

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

**Suit No. 2552 of 2014**

Plaintiffs:	Jubilee General Insurance Company Ltd & another. Through Mr. Hussain Ali Almani Advocate.
Defendant No. 1:	Federation of Pakistan Through Mr. Saroosh Jameel Advocate holding brief for Mr. Osman A. Hadi Assistant Attorney General.
Defendants No. 2, 3 & 4:	Federal Board of Revenue & others Through Mr. Shahid Ali Qureshi Advocate.

***For hearing of CMA No. 17253/2014.***

**Date of hearing: 01.11.2019, 18.02.2020, 12.03.2020**

**Date of judgment: 12.03.2020**

**J U D G M E N T**

**Muhammad Junaid Ghaffar, J.** Through this Suit the Plaintiffs have impugned separate notices issued by Defendant No.4 in identical terms under Section 176 of the Income Tax Ordinance, 2001 asking for certain information, followed up by notices under s.182 ibid for its non-compliance and imposition of penalty. It is the case of the Plaintiffs that both these notices have been issued by an officer who lacks jurisdiction in the matter.

2. Learned Counsel for the Plaintiffs submits that Defendant No.4 i.e. Assistant Director, Directorate of Intelligence and Investigation, Inland Revenue, Islamabad has no jurisdiction in terms of S.R.O.350(I)/2014 dated 7.5.2014 (**SRO**) read with Section 230 of the Ordinance, 2001, inasmuch as the Plaintiffs are registered with Large Tax Payer Unit, Karachi, whereas, the said Defendant is an Assistant Director of the Directorate of Intelligence, Inland Revenue at Islamabad. He has read out Serial Nos.10 & 22 of the said Notification and submits that at the most, the said Defendant can approach the concerned

Commissioner having jurisdiction in the matter, seeking the information so desired. As an alternative, he has argued that even otherwise, Section 176 *ibid* cannot be invoked independently for seeking such information as it is in aid of, and ancillary to, Section 177 *ibid* as admittedly, there is no pending audit or inquiry against the Plaintiffs. He has further argued that the notice is also otherwise, silent and without any disclosure as well as its purpose; hence, the same is liable to be set aside. In support he has relied upon **Wateen Telecom Ltd. Through Authorized Attorney V. Sindh through The Secretary of Ministry of Finance Government of Sindh, Karachi and 2 others (2009 PTD 1030)**, **Assistant Director, Intelligence and Investigation, Karachi V. M/s B.R. Herman and others (PLD 1992 SC 485)**, **M.D. Tahir, Advocate V. Director, State Bank of Pakistan, Lahore and 3 others (2004 CLD 1680)** and **Messrs Tri-Star Industries (Pvt.) Ltd. Through Director and 8 others V. The Commissioner of Income Tax Companies-I, Karachi and 5 others (1998 PTD 3923)**.

3. On the other hand, learned Counsel for the Department has contended that the Defendant No.4 has jurisdiction in the matter in view of Section 2(41) of the Ordinance, 2001 as the Plaintiffs are a permanent establishment operating offices in Islamabad; therefore, the objection is misconceived. He further submits that initially the notice was addressed at the Islamabad office which was not replied, and then a reminder was issued with a follow up notice under Section 182 at the Karachi address of the Plaintiffs, therefore, there is no illegality in the action initiated by the Defendants. According to him, under the said SRO the Defendant No.4 has all the jurisdiction to issue such notice as it is only seeking information about the customers of the Plaintiff's which ought to have been replied. Per learned Counsel, even otherwise, Section 176 falls within the Chapter 8 of the Ordinance, 2001, pertaining to the machinery provisions which are to be construed liberally; hence, the Suit is liable to be dismissed. In support he has relied upon **Kohinoor Sugar Mills V. Federation of Pakistan and others (2018 PTD 821)** and **Commissioner of Inland Revenue, Sialkot and others V. Messrs Allah Din Steel and Rolling Mills and others (2018 SCMR 1328)**.

4. I have heard both the learned Counsel and perused the record. Since written statement has been filed, whereas, both the learned Counsel had conceded for final decision of the entire matter as only legal issues are involved, by consent the entire Suit has been heard and is being decided accordingly. Following legal issues are settled for adjudication in terms of Order 14 Rule 2 CPC: -

- “1) Whether Defendant No. 4 has any jurisdiction in the case of Plaintiffs to issue notice under Section 176 of the Ordinance, 2001?
- 2) Whether non-compliance of the above notice could entail imposition of penalty under Section 182 of the Ordinance, 2001?
- 3) What should the Decree be?”

5. Since a legal controversy is involved and all issues are inter-related, they are being dealt with together. The first and foremost point which is to be adjudicated is that whether Defendant No.4 has any jurisdiction in the matter inasmuch as admittedly, the Plaintiffs are registered under the Ordinance, 2001 as well as the Sales Tax Act, 1990 with Large Tax Payer Unit at Karachi. The jurisdiction on the officers of Directorate of Intelligence and Investigation has been conferred through the SRO in question issued under Section 230 of the Ordinance, 2001 and the relevant portion reads as under: -

“S.R.O.351(I)/2014

Islamabad, the 07<sup>th</sup> May, 2014

Subject:- **Jurisdiction of Directorate General (Intelligence and Investigation) Inland Revenue.**

In exercise of the powers conferred by section 230 of the Income Tax Ordinance, 2001 (XLIX of 201), read with section 208 and sub-section (1) of section 209 thereof, and in supersession of its Notification No. S.R.O.51(I)/2013, dated the 29<sup>th</sup> January, 2013, the Federal Board of Revenue is pleased to confer upon the officers of the Directorate General (Intelligence and Investigation), Inland Revenue specified in column (2) of the Table below, the powers of the authorities specified in column (3) of the said Table, to exercise powers and perform functions under the provisions of the said Ordinance as specified in column (4) thereof, and having jurisdiction specified in column (5) of that Table:-

**Table**

S No.	Designation of Officer	Designation of Officer of Inland Revenue	Powers and Functions conferred	Jurisdiction
(1)	(2)	(3)	(4)	(5)
1.				
2.				
3.				
4.				

5.				
6.				
7.				
8.				
9.				
10.	Additional Director-I I&I Inland Revenue, Islamabad	Commissioner	Sections 114, 116, 120, 121, 122, 122C, 123, 124, 124A, 125, 126, 161, 177, (other than powers to initiate audit), 178, 179, 180, 181, 182, Chapter VIII, Part III, Part IV and Part XI of Chapter X, Sections 205 and 221.	I. All persons or classes of persons <b>falling within the jurisdiction of the Large Taxpayer's Unit, Islamabad and Regional Tax Officer, Islamabad.</b> II. All persons or classes of persons not otherwise specified, if the person resides within the jurisdiction of the offices mentioned at (1) above.
11.				
12.				
13.				
14.				
15.				
16.				
17.				
18.				
19.				
20.				
21.				
22.	I. Deputy Assistant Director-I, I&I Inland Revenue, Islamabad. II. Deputy / Assistant Director-II, I&I Inland Revenue, Islamabad.	Commissioner	Sections 114, 116, 120, 121, 122, (except 122 5(A), 122C, 123, 124, 124A, 125, 126, 161, 162, 174, 175, 176, 177 (other than powers to initiate audit), 178, 179, 180, 181, 182, Chapter VIII, Part III, Part IV and Part XI of Chapter X, Sections 205 and 221.	Assigned functions in respect of the persons and classes of persons as specified at S., No. 10 above.

6. Perusal of the aforesaid Notification reveals that the Assistant Director / Defendant No.4 has been notified at Serial No. 22 and has been assigned functions in respect of the persons and classes of persons as mentioned in column 5 against Serial No.10 of the said Notification, which confers powers on the Additional Director, Intelligence and Investigation, Inland Revenue, Islamabad in respect of all persons or classes of persons falling within the *jurisdiction of the Large Tax Payer Unit Islamabad and Regional Tax Office Islamabad*. This clearly reflects that insofar as Defendant No.4 is concerned, he can only exercise such

jurisdiction (under the 2001 Ordinance) which has been conferred on the Additional Director, but only in respect of persons registered with LTU or RTO Islamabad. Admittedly, the Plaintiffs are not registered in Islamabad but with *Large Tax Payer Unit at Karachi*. Therefore, apparently, in view of the aforesaid Notification Defendant No.4, or for that matter any other officer at Islamabad in the Directorate of Intelligence and Investigation, Inland Revenue, is not conferred with any jurisdiction in respect of a taxpayer who is not registered either with LTU Islamabad or RTO Islamabad.

7. Insofar as reliance on Section 2(41) *ibid* is concerned, the same appears to be misconceived inasmuch as it is only a definition clause in respect of a permanent establishment; but at the same time it does not figure out in the above SRO issued in terms of Section 230 of the Ordinance, 2001. Therefore, by taking shelter under s.2(41) *ibid*, Defendant No.4 cannot extend or enlarge his jurisdiction against a person who is registered at Karachi. If that had been the intention, then a specific reference would have been made in the SRO.

8. In view of hereinabove facts and circumstances of this case, it appears that an attempt has been made by Defendant No.4 to seek information from the Plaintiffs for which he lacks jurisdiction and therefore, both the impugned Notices as well as subsequent attempts to impose penalty for purportedly violating the same are declared to be without jurisdiction and lawful authority. Issues No.1 & 2 are answered in negative, whereas, Issue No. 3 is answered by Decreeing the Suit as prayed. Office to prepare decree accordingly.

**J U D G E**

Arshad