

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

Mr. Justice Aqeel Ahmed Abbasi
Justice Mrs. Rashida Asad

C. P. No.D-1594 of 2021

Muhammad Adnan.....Petitioner

Versus

Federation of Pakistan & 2 others.....Respondents

Petitioner : Through Mr. Mazhar-ul-Hassan, Advocate.

Respondents : Nemo for the respondents.

Date of Hearing : 05.03.2021.

Date of Short Order : 05.03.2021.

ORDER

Aqeel Ahmed Abbasi, J : -- Through instant petition, the petitioner, who claims to be a builder, developer and contractor and carries on business under the name and style of A.A. Construction, has sought a declaration to the effect that Tax Laws (Amendment) Ordinance, 2020, promulgated on 19.04.2020, whereby the amount of tax under clause (1) of the Schedule increased default surcharge by amount percentage is illegal and liable to be struck down, or alternatively reduced to 8% per annum. It has been further prayed that petitioner deserves deferment of payment of tax under the Amnesty Scheme due to COVID-19, and the notices issued under Section 122(9) along with Section 111(1) of the Income Tax Ordinance, 2001, are also illegal and without lawful authority.

2. It has been contended by the learned counsel for the petitioner that petitioner filed voluntarily Declaration of Assets under Assets Declaration

Ordinance, 2019 and pursuant to such Assets Declaration Ordinance, 2019, petitioner also filed a declaration on 04.07.2019, whereas, payment of amount of Rs.2,023,075/- was deferred payable by 30th June, 2020, however, subject to payment of surcharge at the rate of 10% quarterly i.e. 40% of four quarters, and surcharge was liable to be paid upto 30.06.2020 at Rs.809,230/- resting total tax liability to be paid at (Rs.2023075+80930= Total Rs.2,832,305/-). According to learned counsel, keeping in view the business condition and the economy adversely effected under lockdown due to COVID-19, the State Bank of Pakistan reduced the interest rate from 13.25% to 9% per annum and further reduced it to 8% and thereafter to 7%, therefore, the exorbitant rate of surcharge is illegal having no lawful basis. It has been prayed by the learned counsel for the petitioner that the Tax Laws (Amendment) Act, 2020, on 19.04.2020 may be declared as ultravires to Article 18 and 25 of the Constitution of Islamic Republic of Pakistan, 1973, whereas, following relief may be granted:-

- a) *Declare that the Tax Laws (Amendment) Ordinance, 2020 promulgated on 19.04.2020 where under the amount of tax under clause (1) of the schedule increased by a default charge by amount percentage as specified in the Table shown in the Assets Declaration Ordinance, 2019 by ignoring of Section 205 of Income Tax Ordinance, 2001, the reduction of interest rate by State Bank of Pakistan from 13.5% to 9% per annum and subsequent reduction of interest rate to 7% per annum is ultravires, illegal and liable to be struck down or to be reduced to 8% per annum.*
- b) *Permanently restrain the Respondents, their men, staff, officers, servants from giving effect to and enforcing the said impugned Assets Declaration Ordinance, 2019 against the Petitioner.*
- c) *The Petitioner deserves deferment of payment and further time for payment of tax due to the COVID-19 prevailing in the country which has caused topsy bravery and the business and commercial activities have come to stand still as the every the Government of Pakistan and Provincial Governments have deferred payments of all utility bills, rental and reduction in the school tuition fees.*
- d) *It is therefore also prayed that the notices U/s 122(9) bearing bar code number 100000081363386 along with 111(1) bearing bar code number 100000081364733 dated 21.11.2020 may kindly be stayed till the decision of this petition.*
- e) *Costs.*
- f) *Such relief or reliefs which this Hon'ble Court may deem fit and proper in the circumstances of the case.*

3. Learned counsel for the petitioner has further argued that imposition and enhancement of additional surcharge in case of default is without lawful authority, whereas, according to learned counsel, during COVID-19 situation State Bank of Pakistan has reduced the interest rate from 13.25 to 9% and further reduced to 7% per annum, however, amount of default surcharge and enhancement of amount through Tax Laws (Amendment) Ordinance, 2020, is illegal and ultra vires to the Constitution of Islamic Republic of Pakistan, 1973, hence liable to be struck down, or alternatively reduced to 8% per annum. While concluding his arguments, learned counsel for the petitioner submits that petitioner may be allowed to avail Amnesty Scheme on payment of tax and default surcharge at the rate of 8% per annum and further requested that notices issued under Section 122(9) read with Section 111(1) of the Income Tax Ordinance, 2001, may be stayed till further orders.

4. We have heard the learned counsel for the petitioner, perused the record and the relevant amendment with his assistance. Attention of the learned counsel for petitioner was drawn to judgment dated 19.06.2019 passed by this Court in ***C.P.No.D-4076/2019 (Re: Suresh Kumar v. Federation of Pakistan and others)***, whereby, under somewhat similar circumstances and the grounds, several provisions of Tax Amnesty Scheme were challenged, however, such petition was dismissed in terms of para-5 of the order passed by the Divisional Bench of this Court in the aforesaid petition, which reads as follows:-

5. From perusal of hereinabove provisions of law, which have been challenged through instant petition to be ultra vires to the Constitution, it has been observed that there is a long list of holders of public office which includes Prime Minister and Federal Ministers, Chief Minister and Provincial Ministers, all the Members of parliament and Provincial Assemblies, Chairman Senate, all the members of Senate, Speaker National Assembly, Chairman or Mayor of a Municipal Corporation, Metropolitan Corporation and its Members, District Nazim and all the Members of Union Council etc. and out of such long list only petitioner, who remained as Councilor of Town Committee Kashmore has approached this Court with the plea that exclusion of holder of public office from the purview of the Amnesty relating to Assets Declaration amounts to discrimination,

whereas, there is no reasonable classification or intelligible differentia while excluding the holder of public office as a class. We do not see any discrimination or unreasonableness while creating or treating the holder of public office as a separate class, as we are of the opinion that a councilor is a holder of public office, who is elected through voting by the public as their representative at the level of Local Government, whereas, he is entrusted with public funds and responsible to perform certain functions for the public at large within the local limits. Accordingly, we do not find any substance in the instant petition, which is dismissed in limine along with listed application. It may however, be clarified that the constitutionality or validity of aforesaid enactment and promulgation of the Ordinance relating to Assets Declaration, has been examined only to the extent of petitioner with particular reference to provisions of Section 2(1)(e), Section 11(a) of Assets Declaration Ordinance, 2019 and Section 2(1)(d) of Voluntary Declaration of Domestic Assets Act, 2018.”

5. While confronted with hereinabove factual and legal position as emerged from the order passed by this Court in the aforesaid petition, learned counsel for the petitioner has submitted that the different provisions of the Assets Declaration Ordinance, 2019 were under challenged in the aforesaid petition, whereas, in the instant case, petitioner has challenged the amendment introduced through the Tax Laws (Amendment) Ordinance, 2020, whereby, the amount of tax under clause (1) of the Schedule to the Ordinance has been increased by default surcharge by amount percentage as specified in the Table shown in the Assets Declaration Ordinance, 2019 by ignoring Section 205 of the Income Tax Ordinance, 2001. According to the learned counsel for petitioner, the State Bank of Pakistan keeping in view the prevailing Covid-19 in the country has reduced interest rate from 13.5% to 9% per annum and further reduced interest rate at 8%, whereas, through impugned amendment the amount of default surcharge has been increased disproportionately, which even otherwise, is harsh, hence liable to be struck down or alternatively reduce interest rate to 8%. It has been prayed by the learned counsel for the petitioner that the petitioner may be allowed further time to make payment of tax, whereas, notices dated 21.11.2020 issued by the respondents under section 122(9) and section 111(1) of the Income Tax Ordinance, 2001 may be directed to be withdrawn.

6. The Assets Declaration Ordinance, 2019 was promulgated by the President of Pakistan in terms of powers conferred under clause (1) of Article 89 of the Constitution of Islamic Republic of Pakistan, 1973, to allow the non-documented economy's inclusion in the taxation system and to serve the purpose of economic revival and growth by encouraging a tax compliant economy, whereas, to achieve the above target, incentive was given to the public at large to declare their undisclosed assets, sales and expenditure by filing Assets Declaration Form and to make payment of taxes within due date i.e. on or before 30.06.2019. The rate of taxes have been given in the Schedule attached to the Assets Declaration Ordinance, 2019, whereas, the rate of default surcharge has also been provided in the same Schedule with particular reference to the time period provided for making payment of taxes and in case of delay the amount of the default surcharge. It is pertinent to note that the aforesaid Tax Amnesty Scheme required voluntarily filing of Assets Declaration, therefore, there seems no element of compulsion as it was optional for a taxpayer to avail benefit of such scheme subject to fulfillment of conditions as detailed in the Ordinance 2019. The rate of default surcharge has no nexus either with the tax or surcharge imposed under the Income Tax Ordinance, 2001 nor has any bearing on the interest rate approved by the State Bank of Pakistan. The objection of the petitioner regarding high rate of default surcharge while comparing it with the interest rate of the State Bank of Pakistan is totally misconceived and has no legal basis for the reason that the provisions of the Income Tax Ordinance, 2001 and the Assets Declaration Ordinance, 2019 are separate and independent provisions, whereby, the Authority to impose tax and to charge surcharge in case of any default vested in the legislature. Similarly the legislature and for that purpose the President, while exercising powers under Article 89 of the Constitution of Islamic Republic of Pakistan, 1973 has the authority to determine the rate of tax or surcharge in case of default or delay in payment of tax within the time period prescribed

for such purpose. Learned counsel for the petitioner has not been able to point out any provisions of the Constitution or the law, which may render the enhanced rate of surcharge for being unconstitutional or illegal. Moreover, issuance of any Tax Amnesty Scheme for the purposes of documentation of economy is a matter of public policy and unless it can be shown that such Amnesty Scheme is against public policy or in violation of any Constitutional or legal provision, the same cannot be challenged on mere ground of harshness, particularly when there is no element of arbitrariness or discrimination amongst the same class of persons.

7. In view of hereinabove facts and circumstances of the instant case, we do not find any substance in the instant petition, which was dismissed in limine by our short order dated 05.03.2021 and these are the reasons of the same. However, dismissal of instant petition in the above terms may not justify the issuance of Notices to the petitioner under Section 122(9) and 111(1) of the Income Tax Ordinance, 2001, and the petitioner will be at liberty to raise all such objections as may be available under the law.

JUDGE

JUDGE

Nadeem/Farhan