

THE HIGH COURT OF SINDH, KARACHI

Suit No. 320 of 2020

[K-Electric Limited versus Pakistan and others]

Plaintiff : K-Electric Limited through Mr. Hamza Waheed, Advocate.

Defendants 1 and 2 : Pakistan, through Chairman, Federal Board of Revenue & Director General, Directorate General of I&I, Inland Revenue, through Mr. Bilal Khilji, Assistant Attorney General for Pakistan.

Defendants 3 to 5 : Director (Karachi), Directorate General of Intelligence & Investigation and two [02] others through Mr. Ghulam Asghar Pathan, Advocate.

Date of hearing : 18-05-2022

Date of Decision : 18-05-2022

JUDGMENT

Adnan Iqbal Chaudhry J.- By consent of learned counsel the suit is being treated as a short cause as it does not require the recording of evidence and can be determined on legal issues alone.

2. The Plaintiff received notice dated 21-01-2020 followed by a reminder dated 04-02-2020 under section 176 of the Income Tax Ordinance, 2001 [ITO] calling upon the Plaintiff to “..... *provide party-wise details/date/information in relation to income tax collected and deposited by you from Steel Melters, [re-rollers] or composite units u/s 235B of the Income tax Ordinance, 2001 from July 2014 to December 2019....*” (‘the impugned notice’).

3. Though section 176 of the ITO designates the Commissioner Inland Revenue to issue notice thereunder, the impugned notice was issued by the Additional Director of the Directorate General, Intelligence & Investigation (Inland Revenue) [hereinafter ‘DG I&I’] apparently in exercise of powers conferred by the FBR under SRO

115(I)/2015 dated 09-02-2015 issued under section 230 of the ITO. Sub-section (2)(b) of section 230 empowers the FBR to “confer the powers of authorities specified in section 207 upon the Directorate General and its officers”. The authorities specified in section 207 include the Commissioner Inland Revenue.

4. The case set-up by the Plaintiff is primarily that in conferring powers of officers Inland Revenue on officers of the DG I&I, SRO 115(I)/2015 is *ultra vires* the ITO, in particular section 207 read with sections 208 and 209 thereof, and thus the impugned notice under section 176 of the ITO issued by the DG I&I is without jurisdiction. The alternative contention of the Plaintiff is that under SRO 115(1)/2015 as amended by notification dated 24-03-2016, it was the ‘Additional Director-III’ of the DG I&I who had territorial jurisdiction to issue notice under section 176 of the ITO to taxpayers categorized as ‘Large Taxpayers Unit-II’ such as the Plaintiff, whereas the impugned notice simply states to have been issued by an ‘Additional Director’, and thus the impugned notice is without jurisdiction. It is in that vein that the Plaintiff prays for declarations that the impugned notice under section 176 of the ITO, and the impugned notifications being SRO 115(1)/2015 as amended by notification dated 24-03-2016, and the notification dated 14-02-2019 for the transfer/posting of the Additional Commissioner-IR to Additional Director, DG I&I, may be declared without lawful authority.

5. Thus, for determining the suit, the following legal issues arise:

- (i) Whether SRO 115(I)/2015 dated 09-02-2015 issued by the FBR is *ultra vires* the Income Tax Ordinance, 2001 ? If so, to what effect?
- (ii) Whether the impugned notice under section 176 of the Income Tax Ordinance, 2001 is beyond the territorial jurisdiction of the issuing officer ?
- (iii) What should the decree be ?

6. Regards Issue No. (i), learned counsel for the Plaintiff acknowledged that a challenge to the *vires* of SRO 115(1)/2015 on a similar ground has been dealt with and rejected by this Bench in Suit No. 1872/2016 titled '*Saleem Butt v. Pakistan through Secretary Revenue Division*' *vide* judgment dated 31.05.2021. To that extent learned counsel for the Plaintiff conceded to a judgment in same terms. Therefore, for reasons discussed in the case of *Saleem Butt supra*, it is held that SRO 115(I)/2015 dated 09-02-2015 is not *ultra vires* the Income Tax Ordinance, 2001. Resultantly, and save the Plaintiff's alternative argument which is addressed *infra*, it is held that the impugned notice under section 176 of the ITO, the amending notification dated 24-03-2016, and the transfer/posting notification dated 14-02-2019, all were issued with lawful authority. Issue No. (i) stands answered.

7. As regards Issue No. (ii), the submission of learned counsel for the Plaintiff was that it was the 'Additional Director-III' of the DG I&I who had territorial jurisdiction in the matter, whereas the impugned notice simply states to have been issued by an 'Additional Director'. On the other hand, learned counsel for the department submitted that the impugned notice had in fact been issued by the Additional Director-III and the omission of 'III' was only a typographical error.

The name of the Additional Director, DG I&I who issued the impugned notice is mentioned as 'Tarique Hussain Tunio'. The jurisdiction order dated 22-07-2019 issued by the DG I&I, annexed to the written statement, shows that Tarique Hussain Tunio was designated as 'Additional Director-III'. When confronted with that, learned counsel for the Plaintiff has no answer. Therefore, Issue No(ii) is also answered in the negative.

8. Both issues having been answered in the negative and against the Plaintiff, the suit is dismissed.

JUDGE