

JUDGMENT SHEET
IN THE LAHORE HIGH COURT,
RAWALPINDI BENCH, RAWALPINDI
JUDICIAL DEPARTMENT

Writ Petition No.4290 of 2023

Rahat Café, Rawalpindi **V/S** *Government of Punjab and
Punjab Revenue Authority etc.*

J U D G M E N T

Date of hearing	18.03.2014, 01.04.2024
Petitioner(s) by	M/s Hafiz Muhammad Idris, ASC with Syed Farid Ahmed Bukhari, Faizan Ahmed Mirza, Hassan Askari Kazmi, Bilal Kayani and Faisal Khurshid Awan, Advocates in this petition and connected W.P.No.751 of 2024. M/s Ch. Naeem ul Haq, ASC with Ch. Imran ul Haq and Ch. Faheem ul Haq, Advocates in connected W.P.Nos.3957, 3958, 3959, 3961, 4102, 4103, 4104, 4104, 4106, 4107, 4198, 4199, 4200, 4255, 4256 of 2023, 76, 77, 79, 81, 82, 243, 301, 446, 447, 448, 449, 450,451, 606, 607 and 851 of 2024. M/s Syed Farid Bukhari, Faisal Khurshid Awan and M. Bilal Bukhari, Advocates in connected W.P.No.4228 of 2023. Mr. Muhammad Musawar Gill, Advocate in connected W.P.Nos.4244 of 2023 and 123 of 2024. Mr. Nasir Muhammad Malik, Advocate in connected W.P.Nos.129, 130, 131, 141 of 2024. Malik Muhammad Aslam, Advocate in connected W.P.No.214 of 2024. Ghazala Nazir Qureshi, Advocate in connected W.P.Nos.361, 362, 363, 364, 365 of 2024. Mr. Muhammad Taimur Malik, ASC in connected W.P.Nos.385, 386, 387 of 2024. Mr. Khalid Jamshed Khattak, Advocate in connected W.P.No.453 of 2024.

	M/s Atif Waheed and Ahmad Shahzad, Advocates in connected W.P.Nos.569, 570 and 571 of 2024.
Respondent(s) by	<p>M/s Hassan Kamran Basheer, ASC with Abdul Wakeel, Advocate for the Respondent/PRA in connected W.P.Nos.3958, 3959, 4104 and 4256 of 2023, 77 and 130 of 2024 with Ms. Nadia Murad, Legal Officer, PRA and Finance Department, Government of Punjab, Lahore.</p> <p>Mr. Zeeshaan Zafar Hashmi, Advocate for the Respondents-PRA in W.P.Nos.3150, 3151 of 2022, 4153 and 4228 of 2023, 76, 84, 129, 301, 363, 385, 449, 450, 570 and 606 of 2024.</p> <p>Mr. Asim Waqar, Advocate for the Respondents in connected W.P.Nos.4198, 4199, 4200, 4244 of 2023, 141, 364, 387, 446 and 571 of 2024.</p> <p>Mr. Muhammad Hussam, Advocate for the Respondent-PRA in connected W.P.Nos.4105, 4106, 4107, 4255 of 2023.</p> <p>Raja Umair Mustafa, Advocate for the Respondent-PRA in connected W.P.Nos.3961, 4102 and 4103 of 2023.</p> <p>M/s Muhammad Baqir Hussain and Nauman Ali Malik, Advocates for the Respondent-PRA in connected W.P.Nos.123, 243, 362, 447, 453 and 569 of 2024.</p> <p>Malik Amjad Ali, Additional Advocate General with Mr. Abid Aziz Rajori, Assistant Advocate General.</p> <p>Mr. Arshad Mahmood Malik, Assistant Attorney General.</p> <p>Mr. Rashid Mehmood, Research Officer, Lahore High Court, Rawalpindi Bench, Rawalpindi.</p>

JAWAD HASSAN, J. This judgment will also decide the connected petitions listed in Schedule-A beside this petition, as common questions of law and facts are involved in all these constitutional petitions.

2. The Petitioner in the instant petition and in the connected petitions (hereinafter would be referred as the “*Petitioners*”) have

challenged the vires of show cause notices (the “*impugned notices*”) under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 (the “*Constitution*”) issued under Section 24(2) of the Punjab Sales Tax on Services Act, 2012 (the “*Act*”) by the Respondent No.3/Additional Commissioner Punjab Revenue Authority, Finance Department, Government of Punjab.

3. Learned counsel for the “*Petitioners*” *inter alia* argued that the “*Petitioners*” are taxpayers and have regularly been paying taxes but the estimate given by the Respondent No.3 in the “*impugned notices*” is based on assumptions which is contrary to data already provided by the “*Petitioners*” in their returns under Section 35 of the “*Act*”; that a notice in terms of Section 52 of the “*Act*” was to be issued before the “*impugned notices*” for the purpose of recovery of tax not levied or short levied; that the “*impugned notices*” have not been issued by a competent authority.

4. Learned counsel for the Respondents, on the other hand, filed report and parawise comments and defended the “*impugned notices*” by stating that the same have been issued due to concealment of sales and short payments of tax due.

5. Arguments heard. Record perused.

6. The question that looms large before the Court is whether the Respondent No.3 can straightaway issue notice under Section 24(2) of the “*Act*” to the taxpayer in connection with not levied or short levied tax. The procedure for the assessment of tax liability is laid in Section 24 of the “*Act*” which reads as:

24. Assessment of tax.— (1) *Where on the basis of any information acquired during an audit, inquiry, inspection or otherwise, an officer of the Authority is of the opinion that a registered person has not paid the tax due on taxable services provided by him or has made short payment, the officer shall make an assessment of the tax actually payable by that person and shall impose a penalty and charge*

default surcharge in accordance with sections 48 and 49.

(2) No order under sub-section (1) shall be made unless a notice to show cause is given to the person in default within [eight] years from the conclusion of the tax period to which the assessment relates specifying the grounds on which it is intended to proceed against him and the said officer shall take into consideration the representation made by such person and provide him with an opportunity of being heard if the person so desires.

(3) An order under sub-section (1) shall be made within one hundred and twenty days of issuance of the show cause notice or within such extended period as the officer may, for reasons to be recorded in writing, fix provided that such extended period shall ordinarily not exceed sixty days.

(4) In computing the period specified in sub-section (3), any period during which the proceedings are adjourned on account of a stay order or proceedings under section 69 or the time taken through adjournments by the person shall be excluded.

(5) An order passed by an officer under sub-section (1) may be further amended as may be necessary when on the basis of any additional information acquired during an audit, inquiry, inspection or otherwise, the officer is satisfied that—

(a) any tax has been under-assessed or assessed at a low rate; or

(b) any taxable service provided by the person has escaped assessment.

(6) The provisions of sub-sections (2), (3) and (4) shall be applicable to an order passed under sub-section (5).

. Section 24(1) of the “Act” empowers an officer of the authority to make an assessment of the tax liability on the basis of any information acquired during an audit, inquiry, inspection or otherwise, if he draws opinion that a registered person has not paid the due tax or he has made a short payment on account thereof. Significant to

mention here that, in course of such assessment, assessing officer under Section 24(2) of the “Act” was obliged as well to afford the “Petitioners” with opportunity of making a representation as well as hearing. Though, admittedly the “*impugned notices*” were issued by the Respondent No.3 under Section 24(2) of the “Act”, but according to learned counsel for the “Petitioners”, the objections taken up by the “Petitioners” in their respective replies have not even been considered nor have the “Petitioners” been afforded opportunity of hearing and huge amount of sales tax have been assessed against them. Moreover, it is quite considerable that the alleged information supplied to the Respondent No.3 by the Punjab Revenue Authority has not been conveyed to the “Petitioners” in black and white enabling them to counter, repel and falsify such information. Learned counsel for the “Petitioners” has also stressed hard that no notice is served upon the “Petitioners” as was required under Section 52 of the “Act”, which reads as follows:

52. Recovery of tax not levied or short-levied.—

(1) Where by reason of inadvertence, error, misconstruction or for any other reason, any tax or charge has not been levied or has been short levied, the person liable to pay such amount of the tax or charge shall be served with a notice, within [eight] years of the relevant tax period requiring him to show cause for payment of the amount specified in the notice.

(2) Where by reason of some collusion, abetment, deliberate attempt, mis-statement, fraud, forgery, false or fake documents—

(a) any tax or charge has not been paid or is, short paid, the person liable to pay such tax shall be served with a notice within [eight] years of relevant tax period, requiring him to show cause for non-payment of such tax; and

(b) any amount of the tax is refunded which is not due, the person obtaining such refund shall be served with a notice

within [eight] years of the receipt of such refund to show cause for recovery of such refund.

(3) The officer shall, after considering the objections of the person served with a notice under sub-sections (1) or (2) or if the objections are not received within the stipulated period, determine the amount of the tax or charge payable by him and such person shall pay the amount so determined.

(4) Any order under sub-section (3) shall be made within one hundred and twenty days of issuance of the notice to show cause or within such extended period as the officer may, for reasons to be recorded in writing, fix provided that such extended period shall not ordinarily exceed sixty days.

(5) In computing the period specified in sub-section (4), any period during which the proceedings are adjourned on account of a stay order or proceedings under section 69 or the time taken through adjournments by the petitioner not exceeding thirty days shall be excluded.

Above reproduced Section 52(3) of the “Act” clearly manifests that the officer concerned shall determine the tax liability after considering the objections of the person served with notice, which obligation cast upon the Respondent No.3 finds lacking in connection with “impugned notices”. In addition thereto, for the purpose of requisite inquiry for assessment of tax, the Respondent No.3 has not set in field procedure laid down in Section 57 of the “Act” requiring the relevant record for such assessment. The said section reads as under:

57. Obligation to produce documents and provide information.— (1) *Notwithstanding anything contained in this Act or any other law, any person required to maintain any record under this Act and the rules, shall, on demand by an officer, [**] by notice in writing, as and when specified in the notice—*

(a) produce for examination, such documents or records which the officer

considers necessary or relevant to the audit, inquiry or investigation under this Act;

(b) allow the officer to take extracts from or make copies of such documents or records; and

(c) appear before the officer and answer any question put to him concerning the documents and records relating to the audit, inquiry or investigation referred to in clause (a).

(2) An officer conducting an audit, enquiry, investigation or otherwise for the purposes of the Act or the rules may require in writing any person to furnish any information as is held by the person.]

(3) The Authority [or an officer authorized by the Authority] may require, in writing, any person, department, company or organization, to provide any information or data held by that person, department, company or organization, which, in the opinion of the Authority, is required for purposes of formulation of policy or administering or implementing this Act and the rules.

(4) Every person, department, company or organization shall furnish the information requisitioned by the Authority or the officer under sub-sections (2) or (3), within the time specified in the notice issued by the Authority.

Intent behind above-mentioned provision of law in connection with requisite inquiry is to bring on record justified footings and reasons for assessment of tax liabilities on basis of record, however, the “*impugned notices*” clearly reflect to be bereft of a requisite inquiry prescribed under umbrella of the “*Act*”. Under the tax laws, a procedure for assessment of tax, information to be sought, and recovery of tax has been provided in Income Tax Ordinance, 2001 (the “**Ordinance**”), the Sales Tax Act, 1990 (the “**Act 1990**”) and the “*Act*”. A combined reading of aforesaid statutes especially the provisions relating to assessment of tax (Section 122(5) of the “*Ordinance*”, Section 11 of the “*Act 1990*” and Section 24 of the

“Act”), information to be sought (Section 176 of the “Ordinance”, Section 38A of the “Act 1990” and Section 53 of the “Act”) and recovery of tax (Section 137 of the “Ordinance”), Section 48 of the “Act 1990” and Section 52 of the “Act”) shows that these sections are identical and envisaging of assessment of tax liability, a (show cause notice) notice to confront taxpayer with intended assessment/information and to provide him an opportunity of hearing. When confronted to learned counsel for the Respondents-PRA a recent judgment of Supreme Court of Pakistan in “COMMISSIONER INLAND REVENUE, LAHORE Versus Messrs MILLAT TRACTORS LIMITED, LAHORE and others” (2024 SCMR 700), holding that the taxpayer is to be confronted with the information and the grounds applicable under Section 111(1) through a separate notice under the said provision, and then the proceedings are to be culminated through an appropriate order in the shape of an opinion of the Commissioner. This then becomes definite information for the purposes of Section 122(5), provided the grounds mentioned in Section 122(5) are applicable, he could not justify the situation in favour of the Respondents by even analogy of similar sections of aforesaid tax laws and the settled principles of Supreme Court of Pakistan enunciated from time to time. Recently, the Division Bench of this Court in Income Tax Reference No.03 of 2023 titled “Zubair Khan Versus Commissioner Inland Revenue Jhelum Zone etc” decided vide judgment dated 02.04.2024 also affirmed the view of issuance of notice before passing any assessment by relying on the judgments of Supreme Court of Pakistan.

7. Furthermore, the replies of the “Petitioners” filed with the Respondent No.3 are still pending adjudication, contentions set forth wherein have not been taken into consideration by the Respondent No.3 nor the “Petitioners” have been afforded with opportunity of

hearing in relation thereto, which otherwise is requirement of law in compliance to Article 10-A of the “*Constitution*”. Statutory principle of law is that a thing should be done as it is required to be done by law and not otherwise. This Court in case “Shell Pakistan Limited Vs. Punjab through the Secretary Ministry of Finance and others” (2020 PTD 1607), pertaining issue under the “Act”, has held that “Article 10-A of the Constitution provides and protects fundamental right of citizen to have fair trial and due process and Courts are charged with duty to protect those rights including the rights of tax payers.” In another tax dispute, in case “Mubashir Yameen Vs. Assistant/Deputy Commissioner Inland Revenue, RTO, Rawalpindi and others” (2023 PTD 146), this court held that “Under Article 4 of the Constitution, it is an inalienable right of the citizen to be treated in accordance with law. Also the fair trial and due process are the fundamental rights of the every citizen of Pakistan under Article 10-A of the Constitution.” Moreover, it is held in case “Mirpurkhas Sugar Mills Limited through Wasif Khalid and 19 others Vs. Federation of Pakistan through Secretary, Cabinet Division, Islamabad and 9 others” (PLD 2021 Sindh 418):

“8. At the very outset we note that any form of corruption, tax evasion, money laundering, illegal cartelization needs to be stamped out with an iron hand but at the same time this must be done in accordance with law and by following due process as mandated by Article 10(A) of the Constitution so that every suspect has a fair opportunity to clear his name and position. Only through the executive following the law, acting in accordance with the law and treating every one equally before the law and jealously guarding a suspects due process rights and dignity as mandated by Articles 4, 25, 10(A) and 14 of the Constitution will the rule of law and good governance be enhanced

and peoples faith in the democratic system grow.”

8. As has been discussed above that “*impugned notices*” are without the strength of due inquiry and the “*Petitioners*” have not been afforded with opportunity of hearing as well as objections raised by them in their respective replies have not been given due consideration as held in case “COMMISSIONER INLAND REVENUE, LAHORE” supra and the principles enunciated in above-referred judgment by the Supreme Court of Pakistan has been followed and is binding under Article 189 of the Constitution of Islamic Republic of Pakistan, 1973. Therefore, the “*impugned notices*” cannot be allowed to breath in field anymore. Consequently, all the writ petitions are ***allowed*** and the “*impugned notices*” are hereby ***set aside***. The matter is remitted to the Respondent No.3 with a direction to first conduct due inquiry in all the petitions in terms of Section 57 of the “*Act*” after ensuring submission of replies by all the “*Petitioners*” in relation thereto, to secure/receive the record/documents from the “*Petitioners*”/relevant corners, if desired, and then to decide objections raised by the “*Petitioners*” in their respective replies through speaking orders. The said exercise shall be done by the said Respondent within a period of thirty (30) days from the receipt of certified copy of this judgment. The parties concerned shall appear before the Respondent No.3 on 02.05.2024.

(JAWAD HASSAN)
JUDGE

APPROVED FOR REPORTING

JUDGE

SCHEDULE-A

Sr.#	Case Number
1	W.No.3957 of 2023
2	W.No.3958 of 2023
3	W.No.3959 of 2023
4	W.No.3961 of 2023
5	W.No.4102 of 2023
6	W.No.4103 of 2023
7	W.No.4104 of 2023
8	W.No.4105 of 2023
9	W.No.4106 of 2023
10	W.No.4107 of 2023
11	W.No.4198 of 2023
12	W.No.4199 of 2023
13	W.No.4200 of 2023
14	W.No.4228 of 2023
15	W.No.4244 of 2024
16	W.No.4255 of 2023
17	W.No.4256 of 2023
18	W.No.76 of 2024
19	W.No.77 of 2024
20	W.No.79 of 2024
21	W.No.81 of 2024
22	W.No.82 of 2024
23	W.No.123 of 2024
24	W.No.129 of 2024
25	W.No.130 of 2024
26	W.No.131 of 2024
27	W.No.141 of 2024
28	W.No.214 of 2024
29	W.No.243 of 2024
30	W.No.301 of 2024
31	W.No.361 of 2024

32	W.No.362 of 2024
33	W.No.363 of 2024
34	W.No.364 of 2024
35	W.No.365 of 2024
36	W.No.385 of 2024
37	W.No.386 of 2024
38	W.No.387 of 2024
39	W.No.446 of 2024
40	W.No.447 of 2024
41	W.No.448 of 2024
42	W.No.449 of 2024
43	W.No.450 of 2024
44	W.No.451 of 2024
45	W.No.453 of 2024
46	W.No.569 of 2024
47	W.No.570 of 2024
48	W.No.571 of 2024
49	W.No.606 of 2024
50	W.No.607 of 2024
51	W.No.751 of 2024
52	W.No.851 of 2024