

IN THE HIGH COURT OF SINDH AT KARACHI

Const. Petition No.D-1129 of 2015

Present:
Mr. Justice Aqeel Ahmed Abbasi &
Mr. Justice Aziz-ur-Rehman.

Mr. Ayyaz Shoukat, advocate for the petitioner.

Mr. Amjad Javaid Hashmi, advocate for the respondent.

Mr. Mir Hussain, Assistant Attorney General.

Date of hearing: 15.09.2017
Date of order: 15.09.2017

O R D E R

AQEEL AHMED ABBASI, J. Through instant petition, petitioner company has impugned Show Cause Notices dated 09.12.2014 and 28.01.2015 issued under Section 25 of the Sales Tax Act, 1990, for audit for tax period July, 2012 to June, 2014, issued by the Additional Commissioner, Inland Revenue Audit Range, Zone-III, RTO-III, Karachi, and another notice dated 10.02.2015 issued under Section 25 and 38 of the Sales Tax Act, 1990, for selection of the case of the petitioner for audit for tax period July, 2013 to June, 2014, issued by the Commissioner Inland Revenue, Zone-1, RTO-II, Karachi, whereas, following relief has been sought:-

- i. Declare section 25 of the Act, as unconstitutional and contrary to the scheme of the Act.
- ii. Declare that the Commissioner does not have the power to select a person for the audit and can only conduct an audit once the mechanism provided under section 72B of the Act, has been complied.
- iii. Declare that impugned notices dated 09.12.2014, 28.01.2015 and 10.02.2015 are without lawful authority and of no legal effect.

- iv. Suspend the operation of impugned notices and prohibit the Respondents and their officers from directly or indirectly proceedings or acting on the basis of impugned notices.
- v. Declare that in the presence of SRO 460(I)/2013 and ninth schedule of the Act, sections 3(1A) and 3(5) of the Act are not applicable to the Petitioner Company.
- vi. Grant cost of petition.
- vii. Grant any other relief that this Hon'ble Court deemed fit and appropriate, in the circumstances of the case, may also be granted.

2. Learned counsel for the respondent at the very outset submits that the controversy agitated through instant petition is has already been decided by the Divisional Bench of this Court in the case of **Messrs Pfizer Pakistan Ltd. through Company Secretary and others v. Deputy Commissioner and others (2016 PTD 1429)**, whereby, it has been categorically held that selection of a case for audit by the Commissioner can be made irrespective, whereas, such powers are vested with the Board of Revenue in terms of Section 214-C of the Income Tax Ordinance, 2001. According to learned counsel for the respondent, similar provisions are also available in Section 25 and 21(2)(b) of the Sales Tax Act, 1990, which are para-materia Section of provisions of Section 177 and 214-C of the Income Tax Ordinance, 2001.

3. While confronted with above position, learned counsel for the petitioner could not controvert the same, however, submits that instant matter two different RTOs have issued notices to the petitioner for the purpose of audit, which is contrary to law, since no such power to have been agitated through instant petition nor it is the part of the prayer clause of the petition made by the petitioner, therefore, we would dismiss instant petition in view of the judgment passed by the Division Bench of this Court as referred to hereinabove.

4. However, we may observe that in case of any dispute with regard to jurisdiction of the case of the petitioner between two different RTOs, the petitioner may approach the relevant forum by raising all such legal objections, which shall be considered by the respondents strictly in accordance with law and unless the issue of proper jurisdiction of the petitioner's case is decided by the competent forum no adverse proceedings may be initiated against the petitioner.

JUDGE

JUDGE

Nadeem