

ORDER SHEET

HIGH COURT OF SINDH AT KARACHI

C.P. No.D-1895/16, 747/16,1894/16 & 4008/19,

Date Order with signature of Judge

05.09.2019.
Mr. Amjad Javaid Hashmi, advocate for the petitioners.
Mr. Kafeel Ahmed Abbasi, DAG.
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Since similar point is involved in all these four petitions filed on behalf of the petitioners, hence the same are being disposed of by this common order.

Mr. Amjad Javed Hashmi, advocate has appeared on behalf of the petitioners and has assailed show cause notices issued by the department to the Taxpayers. According to him, these show cause notices are violative of Article 4 of the Constitution of Islamic Republic of Pakistan.

At the very outset, he was directed to satisfy the Court with regard to the maintainability of these petitions which have been filed against the issuance of show cause notices only to the petitioners and they are required to furnish reply thereof, as in case any adverse order is passed, the petitioners would have the remedy to file appeal before the department under the provisions of Section 127 of the Income Tax Ordinance 2001 (**the Ordinance**). In reply to the said query, Mr. Amjad Javaid Hashmi, advocate explained that no doubt remedy is available under the relevant provisions of the Ordinance but, in his view, notices are violative of Article 4 of the Constitution.

Mr. Kafeel Ahmed Abbasi has opposed these petitions as not maintainable.

Mr. Amjad Javaid Hashmi as well as Mr. Kafeel Ahmed Abbasi, advocates have been heard and the matter has been perused.

We have failed to understand that how the issuance of show cause notice only for making some queries and calling some information from the Taxpayers is violative of Article 4 of the Constitution. The department is empowered under the relevant provisions of the Ordinance to call certain record and information from the Taxpayers, which Taxpayers are legally obliged to comply with and in case, any adverse order is passed, the Taxpayers have the remedy to file appeal under Section 127 of the Ordinance in this behalf. In our view, no right of the Taxpayers under Article 4 of the Constitution is infringed, in case the department calls certain details, documents and information etc. from a taxpayer as is evident from the perusal of these petitions. We, therefore, do not find any justification to interfere with the issuance of show cause notices calling for certain record etc. from the Taxpayers for certain clarifications. There are plethora of judgments given by the Superior Courts wherein it was held that petitions are not maintainable against issuance of show cause notice. Reference in this regard may be made to the decision given by a Division Bench of this Court in the case of Messrs Pakistan Telecommunication Company Ltd. through duly Authorized Attorney and others Vs. Province of Sindh through Secretary, Ministry of Finance and 2 other (2015 PTD 2072), relevant para whereof is reproduced as under:

“We are of the considered opinion that in view of the facts and circumstances of these petitions, no ground for interference by this Court under Article 199 of the Constitution is made out at this stage of proceedings, when the petitioners have been merely confronted through Show Cause Notice(s)/letter(s) by Sindh Revenue Board regarding effect of withdrawal of exemption Notifications in respect of sales tax on services received by petitioners on incoming international calls, terminating in Pakistan (Sindh), whereas, neither any adverse order has been passed by the respondents nor any demand has been created towards sales tax on services under Sindh Sales Tax on Services Act, 2011. There seems no cause of action or grievance yet ripe to be made subject matter of these petitions”.

We, therefore, in view of the above facts and circumstances, direct the Taxpayers (petitioners) to give proper reply to the department in respect of show cause notices issued to them. It is expected from the department that after hearing the petitioners, they would proceed strictly in accordance with law when admittedly reply to the show cause notice in

some of the petitions has already been filed. With these directions, the above petitions are dismissed along with the listed applications.

Office is directed to place a copy of this order in all the captioned petitions.

JUDGE

JUDGE

Gulzar/PA