

# **IN THE HIGH COURT OF SINDH AT KARACHI**

Const. Petition No. **D - 6855** of 2017

<b>Date</b>	<b>Order with signature of Judge</b>
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Present:

*Mr. Justice Aqeel Ahmed Abbasi.*

*Mr. Justice Nazar Akbar.*

## **Hearing of Case**

1. For hearing of Misc. No.28488/2017
2. For hearing of Main Case.

**03.11.2017:**

Mr. Jawaid Farooqi, advocate for the petitioner.

Mr. Muhammad Aqeel Qureshi, advocate for the respondent  
a/w. Asif Jamali, Deputy Commissioner Inland Revenue.

## **O R D E R**

**Aqeel Ahmed Abbasi, J.:** Through instant petition, petitioner has impugned recovery proceedings initiated by the respondents through attachment of bank account of the petitioner, which according to learned counsel for the petitioner, has been made in total violation and express provisions of law, without passing any order or providing any opportunity of being heard to the petitioner. Per learned counsel, notices were issued by the respondents under Section 161(1A) of the Income Tax Ordinance, 2001 for the tax year, 2012 to 2014 and 2016 which were duly responded in writing by the petitioner, however, neither any order was passed by the respondents creating any tax liability against the petitioner, nor such orders, if any, have ever been served upon to the petitioner. On the contrary, according to learned counsel, the respondents have surreptitiously attached bank account of the petitioner by issuing Notice under Section 140 of the Income Tax Ordinance, 2001, without having adopted the legal course provided for the recovery proceedings under Income Tax Ordinance, 2001 and Recovery Rules, 2002.

2. Pursuant to Court Notices, Mr. Muhammad Aqeel Qureshi, has shown appearance along with Asif Jamali, Deputy Commissioner Inland Revenue, who has filed parawise comments along with annexures, which are taken on record, copy thereof has been supplied to the learned counsel for the petitioner. Officer present in Court submits that he has not violated the order passed by this Court, as according to him, the notice and order passed by this Court on 11.10.2017 was served on 18.10.2017. He further submits that the impugned order passed under Section 161 of the Income Tax Ordinance, 2001, for the Tax Years 2013 to 2014, were duly served upon the petitioner electronically (E-portal) as well as through courier, which fact can be ascertained from (E-portal record) delivery report [*Leopard Courier Service (Pvt.) Ltd.*] on 31.08.2017. Learned counsel for the respondent submits that another copy of order has been supplied to the petitioner, who has already filed an appeal before the Commissioner (Appeals) on 01.11.2017, therefore, instant petition has become infructuous.

3. While confronted with hereinabove factual position as stated in the parawise comments and by the Officer present in Court, learned counsel for the petitioner submits that the petitioner is disputing the delivery of certified copy of the order passed by the respondent, whereas, according to learned counsel for the petitioner, respondents have hurried up with the recovery proceedings by adopting coercive measures through attachment of bank account without notice to the petitioner, whereas, no opportunity has been given to the petitioner even to file an appeal along with stay application before the Commissioner (Appeals) as provided under the Statute. It has been further contended by the learned counsel for the petitioner that the recent tendency of the respondent department to create fictitious demand, and to enforce its recovery by adopting coercive measure, without resorting to the normal procedure of recovery as provided under the Income Tax Ordinance and the Income Tax Rules, 2002, requires to be curtailed, therefore, requests that the respondents may be directed to refund the amount, which has been forcibly received in violation of law and the procedure, so that the petitioner may seek the remedy before the 1<sup>st</sup> Appellate Authority in accordance with law.

4. We have heard the learned counsel for the parties and perused the record, which reflects that before passing the order under Section 161 of the Income Tax Ordinance, 2001, for the aforesaid Tax Years, the petitioner was provided opportunity of being heard by issuing, Show Cause Notice, which was admittedly responded by the petitioner, whereafter, orders under Section 161/205 of the Income Tax Ordinance, 2001, were passed by the respondents, however, service of such order is being disputed by the petitioner. From perusal of the parawise comments and its annexures filed on behalf of the respondent and the submissions made by the Officer present in Court, it appears that the respondents' claim to have communicated the impugned order to the petitioner electronically i.e. through (E-portal) as well as through Courier. Such disputed fact cannot be examined by this Court while exercising constitutional jurisdiction under Article 199 of the Constitution of Islamic Republic of Pakistan. Moreover, the copy of the aforesaid orders have been supplied to the petitioner, who has availed the statutory remedy by filing appeals before the Commissioner (Appeals).

5. In view of hereinabove facts and circumstances of the case, we would dispose of instant petition with the directions to the petitioner to pursue the appeals before the concerned Commissioner (Appeals), who shall decide the appeal of the petitioner at an early date, preferably, within a period of four (04) weeks from the date of receipt of this order, which shall be communicated to the concerned Commissioner by the petitioner. We may further observe that if the Commissioner (Appeals) decides the appeals in favour of the petitioner, the disputed amount recovered by the respondents from the petitioner, shall be refunded within seven (07) days from the date of such order by giving effect to the orders of the Commissioner (Appeals), whereas, any delay in this regard will expose the concerned Officer to Contempt of Court proceedings or violation of the Court's order.

6. Before parting with this order, we may observe that tendency to enforce the recovery of the impugned demand without issuing any Notice

or providing any opportunity of being heard to a taxpayer is required to be curbed as it creates no confidence in the departmental authorities, whereas, the right of appeal provided under the Statute is seriously hampered. The respondents are directed to be careful in future and to ensure that the recovery of the impugned demand shall be made strictly in accordance with law and the Rules of Recovery after providing opportunity to the taxpayer, keeping in view the time period provided to file an appeal before the Commissioner (Appeals).

Petition stands disposed of in the above terms along with listed application.

**J U D G E**

**J U D G E**

Nadeem.