

THE HIGH COURT OF SINDH KARACHI

Suit No. 271 of 2021

[Muhammad Asim versus Federation of Pakistan & others]

Plaintiff : Muhammad Asim through
Mr. Mushtaque Hussain Qazi
Advocate.

Defendants 1, 2 & 6 : Nemo.

Defendants 3-4 : The Commissioner Inland Revenue,
Zone-III and Commissioner Inland
Revenue, Zone-VI, through
Mr. Muhammad Aqeel Qureshi,
Advocate.

Defendant 5 : The Deputy Commissioner Inland
Revenue Audit Unit-01, Zone-III,
through Mr. Ameer Bakhsh Metlo,
Advocate.

Date of hearing : 05-03-2021

Date of Decision : 02-06-2021

JUDGMENT

Adnan Iqbal Chaudhry J. - By way of this suit, filed on 01-02-2019 but registered later, the Plaintiff has challenged an audit notice dated 23-11-2018 issued under section 25 of the Sales Tax Act, 1990 by the Commissioner IR, Zone-III, CRTO, Karachi (impugned audit notice) and subsequent follow-up notices.

2. While the Commissioner IR, Zone-III and Deputy Commissioner IR, Zone-III, CRTO (Defendants 3 & 5) were pursuing the impugned audit notice against the Plaintiff, the Commissioner IR, Zone-VI and Assistant Commissioner IR, Zone-VI, CRTO (Defendants 4 & 6) also exercised jurisdiction over the Plaintiff by way of notice dated 21-01-2019 for recovery of tax under section 48 of the Sales Tax Act pursuant to an order-in-original passed in respect of a previous tax period. Against the latter notice the Plaintiff preferred separate proceedings. The case set-up by the Plaintiff in this suit was that both the Commissioner IR, Zone-III, and the Commissioner IR, Zone VI could not simultaneously exercise jurisdiction over the Plaintiff. As to

which of the said Commissioners had jurisdiction over the Plaintiff, it was contended by learned counsel for the Plaintiff that in terms of jurisdiction notification dated 19-09-2017 issued by the FBR, it was the Commissioner IR, Zone VI, and thus the impugned audit notice issued by the Commissioner IR, Zone-III was beyond his person-specific jurisdiction. To that end, learned counsel for the Plaintiff also filed a statement setting out the chronology of jurisdiction notifications issued by the FBR to conclude: *“And accordingly the jurisdiction of the Plaintiff, being textile manufacturer, continues with the Defendant No.6”* viz., the Assistant Commissioner IR, Zone VI.

3. None of the income tax authorities arrayed as defendants filed written statement. However, on 23-10-2019, the Commissioner IR, Zone-III, CRTO filed a statement that:

“..... Keeping in view the above facts, the jurisdiction of the case of M/s Asim Jofa was transferred to Commissioner-IR, Zone-VI, Corporate Regional Tax Office, Karachi vide letter No.3611 dated 08.05.2019 (copy attached) on the basis of reply dated 1st February, 2019 submitted by the Plaintiff through its authorized representative Mr. Mushtaque Hussain Qazi. All the corresponding records were also transferred to the above mentioned Zone for further necessary action at their end as per law.”

4. In view of the above statement, learned counsel for the tax department conceded that jurisdiction over the Plaintiff lay with the Commissioner IR, Zone-VI and not with the Commissioner IR, Zone-III. Given that, no question was raised to the maintainability of the suit, and the following order and issue was recorded on 05-03-2021:

“All learned counsel submit that only legal questions are involved and the suit can be decided at the preliminary stage in view of Order XV Rule 3 CPC. The issue is whether the impugned show-cause¹ notice is without jurisdiction ? And if so, to what effect ? Heard learned counsel. Reserved for judgment.”

5. Heard the learned counsel and perused the record.

6. Both, learned counsel for the Plaintiff and learned counsel for the tax department filed a copy the jurisdiction notification dated 19-09-2017 issued by FBR under sections 30 and 31 of the Sales Tax Act,

¹ Sic. Read ‘audit’.

1990, which specifies the jurisdiction of Commissioner IR. The relevant extract of that notification is as follows:

**“GOVERNMENT OF PAKISTAN
REVENUE DIVISION
FEDERAL BOARD OF REVENUE

NO.57(2)Jurisdiction/2017/113483-R

Islamabad, the 19th September, 2017

NOTIFICATION

(Inland Revenue Operations Wing, FBR)

Subject: - JURISDICTION OF CHIEF COMMISSIONER AND COMMISSIONERS INLAND REVENUE, CORPORATE REGIONAL TAX OFFICE, KARACHI.

In exercise of the powers conferred under section 209 of the Income Tax Ordinance, 2001 (hereinafter read as “Ordinance”), section 30 and section 31 of the Sales Tax Act, 1990, section 29 of the Federal Excise Act, 2005 and in suppression of all earlier orders or notifications of the Board in respect of Jurisdiction, the Federal Board of Revenue is pleased to direct that:-

- i)
- ii) *the Commissioners of Inland Revenue specified in column (2), shall exercise the power and perform functions, as specified in column (3), in respect of the persons or classes of persons or cases or classes of cases as specified in column (4) of the Table below:-*

2. *This notification shall take with immediate effect.*

TABLE

S.#	Commissioner Inland Revenue	Powers & Functions	Jurisdiction
(1)	(2)	(3)	(4)
03.	Commissioner Inland Revenue (Zone-III) Corporate RTO, Karachi.	The Commissioner Inland Revenue shall exercise powers and perform functions as conferred under: (a) Income Tax Ordinance, 2001 and Rules made thereunder; (b) Sales Tax Act, 1990 and Rules made there under; (c) Federal Excise Act, 2005 and Rules made there under; (d) Wealth Tax Act, 1963 (Repealed); (e) Finance Act, 1986 (Act No. V of 1989), as amended from time to time; and (f) Worker Welfare Fund Ordinance 1971.	(a) All cases of companies of following sectors other than those specifically assigned to LTU/LTU-II, Karachi whose place of business is situated in the areas, falling within the limits of former Civil Division Karachi of the Province of Sindh:- i) Commercial Banks, Non-Banking Financial Institutions, Investment Banks including Investment Companies, Security Companies/Agencies, Insurance Companies. ii) Educational /Training/ vocational Institutions; iii) Builders, Real Estate

			<p>developers and Co-operative Housing Societies;</p> <p>iv) Manufacturer, Exporter, and Importer of Auto and Auto Parts; and</p> <p>v) Any other sector of companies not assigned to LTU/LTU-II, Karachi or any other Zone of Corporate RTO, Karachi whose name begin with Alphabet A to E.</p> <p>(b) Directors of all companies and AOPs falling in jurisdiction of Zone-III of Corporate RTO, Karachi.</p> <p>(c) Monitoring and Enforcement of tax payers under the Provisions of the laws and rules (specified in Column (3) of the table) in respect of all withholding agents existing in the jurisdiction of Zone-III of Corporate RTO, Karachi.</p> <p>(d) All cases of statutory agents / representatives assessable under sections 172 and 173 of the Income Tax Ordinance, 2001 as specified in paragraphs herein above.</p> <p>(e) Cases or classes of cases or persons or classes of persons or areas assigned specifically by FBR/Chief Commissioner from time to time.</p>
06.	Commissioner Inland Revenue (Zone - VI), Corporate RTO, Karachi.	<p>The Commissioner Inland Revenue shall exercise powers and perform functions as conferred under:</p> <p>(a) Income Tax Ordinance, 2001 and Rules made thereunder;</p> <p>(b) Sales Tax Act, 1990 and Rules made there under;</p> <p>(c) Federal Excise Act, 2005 and Rules made there under;</p> <p>(d) Wealth Tax Act, 1963 (Repealed);</p>	<p>(a) All cases or classes of cases, persons or classes of persons (Corporate & Non-Corporate) of following sectors other than those specifically assigned to LTU/LTU-II, Karachi, Corporate RTO, Karachi or RTO-III, Karachi, or any other zone of RTO-II, Karachi whose place of business is situated in the areas falling within the limits of former Baldia Town, Jamshed Town, Kiamari Town, Lyari Town, Liaquatabad Town,</p>

		<p>(e) Finance Act, 1986 (Act No. V of 1989), as amended from time to time; and</p> <p>(f) Worker Welfare Fund Ordinance 1971.</p>	<p>Orangi Town, Saddar Town, SITE Town and within the limits of Clifton Cantonment, Karachi Cantonment, Kiamari Cantonment, and Manora Cantonment:</p> <p>i) Manufacturer, Exporter, Importer, distributor/ wholesaler and retailer of Textiles and Textile products & Fabrics including Ginning, Spinning, Sizing, Weaving, Bleaching, Dyeing, Printing, Calendaring, Mercerizing & other allied processes etc whose names begin with alphabet A to Z;</p> <p>ii) Manufacture, Importer, Exporter, distributor/ wholesaler and retailer of Garments, Terry Towels and other made ups whose names begin with A to Z;</p> <p>iii)</p> <p>iv)</p> <p>v)</p> <p>(b).....</p> <p>(c).....”</p>
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7. Per learned counsel for the Plaintiff, the Plaintiff falls under clause (a)(i) of column 4 at serial 6 of the above notification, and thus only the Commissioner IR, Zone-VI could exercise jurisdiction over the Plaintiff. As noted above, that fact was conceded by the tax department. Therefore, the first part of the issue framed vide order dated 05-03-2021 is answered in the affirmative, i.e., the impugned audit notice was beyond the person-specific jurisdiction of the Commissioner IR, Zone-III, CRTO, Karachi. However, the second part of said issue, viz. “And if so, to what effect?”, was agitated by learned counsel for the tax department as follows.

8. Learned counsel for the tax department submitted that nothing turns on the fact that the impugned audit notice was beyond the jurisdiction of the Commissioner IR, Zone-III, in that the matter was subsequently “transferred” to the Commissioner IR, Zone-VI who

had jurisdiction, and who could take further proceedings on the same audit notice as envisaged under Rule 8 of the Sales Tax Rules, 2006 which reads as under:

“8. Transfer of registration.-- (1) The Board may, in accordance with clauses (a), (b) and (c) of sub-rule (1) of rule 5 or otherwise, by an order, transfer the registration of a registered person from the jurisdiction of one LTU or RTO to another.

(2) On transfer of registration,--

(a) all the records and responsibilities relating to such registered person shall be transferred to the LTU or RTO, in whose jurisdiction the registration has been so transferred;

(b) notwithstanding the actions already taken, being taken or otherwise pending immediately before the transfer in respect of such registered person under any of the provisions of the Act or the rules made thereunder in the LTU or RTO from where his registration has been transferred, the LTU or RTO, in whose jurisdiction the registration is so transferred shall exercise the jurisdiction over such person in the manner as if it always had such jurisdiction.

(3)

(4)"

On the other hand, learned counsel for the Plaintiff cited the cases of *Mansab Ali v. Amir* (PLD 1971 SC 124) and *Collector of Customs, Model Customs Collectorate v. Kapron Overseas Supplies Co.* (2010 PTD 465) which stipulate that where the mandatory condition for the exercise of jurisdiction by an authority was not fulfilled, all proceedings which followed became illegal and without jurisdiction.

9. From the jurisdiction notification dated 19-09-2017 issued by the FBR, it is apparent that at the time the impugned audit notice was issued, jurisdiction over the Plaintiff lay with the Commissioner IR, Zone-VI, and not with the Commissioner IR, Zone-III. Therefore, there was no question of ‘transferring’ jurisdiction to the Commissioner IR, Zone VI who already had the requisite jurisdiction to begin with. In fact, the letter dated 08-05-2019 from the Deputy Commissioner (HQs), Zone-III to the Deputy Commissioner (HQs), Zone-VI shows that the Plaintiff’s record was simply dispatched to the latter because the former did not have jurisdiction. Thus, reliance on Rule 8 of the Sales Tax Rules, 2006 by learned counsel for the department, is misplaced. That Rule is only triggered when the FBR

transfers the registration of a registered person from the jurisdiction of one LTU or RTO to another, which is not the case here.

10. Since the impugned audit notice issued by the Commissioner IR, Zone-III was without jurisdiction, I agree with learned counsel for the Plaintiff that its effect, as discussed in the cases of *Mansab Ali* and *Kapron Overseas Supplies Co. (supra)*, would be that any further proceedings thereupon would also be without jurisdiction. The second part of the issue is answered accordingly.

11. In view of foregoing, the suit is decreed by declaring that the audit notice dated 23-11-2018 under section 25 of the Sales Tax Act, 1990 issued to the Plaintiff by the Commissioner IR, Zone-III, CRTO, Karachi, and notices that followed-up thereupon, were without jurisdiction, and are hereby are set-aside. Pending application is disposed of as infructuous.

JUDGE

KARACHI:
DATED: 02-06-2021