

IN THE HIGH COURT OF SINDH, KARACHI

Const. Petition No. D – 4125 of 2014

PRESENT:

MR. JUSTICE AQEEL AHMED ABBASI.
JUSTICE MRS. ASHRAF JEHAN.

United Energy Pakistan Limited..... Petitioner

Versus

Federation of Pakistan & others..... Respondents

Petitioner: through Mr. Ali Almani, advocate.

Respondent No.1: through Mr. Mir Hussain,
Assistant Attorney General.

Respondents No. 2&3: through Mr. Amjad Javed Hashmi, advocate.

Date of Hearing: 17.05.2018.

JUDGMENT

AQEEL AHMED ABBASI, J: Through instant petition, the petitioner, who is a private limited company incorporated in Mauritius and operates through a branch office in Pakistan, and engaged in the exploration and production of oil and gas, has impugned a Notice dated 05.08.2014 issued by Additional Commissioner Inland Revenue, Range B, (E&C), Zone IV, LTU, Karachi, for recovery of outstanding tax payment relating to Occidental Oil & Gas Pakistan LLC (“OOGPL”), amounting to Rs.503,200,907/-, and Occidental Petroleum (Pakistan) Limited (“OPPL”), amounting to Rs1,813,772,867/- under section 98C of the Income Tax Ordinance, 2001.

2. Briefly, the facts as stated in the memo of petition are that the petitioner purchased working interest of BP Pakistan Exploration and Production (“**BP**”) on 16.09.2011 in several petroleum concession agreements, licenses and leases, issued by the President of Pakistan for the exploration and production of oil and gas in the concession areas. BP’s working interest in these concession agreements, licenses and leases was assigned to and novated in the petitioner’s favour through various agreements, details of which has been given in para 4 of the memo of petition. The working interest in some of these concession agreements, licenses and leases had earlier been purchased by BP from OOGPL and OPPL and was assigned to it with effect from 01.01.2007. According to the petitioner, the working interest in the above agreements cannot be assigned without approval of Director General of Petroleum Concessions (“**DGPC**”), whereas, all assignments, agreements have to be signed by President of Pakistan (through authorized officer), therefore, the federal government is fully aware, approves and is part of the assignment process, which also includes approval of other government departments, including Federal Board of Revenue (“**FBR**”) to ensure that an assigner does not have any outstanding tax liability and in case of any such liability, to ensure that the government revenue is adequately protected through a provision to be inserted in such agreement as may be considered adequate by FBR and DGPC. The petitioner received a notice dated 05.08.2014, issued under section 98C(2) of the Income Tax Ordinance, 2001, whereby the petitioner has been required to make payment of some outstanding liability of OOGPL for the tax years 2003 to 2008 and against OPPL for the tax years 2004 to 2010, on the

pretext that both the tax payer sold their assets to which the above demand relates to BP which in turn sold their assets, including those acquired from OOGPL and OPPL to the petitioner, being successor in terms of section 98C(2) of the Income Tax Ordinance, 2001, therefore, the petitioner is required to pay the said outstanding amount of tax to the respondents.

3. It has been contended by learned counsel for the petitioner that the impugned Notice has been issued without lawful authority and contrary to the facts of the case, as, according to the learned counsel, the petitioner is not successor of BP. Per learned counsel, petitioner has purchased certain assets owned by BP, including its working interest in several concession agreements, licenses and leases only and has not purchased the BP's debts nor is it continuing BP's business. It has been further submitted by learned counsel for the petitioner that the petitioner has not even purchased the shares of BP nor engaged in the operation or functions of BP, therefore, no tax arrears against BP can, therefore, be recovered from the petitioner in the grab of proceedings initiated in terms of section 98C(2) of the Income Tax Ordinance, 2001. According to learned counsel for the petitioner, the respondents have never confronted the petitioner with any document, assessment order or demand notice pursuant to which the impugned Notice has been issued for the recovery of a huge amount of tax which may suggest that such amount is outstanding against BP or OOGPL or OPPL, nor the petitioner has been provided any opportunity to explain its position with regard to misconceived presumption by the respondents to the effect that the petitioner is the successor of the

aforesaid companies, hence liable to pay the alleged tax arrears outstanding against the above companies.

4. Without prejudice to hereinabove submissions, learned counsel for the petitioner has further argued that even if BP were the successor of OOGPL and OPPL and the petitioner was BP's successor in terms of section 98C of the Income Tax Ordinance, 2001 for the purpose of alleged tax arrears, then OOGPL and OOPL's working interest was assigned to BP with effect from 01.01.2007 as such, according to the learned counsel, neither BP nor the petitioner can possibly have succeeded to and be liable for the alleged tax arrears of OOGPL for the subsequent years i.e. tax year 2008 of OOGPL, for the tax year 2008 to 2010 of OOPL, as according to the learned counsel, section 98C(2) and (3) of the Income Tax Ordinance, 2001 refers to the tax year preceding the succession and it has no applicability to any alleged tax arrears of a predecessor for the tax years after the succession has taken place. It has been further contended by learned counsel for the petitioner that the respondents have otherwise failed to comply with the provisions of section 98C of the Income Tax Ordinance, 2001 while issuing the impugned Notice, as according to learned counsel, no efforts whatsoever appears to have been made by the respondents to recover the alleged tax arrears from the predecessor-in-interest, against whom, the alleged tax liability is outstanding. It has been prayed by learned counsel for the petitioner that the impugned Notice being illegal and arbitrary may be set aside, and the respondents may be directed not to proceed against the petitioner in respect of any alleged tax arrears of the aforesaid companies as the petitioner is not the successor of the aforesaid

companies in terms of section 98C of the Income Tax Ordinance, 2001.

5. Conversely, learned counsel for the respondents has raised an objection as to maintainability of instant petition as, according to learned counsel, against a show cause notice, petition is not maintainable. Per learned counsel, petitioner is required to submit response to the show cause notice before the tax authorities, who shall decide such objections as raised through instant petition in accordance with law. It has been further contended by learned counsel for the respondents that through instant petition disputed facts have been agitated which cannot be decided by this Court while exercising its constitutional jurisdiction under Article 199 of the Constitution. It has been prayed that petition may be dismissed and petitioner may be directed to comply with impugned Notice under section 98-C of the Income Tax Ordinance, 2001. Without prejudice to hereinabove preliminary objections, learned counsel for the respondents further argued that unless, the petitioner can establish that the petitioner is not successor of BP, which in turn sold its assets including those acquired from OOGPL and OPPL to the petitioner, the petitioner remains liable to make payment of any outstanding arrear of tax in terms of section 98C of the Income Tax Ordinance, 2001.

6. We have heard learned counsel for the parties, perused the record with their assistance as well as the provisions of section 98C of the Income Tax Ordinance, 2001. Admittedly, before issuing the impugned Notice dated 05.08.2014 under section 98C(2) of the Income Tax Ordinance, 2001, to the petitioner, the respondents have never confronted the petitioner with their stance to the effect that the

petitioner is successor of BP or OOGPL or OOPL nor the petitioner has been supplied with any material, including Agreement relating to sale/purchase or transfer of Assets/Liabilities of aforesaid companies to petitioner company, nor petitioner has been supplied to copies of Assessment orders and Demand Notices against the aforesaid companies, for the tax years 2003 to 2008 and tax years 2004 to 2010, which could otherwise justify recovery proceedings initiated by the respondents through the impugned Notice under section 98C(2) of the Income Tax Ordinance, 2001. It further appears that the respondents have also never confronted the petitioner with the concession agreement(s) according to which, the petitioner is made liable to pay outstanding tax liabilities of BP or OOGPL and OPPL as their successor. It is regretted to note that inspite of having recognized the petitioner as a separate legal entity and tax payer with distant NTN number and tax profile, the petitioner has been held liable to make payment of huge amount of tax assess for tax year 2003 to 2010, allegedly outstanding against the aforesaid companies, however, without providing any reasonable opportunity of being heard, in the garb of proceedings under section 98C(2) of the Income Tax Ordinance, 2001, whereas, a direct Notice of recovery has been issued in an arbitrary manner. Whereas, requirements of Notice under section 98C(2) of the Income Tax Ordinance, 2001 have also not been complied with as no efforts appears to have been made by the respondents to recover the aforesaid outstanding liability from the aforesaid companies against whom such demand was created through assessment process. Moreover, the petitioner has seriously disputed

the stance of the respondents whereby the respondents have treated the petitioner as successor of the aforesaid companies.

7. In view of hereinabove facts and circumstances of the case, we are of the view that the impugned Notice has been issued without lawful authority as the same could have only been issued once the respondents would have provided an opportunity of being heard to the petitioner by confronting the petitioner with the relevant documents and material to suggest that the petitioner is the successor of the aforesaid companies against whom such tax liability was outstanding and the petitioner is the successor of such aforesaid companies, hence liable to pay the arrears of tax in respect of its predecessor-in-interest.

8. Accordingly, instant petition was allowed vide our short order dated 17.5.2018 and the impugned Notice dated 15.8.2014 was set aside, above are the reasons of our short order.

9. However, before parting with this Judgment, we may observe that the respondents would adopt proper legal course for recovery of outstanding tax liability in respect of aforesaid companies whereas full opportunity shall be provided to the petitioner before taking any adverse action for the recovery of the aforesaid amount in accordance with law.

JUDGE

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