No.1. It is most commonly noticed that whenever a show cause notice is issued by the hierarchy provided under the tax laws calling upon the taxpayer to submit the reply, they immediately challenge the show cause notice in writ jurisdiction with the presumption or presupposition that the show cause notice means an adverse order against them, so in our considerate appraisal, abstinence from interference at the stage of issuance of show cause notice in order to relegate the parties to the proceedings before the concerned authorities must be the normal rule. The challenge to show cause notices in writ jurisdiction at premature stages and tendency to bypass the remedy provided under the relevant statute is by and large deprecated and disapproved in many dictums laid down in local and foreign judgments in which courts have considered the interference as an act of denouncing and fettering the rights conferred on the statutory functionaries specially constituted for the purpose to initially decide the matter. The excerpts from few relevant judgments are reproduced as under:-

Messrs.' Chaudhri Wire Rope Industries Ltd. vs. Sales Tax Officer, Special Circle-I, Lahore (1988 SCMR 1934). As already mentioned, apart from issuing notices to the appellant no further proceedings had been taken by the Sales-tax Officer before the appellant moved the constitutional jurisdiction of the High Court. In the circumstances of this case the petition before the High Court was clearly premature and the learned Single Judge was right in dismissing it on this ground. We would, therefore, dismiss this appeal without costs. We may hardly need to add that it will be open to the appellant to take up all the defences which it wishes to urge in support of this appeal before the Sales Tax Office who will no doubt consider them on merits before making any order.

Messrs.' Ocean Pakistan Ltd. vs. Federal Board of Revenue, Islamabad and others (2012 PTD 1374). Show cause notice dated 12.10.2011 issued under section 122(9) read with section 122(5A) of the Income Tax Ordinance, 2001 by the Additional Commissioner Inland Revenue, Islamabad is under challenge in this petition. In above view of the matter, irrespective of what has been argued before us by the learned counsel for the petitioner, we are of the considered opinion that since all the legal arguments

referred to in the preceding paras, raised on behalf of the petitioner-company, are similarly raised before the competent forum, which has issued show-cause notice to the petitioner-company, any finding on any of the legal objections by this Court is likely to cause prejudice to the case of the petitioner-company before the Income Tax hierarchy. Even the learned Single Judge in Chambers of the High Court has left it open for the Additional Commissioner Inland Revenue to decide the issues whether the sale of 'working interest' falls outside the purview of agreement and consequent to the sale, the petitioner is to be governed by the Ordinance, 2001.

Deputy Commissioner of Income Tax/Wealth Tax, Faisalabad and Others vs. Messrs.' Punjab Beverage Company (PVT.) Ltd. (2007 PTD 1347=2008 SCMR 308). The tendency of by-passing the remedy provided under law, and resort to Constitutional jurisdiction of High court was deprecated. The petitioner instead of rushing to the High Court and consuming sufficient time should have submitted reply before invoking the jurisdiction of the High Court. Such practice is to be deprecated because if merely on the basis of show-cause notice proceedings are started then in such position department would never be in a position to proceed with the cases particularly the recovery of revenue etc. Thus keeping in view the circumstances of the case we are of the opinion that respondent, had wrongly availed remedy under Article 199 of the Constitution instead of availing appropriate remedy under Income Tax Ordinance, 1979.

Messrs.' Amin Textile Mills (Pvt.) Ltd. vs. Commissioner of Income-Tax and 2 others (2000 SCMR 201). There is no material on record to show that the competent Authority failed to apply its independent mind to the facts of the case before issuing notices. High Court was right to observe that the petitioner should in the first instance, approach the hierarchy of the forums provided for under the Ordinance instead of filing a Constitution petition. In the case of A1 Ahram Builders (Pvt.) Ltd. v. Income Tax Appellate Tribunal (1993 SCMR 29), this Court discouraged the tendency to bypass the remedy provided under the relevant statute to press into service Constitutional jurisdiction of the High Court.

Shagufta Begum vs. The Income-Tax Officer, Circle-XI, Zone-B, Lahore (PLD 1989 SC 360). We consider it a fit case in which the petitioner would be well advised if he raises the pleas sought to be advanced before this court in the departmental forum in the first instance and also to pursue the normal channels of appeal/revision/reference. It is well known that a plea regarding the assumption of jurisdiction by a Tribunal or a court is available to a litigant even when appearing before the highest court in the country. It is therefore hoped and expected that when an objection in this behalf is raised before the learned officer concerned, he would dispassionately examine it on its own merits and render a decision which he believes bona fide to be correct.

Khalid Mahmood Ch. and others vs. Government of the Punjab through Secretary, Livestock and Dairy Development (2002 SCMR 805). The disputed show-cause notice is still at preliminary stage and after considering the replies of the petitioners if the competent

Authority comes to the conclusion that it was a case of taking further proceedings under the Ordinance, it will be required to constitute an Enquiry Committee or appoint an Enquiry Officer. The Constitutional petitions in the circumstances were rightly held to be premature and dismissed as such.

Union of India (UOI) and others v. Vicco Laboratories (Equivalent Citation: 2008 (3) ALLMR (SC) 453, 2008 (2) CTC 511, 2007 (123) ECC 278, 2007 (149) ECR 278 (SC), 2007 (218) ELT 647 (SC), (2008 4 MLJ 1272 (SC), (2007) 13 SCC 270, [2007] 1 SCR 534). Normally, the writ court should not interfere at the stage of issuance of show cause notice by the authorities. In such a case, the parties get ample opportunity to put forth their contentions before the concerned authorities and to satisfy the concerned authorities about the absence of case for proceeding against the person against whom the show cause notices have been issued.

State of Uttar Pradesh v. Brahma Datt Sharma (Equivalent Citation: AIR 1987 SC 943, 1987 AWC 760 SC, [1987 (54) FLR 524], JT 1987 (1) SC 571, 1987 Lab IC 689, 1987 (1) SC ALE 457, (1987) 2 SCC 179, [1987] 2 SCR 444, 1987 (2) UJ 55). The purpose of issuing show cause notice is to afford opportunity of hearing to the Govt. servant and once cause is shown it is open to the Govt. to consider the matter in the light of the facts and submissions placed by the Govt. servant and only thereafter a final decision in the matter could be taken. Interference by the court before that stage would be premature.

The Special Director and others v. Muhammad Ghulam Ghouse and others (Equivalent Citation: 2004 (2) ACR 1844 (SC), AIR 2004 SC 1467, 2004 (55) ALR 95, 2004 (106 (2) BOMLR 569, (2004) 3 CALLT 8 (SC), [2004] 120 Comp.Cas 467 (SC), 2004 (91) ECC 299, 2004 (112) ECR 501 (SC), 2004 (164) ELT 141 (SC), JT 2004 (1) SC 206, 2004 (2) PLJR 237, 2004 (1) SCALE 330, (2004) 3 SCC 440, [2004] 50 SCL 93 (SC), [2004] 2 SCR 399, 2004 (1) SCT 671 (SC), 2004 (1) UJ 744). This Court in a large number of cases has deprecated the practice of the High Court's entertaining writ petitions questioning legality of the show cause notices.... writ petitions should not be entertained for the mere asking and as a matter of routine.... whether the show cause notice was founded on any legal premises is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the Court.

Union of India and others v. Kunisetty Satyanarayana (Equivalent Citation: AIR 2007 SC 906, [2007 (112) FLR 325], 2007 (1) PLJR 121, 2006 (12) SCALE 262, (2006) 12 SCC 28, (2007) 2 SCC (LS) 304, [2006] Supp. (10) SCR 257, 2007 (1) SCT 452 (SC), 2007 (3) SLJ 338 (SC). The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature... A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the

rights of any party unless the same has been issued by a person having no jurisdiction to do so.

13. The learned counsel for the respondent No.1 also raised an objection and shown some disquiet that the Notification/order dated 8.3.2011 whereby the authority was delegated under Section 210 of Income Tax Ordinance was not published in the official gazette so it may not be beyond the reasonable doubt that it was fabricated at later stage to cure the defect. A fleeting look of the Notification transpires that its copy was endorsed to at least 14 authorities/bodies including Tax Bar Association Lahore, Sheikhpura, Nankana Sahib, Kasur and Okara as well as to the Editor PTD, Lahore, Editor Taxation, Lahore and the Manager PRAL, Lahore, however this question cannot be decided at this stage without verification whether it was an engineered document presented to rectify the defect or draw a veil over delinquency or slip-ups on the part of FBR but this question can be decided obviously by the concerned authority for which directions have already been issued in our short order.

14. Be that as it may, we would like to refer to Article 19-A of the Constitution of Islamic Republic of Pakistan at this juncture which envisages and encapsulates that every person shall have the right to have access to information in all matters of public importance subject to regulation and reasonable restriction imposed by law. The Freedom of Information Ordinance 2002 was repealed by Section 29 of the Right of Access to Information Act, 2017. Under Clause (a) (xii) of Section 2 of the aforesaid Act, right of access to information means the right of access to information accessible under this Act which is held by or under the control of any public body and includes the right of access to information, documents, or record in digital or printed form as a case may be. Section 5 of the Act elucidates and interprets the publication and availability of record where under the principal officer of the public body has to ensure the categories of information mentioned in the same Section are duly published including uploading over the Internet in a manner which best ensures that these are accessible subject to reasonable restrictions based on limited resources. Consistent with Section 20-A of the General Clauses Act, 1897 also, all rules,

orders, regulations and circulars having the effect of law made or issue under enactment are required to be published in the official Gazette. Bearing in mind, the Constitutionally guaranteed right as well as the provisions of Right of Access to Information Act, 2017 and General Clauses Act, it is incumbent upon the FBR to monitor and ensure that all such Notifications issued under the law or having force of law should be published in the official Gazette and timely posted at FBR website/portal also. The non-publication of certain notifications in the official gazette breeds and nurtures unnecessary litigation keeping aside the main controversy or nucleus of the case therefore FBR in future shall ensure that all such notifications should be published in the official gazette and simultaneously posted at their website also for general public information and taxpayers.

15. As a result of above discussion we reached to the finale that the respondent No.1 should raise all grounds of challenge to the show cause notice including the alleged jurisdictional error in the reply before the Additional Commissioner who shall after providing ample opportunity of hearing first establish the conditions laid down in Section 210 of the Income Tax Ordinance, 2001 with regard to the delegation of authority before he can proceed on the merits of the case. This petition was converted into appeal and allowed vide short order dated 15.09.2021. Above are the reasons.

Acting Chief Justice

Judge

Islamabad,
15.09.2021
Approved for reporting.