

IN THE HIGH COURT OF SINDH AT KARACHI

Const. Petition No. D – 7772 of 2018

Present:

Mr. Justice Aqeel Ahmed Abbasi
Mr. Justice Zulfiqar Ahmed Khan

Petitioner: M/s. Searle Pharmaceuticals (Pvt.) Ltd.,
through Mr. Ovais Ali Shah, advocate.

Respondents: Federation of Pakistan & others,
through Mr. Ameer Bukhsh Metlo,
Advocate

&

Ms. Lubna Pervaiz, DAG.

Date of Hearing: 10.12.2018.

Date of Order: 10.12.2018.

ORDER

Aqeel Ahmed Abbasi, J: Through instant petition the petitioner has challenged the Show Cause Notice dated 10.11.2017 issued by Assistant Commissioner Inland Revenue, F & C-01, Zone-V, Corporate Regional Tax Office, Karachi, towards payment of advance tax for the Tax Year 2017 and first quarter of Tax Year 2018, under Section 147 of the Income Tax Ordinance, 2001. Learned counsel submits that impugned Notice has been issued without lawful authority, and also in violation of the judgments of this Court in the case of *M/s.Pak Saudi Fertilizer Ltd. v. Federation of Pakistan and others (1999 PTD 4061)* as well as judgment of this Court dated 18.10.2017 passed in *C.P.No.D-3374/2014* in the case of *M/s.ENI Pakistan (M) Limited v. Federation of Pakistan and others*, wherein, per learned counsel, it has been held that recovery in respect of Advance Tax under Section 147 cannot be made through order under Section 147 of the Income Tax Ordinance, 2001. It has been contended by learned counsel for the petitioner that petitioner files a statement under Section 114 of the

Income Tax Ordinance, 2001, as receipts of the petitioner are covered under Final Tax Regime, whereas, the petitioner has filed a statement to this effect stating therein that provisions of Section 147 of the Income Tax Ordinance, 2001 are not attracted in the case where receipts are covered in Final Tax Regime (FTR), therefore, petitioner is not required to pay advance tax as claimed by the respondent through the impugned show cause notice. Per learned counsel, in view of above cited judgments of this Court, respondents are otherwise not authorized to pass any order under Section 147 of Income Tax Ordinance, 2001 or to enforce recovery, whereas, in case of any default in respect of payment of Advance Tax, respondents can charge default surcharge at the time of making final assessment. Per learned counsel, the respondents have not issued any Notice to the petitioner for making assessment of the petitioner's income under Normal Tax Regime, therefore, the proceedings under Section 147 of Income Tax Ordinance, 2001 are otherwise, contrary to law, hence, liable to be quashed. Per learned counsel, the controversy agitated through instant petition has already been decided in the aforesaid reported judgments, hence, requests that instant petition may also be disposed of in similar terms and impugned show cause notice may be set aside.

2. While confronted with above legal position as stated by learned counsel for the petitioner, learned counsel for respondent could not controvert the same, however, submits that since, petitioner is providing manufacturing services to others as well, therefore, such receipts are not covered under final tax regime, hence, claim of the petitioner that petitioner's income is liable to be assessed under Final Tax Regime (FTR) is misconceived in fact and law.

3. Learned counsel for the respondent was confronted to assist as to whether, any Notice has been issued to the petitioner under Section 122 of the Income Tax Ordinance, 2001, for making assessment of the petitioner under the Normal Tax Regime instead of Final Tax Regime. On such query, learned counsel for respondent has candidly stated that no such Notice appears to have been issued so far to the petitioner in the instant case. Learned counsel for the respondent was also confronted to assist as to whether, in view of afore cited judgments of this Court, recovery of advance tax under Section 147 of Income Tax Ordinance, 2001 can otherwise be effected by passing an order under Section 147, or respondents can only invoke provisions of Section 205 of Income Tax Ordinance, 2001, to default surcharge for the non-payment of Advance Tax. In response to such query, learned counsel for respondent has once again candidly conceded that in view of aforementioned judgments, the recovery of advance tax cannot be effected in terms of Section 147 of Income Tax Ordinance, 2001.

4. In view of hereinabove facts and circumstances of the case, and by respectfully following the ratio of the above cited judgments, we are of the opinion that impugned Show Cause Notice issued by respondent under Section 147 of Income Tax Ordinance, 2001 for the recovery of advance tax for tax year, 2017 has been issued without lawful authority and in violation of the aforesaid judgments of this court, hence, liable to be set aside. Accordingly, instant petition stands allowed in term of aforesaid judgments of this court alongwith listed application.

JUDGE

JUDGE