

IN THE HIGH COURT OF SINDH AT KARACHI

Const. Petition Nos. D-2869 & D-2770 of 2014

Date

Order with Signature of Judge

Present:

Mr. Justice Aqeel Ahmed Abbasi.

Mr. Justice Mahmood A. Khan

Hearing Priority

1. For hearing of Misc. No. 13919/2014
2. For hearing of Misc. No. 13254/2014
3. For hearing of main cases.

22.11.2019

Mr. Mushtaq Hussain Qazi, advocate for the petitioners.

Mr. Muhammad Ameenullah Siddiqui, Asstt. Attorney General

ORDER

Through instant petition, the petitioner, who is an officer of BPS-16 performing his duty as Auditor, has expressed his grievance against inquiry and investigation by the FIA Authorities on the allegations of fraud and issuance of bogus refunds of sales tax, whereas, following relief has been sought:-

- I. Declare that the respondents and their officers have no lawful authority or jurisdiction under the law to initiate any enquiry proceedings in respect of matters falling within the provisions of the Sales Tax Act, 1990.
- II. Declare that the respondents and their officers have no jurisdiction or lawful authority to conduct and fishing or roving inquiry against the petitioner.
- III. Declare that the letters dated 04.02.2014, 14.04.2014, 17.04.2014, 23.04.2014 (wrongly typed 23.04.2013) and 02.05.2014 issued by the respondent No.4 and 5 in purported exercise of power under the FIA Act, 1947, were issued without jurisdiction or lawful authority and to quash and set aside the same.
- IV. Restrain and prohibit the respondents, their officers from conducting any inquiry or investigation or any other proceeding against the petitioners from taking any adverse action against the petitioners in any manner whatsoever.
- V. Grant any other relief deemed just and appropriate in the circumstances of the case.
- VI. Grant costs of the petition.

2. After arguing the matter at some length, learned counsel for the petitioners submits that controversy agitated through instant petitions, whereby, the petitioners, who are employees of Sales Tax Department, were being prosecuted by FIA authorities in respect of dispute relating to liabilities of Sales Tax on the allegations of having issued bogus refund of sales tax, has already been decided by this Court in the recent judgments passed by this Court in the case of *Dr. Ashfaq Ahmed Tunio & others v. Federal Investigation Agency & others reported in SBLR 2019 Sindh 1* and in the case of *Wali Muhammad Shaikh v. Federation of Pakistan & others reported as SBLR 2019 Sindh 205*, wherein, according to learned counsel for the petitioners, it has been held that FIA authorities cannot be allowed to carry out any fishing and roving inquiry or investigation against a public servant in respect of determination of tax liability including issuance of refund, unless there is a charge of mis-conduct or corruption against a Public Servant. Leaned counsel for the petitioners has placed the copies of judgments passed by this Court in the aforesaid cases through a statement dated 22.11.2019, whereas, copies whereof already supplied to learned Assistant Attorney General, who was put on notice vide order dated 07.1.2019 to examine this aspect of the matter and to assist the Court as to whether the controversy agitated through instant petitions is covered by the earlier decisions of this Court in the above cited judgments, and these petitions can also be disposed of in the similar terms.

3. Learned Assistant Attorney General after perusal of the aforesaid judgments does not dispute the contention of the learned counsel for the petitioners and submits that the facts and the legal controversy agitated through instant petitions is similar to the facts and legal controversy involved in the afore-cited cases, therefore, instant petitions can also be disposed of in the similar terms, however, submits that it may not prevent the Tax Authorities from taking action under the Sales Tax Act, 1990, to retrieve loss of revenue in accordance with law.

4. We have heard learned counsel for the petitioners as well as learned Assistant Attorney General and perused the record and the case law cited with their assistance. It appears that the relevant facts of the instant petitions and the

legal controversy involved are same as of the above cited judgments. Through instant petitions the authority of the FIA in respect of matters covered under the particular Taxing Statute (e.g. Sales Tax Act, 1990) has been challenged, whereas, this aspect of the matter has been examined thoroughly by this Court in the above cited judgments. It will be advantageous to reproduce hereunder the relevant finding on the subject legal controversy by Divisional Bench of this Court in the case of *Dr.Ashfaq Ahmed Tunio & others v. Federation Investigation Agency & others (SBLR 2019 Sindh 1)*, which reads as follows:-

“In order to examine the scope and jurisdiction of the FIA Authorities, it will be advantageous to examine the preamble of Federal Investigation Act, 1974, Section 3 of the Act, which defines the scope and jurisdiction of FIA, Rule 5 (Inquiries and Investigations) Rules, 2002, which prescribes procedure to initiate inquiry, which are reproduced herein-under:-

Preamble:

“Whereas it is expedient to provide for the constitution of a Federal Investigation Agency for the investigation of certain offences committed in connection with matters concerning the Federal Government, and for matters connected therewith.”

“Sec.3” **Constitution of the Agency---** (1) Notwithstanding anything contained in any other law for the time being in force, the Federal Government may constitute an Agency to be called the Federal Investigation Agency for inquiry into, and investigation of the offences specified in the Schedule, including any attempt or conspiracy to commit, and abetment of, any such offence.

(1) The Agency shall consist of a Director-General to be appointed by the Federal Government and such number of other officers as the Federal Government may, from time to time, appoint to be members of the Agency.”

“Rule 5”

5. Initiation of inquiry and registration of criminal case.--

(1) An inquiry shall be initiated against an accused public servant specified in column (2) of table below with prior permission of the authority, specified in column (3) of that table.

TABLE

<u>S.No.</u>	<u>Basic Pay Scale of Public Servant</u>	<u>Authority</u>
1	BPS 1- 12 and equivalent	Deputy Director
2	BPS 13 - 17 and equivalent	Director
3	BPS 18 - 19 and equivalent	Director General

4	BPS 20 - 21 and equivalent	Secretary
5	BPS 22 and equivalent	FACC

(2) Subject to sub-rule (3), a criminal case shall be registered against an accused public servant specified in column (2) of table below with prior permission of the authority specified in column (3) of that table.

TABLE

S.No Basic Pay Scale of Public Servant Authority

1.	BPS 1-12 and equivalent	Director.
2.	BPS 13-17 and equivalent	Director General
3.	BPS 18-19 and equivalent	Additional Secretary
4.	BPS 20-21 and equivalent	Secretary
5.	BPS 22 and equivalent	FACC

(3) No prior permission under sub-rule (2) shall be required for registration of a case against a public servant caught as a result of the trap arranged by the Agency under the supervision of a Magistrate of the first class. In such case, a report within twenty four hours shall be of the department concerned and immediate superior of the public servant concerned.

(4) If no receipt of complaint, the competent authority decide not to initiate an inquiry or register a case it shall record reason there for.”

From perusal of preamble of FIA Act, 1974, it can be ascertained that the purpose and intention of enactment of FIA Act, 1974 is to provide for the constitution of a Federal Investigation Agency, to investigate certain **offences committed in connection with matters concerning the Federal Government and for matters connected therewith**. Though the preamble is not an operative part of Statute but nevertheless it does provide a useful guide for finding out the intention of the legislature and therefore, cannot be ignored while interpreting the law. Reliance in this regard can be placed in the case of *Murree Brewery Co. Ltd. v. Pakistan through the Secretary to Government of Pakistan and others PLD 1972 SC 279* as well as in the case of *Iftikhar Hussain and others v. Government of Pakistan 2001 P.Cr.LJ 146* and the *State through Deputy Attorney General v. Muhammad Amin Haroon and 10 others 2010 P.Cr.LJ 518* Whereas, as per Section 3 of the Act, the constitution, scope and jurisdiction of FIA has been defined according to which, FIA Authorities have been empowered to **conduct inquiry and investigation of the offences specified in the schedule attached to the FIA Act, 1974, including an attempt or conspiracy to commit and abetment of, in such offence**. Similarly, as per Rule 5 of the FIA (Inquiries and Investigations) Rules, 2002, prior permission of competent

Authority as specified in Column 3 of the table is necessary before initiating an inquiry against an accused public servant. In the instant case, the petitioners against whom the inquiry has been initiated by the respondents are officers of BPS-18 and above, therefore, before initiating any inquiry against the aforesaid petitioners prior permission of D.G. FIA was required to be obtained, however, neither in the impugned letter issued by the respondents nor in the comments or the documents placed on record during the course of hearing the respondents could demonstrate that prior permission was obtained from the Director General in the instant case. From perusal of the entries in the schedule to the Federal Investigation Agency Act, 1974, which are presently 38 in number, it can be seen that offences under the Income Tax Ordinance, 2001; Sales Tax Act, 1990; and Customs Act, 1969 have not been included in the schedule, which shows that any order passed and proceedings initiated under the aforesaid Acts, cannot be subject matter of inquiry and investigation under the FIA Act, 1974. In other words, the scrutiny of assessment proceedings, including the assessment orders under the Income Tax Ordinance, 2001; Sales Tax Act, 1990; and Customs Act, 1969 cannot be made by the FIA Authorities nor any inquiry or investigation can be initiated to examine the legality of assessment proceedings or the orders passed by the Taxation Authorities under the Income Tax Ordinance, 2001; Sales Tax Act, 1990; and Customs Act, 1969. Reliance in this regard can be placed to the reported judgment of the Hon'ble Supreme Court in the case of ***Director General, FIA and others v. Kamran Iqbal and others*** [2016 SCMR 447], wherein, it has been held as under:-

“5. *Indeed, preamble to a Statute is not an operative part thereof, however, as is now well laid down that the same provides a useful guide for discovering the purpose and intention of the legislature. Reliance in this regard may be placed on, the case of Murree Brewery Company v. Limited v. Pakistan through the Secretary of Government of Pakistan and others (PLD 1972 SC 279). It is equally well established principle that while interpreting a, Statute a purposive approach should be adopted in accord with the objective of the Statute and not in derogation to the same.*

6. *Keeping in view the intent of the Act as spelt out from the preamble and the fact that through the Act the FIA, in terms of the schedule to the Act has been granted jurisdiction and power to act in respect of several offences under the P.P.C. which are cognizable by the local police also, and also in order to avoid a conflict of jurisdiction, the only conclusion that the Court may draw is that for exercising jurisdiction in the matter of the offences enumerated in the schedule to the Act there has to be some nexus between the offences complained of the Federal Government or else there shall be overlapping of the jurisdiction of the local police and the FIA creating an anomalous aspect of concern is that though in terms of notification, bearing SRO 977(1)/2003, Section 489-F,*

P.P.C. has been made a scheduled offence under the FIA Act, but no reasonable classification has been provided for exercising such power and it is left to the discretion of the concerned officer of the FIA to exercise his authority and jurisdiction under the Act in respect of the said offence, which militates against the protection enshrined by Article 25 of the Constitution of Islamic Republic of Pakistan. If a citizen is exposed to the proceedings in respect of an offence lodged against him which could be initiated before more than one forums, a reasonable classification is the requirement of the Constitution.”

Further reliance in this regard can also be made in the case of ***Adamjee Insurance Company Limited v. Federal Investigation Agency (F.I.A)***[2004 CLD 246].

Moreover, perusal of the contents of the complaint and the impugned letters issued by the FIA Authorities to the petitioners, reflects that the allegations and accusation against the petitioners, besides being vague and generalize in nature do not refer to any particular tax year, NTN Number or particulars of a taxpayer nor there has been any reference to Assets acquired by the petitioners through corruption and corrupt practices. FIA Authorities have failed to even verify the complaint and the allegations contained therein, nor have recorded the statement of the complainant inspite of considerable lapse of time. It is astonishing to note as to how, without examining the legal provisions relating to jurisdiction of FIA Authorities, ignoring the legal requirement to seek prior permission from Competent Authority and even without verifying the complaint and the allegations therein to be correct or otherwise, the impugned inquiry could be initiated against the petitioners. It is pertinent to observe that the Income Tax Ordinance, 2001; Sales Tax Act, 1990; and Customs Act, 1969 are special enactments, which provide for quasi-judicial proceedings of assessment of income tax and sales tax liability, as well as determination of customs duty through quasi-judicial orders, which are appealable before the Appellate Forums provided under the respective Statutes, which includes Reference to the High Court, as well as Appeal before the Hon’ble Supreme Court, therefore, the FIA Authorities cannot sit in judgment upon the assessment proceedings or the orders passed by the Taxation Authorities to this effect. Whereas, in terms of Section 227 of Income Tax Ordinance, 2001, Section 51 of Sales Tax Act, 1990 and Section 217 of Customs Act, 1969, even the jurisdiction of Civil Courts has been ousted. Reliance in this regard can be placed to the following cases:-

- i) *Kohinoor Industries Ltd. Faisalabad v. Govt. of Pakistan through Secretary, Ministry of Finance, Islamabad and others (PTCL 1994 CL 280)*

- ii) *Play Pictures through Proprietor and 8 others v. The Central Board of Revenue through Member, Customs, Islamabad and 4 others (2000 CLC 1403)*
- iii) *English Sweets (Pvt) Ltd. Karachi v. Pakistan through Secretary to the Government of Pakistan, Islamabad and 3 others (2005 PTD 247)*
- iv) *Raj Muhammad Khan and others v. Muhammad Farooq Khan and other (1998 SCMR 699)*

While applying the ratio of above judgments to the facts of the instant case, it is clear that the very initiation of the inquiry by the FIA Authorities against the petitioners was without lawful authority and based on mala-fides, whereas, respondents did not comply with legal requirements, which includes verification of complaint and the allegations contained therein, and prior permission of the Competent Authority to initiate any inquiry. In the absence of any material, FIA Authorities cannot be allowed to carry out any fishing and roving inquiry or investigation against a public servant. Reference in this regard can be made to the following cases:-

- i) *Director General, F.I.A. and others v. Kamran Iqbal and others (2016 SCMR 447)*
- ii) *Assistant Director, Intelligence and Investigation, Karachi v. M/s B.R. Herman and others (PLD 1992 SC 485)*
- iii) *Muhammad Irshad Khan v. Chairman, National Accountability Bureau and 2 others (2007 PCr.L.J 1957)*
- iv) *Ghulam SarwarZardari v. Piyar Ali alias Piyaro and another (2010 SCMR 624)*

In view of hereinabove facts and circumstances of the instant case, we are of the considered opinion that the impugned Notices issued by the FIA Authorities and the inquiry and investigation initiated against the petitioners, pursuant to a purported complaint, are without jurisdiction and lawful authority, and also based on malafides, hence liable to be quashed. Accordingly, vide our short order dated 28.02.2018, instant petition was allowed alongwith listed applications and above are the reasons of such short order.”

5. By respectfully following earlier decision of a Divisional Bench judgments of this Court as well as the ratio of the judgments of the Honourable Supreme Court as relied upon in the said judgments on the legal controversy involved in these petitions, both these petitions are allowed. Consequently, the impugned Notices issued and the inquiry & investigation initiated against the

petitioners by the FIA Authorities, are declared to be without jurisdiction and lawful authority.

J U D G E

J U D G E

Zahidbaig/Nadeem

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Const. Petition No. D-7162 of 2019

Date	Order with Signature of Judge
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Priority

1. For orders on office objections No. 18.
2. hearing of Misc. No. 31739/2019
3. For hearing of main case.

22.11.2019

Mr. Ajeet Sunder, advocate for the petitioner.
Mr. Ameenullah Siddiqui, Assistant Attorney-General.

Mr. Rana Sakhawat Ali, advocate appears on behalf of Mr. Muhammad Aqeel Qureshi, advocate and files his vakalatnama for Respondents, which is taken on record. Learned counsel for the petitioner, under instructions, submits that instant petition can be disposed of in terms of earlier orders passed in similar petitions, whereby respondents have restrained from enforcing recovery of impugned demand till final decision by the Appellate Tribunal Inland Revenue, Karachi Bench, whereas in case of any adverse order passed by the Tribunal, respondents have been restrained from enforcing recovery of the impugned demand for a further period of seven days to enable him to seek further remedy in accordance with law.

Learned Assistant Attorney-General as well the counsel holding brief for Mr. Muhammad Aqeel Qureshi, advocate do not oppose the disposal of instant petition in terms of earlier orders passed in the similar petitions.

Accordingly, instant petition stands disposed of in the above terms along with listed applications, however, the petitioner is directed to file urgent application before the Tribunal, Karachi Bench, within seven days from the date of this order, who may decide the appeal of the petitioner at an early date, preferably, within a period of two months from the date of receipt of this order, which shall be communicated by the petitioner to the Appellate Tribunal, within seven days.

Petition stands disposed of in the above terms along with listed applications.

Judge

Judge

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Const. Petition No. D-7102 of 2019

Date	Order with Signature of Judge
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Priority

1. For hearing of Misc. No. 31426/2019
2. For hearing of main case.

22.11.2019

Ms. Bushra holds brief for Mr. Qazi Umair Ali, advocate for the petitioner.

Mr. Ameenullah Siddiqui, Assistant Attorney-General.

Mr. Saeed Riaz, advocate appears on behalf of Syed Mohsin Imam, advocate and files his vakalatnama for Respondent N. 4, which is taken on record. Ms. Bushra, advocate holding brief for Mr. Qazi Umair Ali, advocate for the petitioner on the ground that he is busy before another bench of this Court, however, under instructions, submits that instant petition can be disposed of in terms of earlier orders passed in similar petitions, whereby respondents have restrained from enforcing recovery of impugned demand till final decision by the Commissioner Inland Revenue (Appeals-IV), Karachi, whereas in case of any adverse order passed by the Commissioner Appeals, respondents have been restrained from enforcing recovery of the impugned demand for a further period of seven days to enable him to seek further remedy in accordance with law.

Learned Assistant Attorney-General as well the counsel holding brief for Syed Mohsin Imam, advocate do not oppose the disposal of instant petition in terms of earlier orders passed in the similar petitions.

Accordingly, instant petition stands disposed of in the above terms along with listed applications, however, the petitioner is directed to file urgent application before the Commissioner Inland Revenue (Appeals-IV), within seven days from the date of this order, who may decide the appeal of the petitioner at an early date, preferably, within a period of one month from the date of receipt of this order, which shall be communicated by the petitioner to the Commissioner Inland Revenue (Appeals-IV), within seven days.

Petition stands disposed of in the above terms along with listed application.

Judge

Judge

Zahidbaig

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Const. Petition No. D-5647 of 2018

Date	Order with Signature of Judge
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Priority

4. For hearing of Misc. No. 24449/2018
5. For hearing of main case.

22.11.2019

Ms. Bushra holds brief for Mr. Qazi Umair Ali, advocate for the petitioner.

Mr. Ameenullah Siddiqui, Assistant Attorney-General.

Ms. Bushra, advocate holding brief for Mr. Qazi Umair Ali, advocate for the petitioner on the ground that he is busy before another bench of this Court, however, under instructions, submits that instant petition can be disposed of in terms of earlier orders passed in similar petitions, whereby respondents have restrained from enforcing recovery of impugned demand till final decision by the Commissioner Inland Revenue (Appeals-IV), Karachi, whereas in case of any adverse order passed by the Commissioner Appeals, respondents have been restrained from enforcing recovery of the impugned demand for a further period of seven days to enable him to seek further remedy in accordance with law.

Since no one is in attendance on behalf of respondents, learned Assistant Attorney-General does not oppose the disposal of instant petition in terms of earlier orders passed in the similar petitions.

Accordingly, instant petition stands disposed of in the above terms along with listed applications, however, the petitioner is directed to file urgent application before the Commissioner Inland Revenue (Appeals-IV), within seven days from the date of this order, who may decide the appeal of the petitioner at an early date, preferably, within a period of one month from the date of receipt of this order, which shall be communicated by the petitioner to the Commissioner Inland Revenue (Appeals-IV), within seven days.

Petition stands disposed of in the above terms along with listed application.

Judge

Judge

Zahidbaig

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No. D-2878 of 2017 alongwith
C.Ps. No. D-445 and 4639 of 2018

Date	Order with signature of Judge
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1. For hearing of Misc. No. 14127/2017
2. For hearing of main case.

22.11.2019

Mr. Khalid Jawed Khan, advocate for the petitioners.

Mr. Saifullah, A.A.G.

Mr. Shamshad Ahmed, advocate undertakes to file his vakalatnama on behalf of respondents in C.Ps. Nos. 445 and 4639 of 2018, submits that respondents in C.P. No. D-2878/2017 intend to engage a private counsel and requests for time to file comments. Let the same be filed before the next date of hearing with advance copy to learned counsel for the petitioners.

Adjourned, to be fixed after four weeks. Interim order passed earlier to continue till next date of hearing.

J U D G E

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