

# IN THE HIGH COURT OF SINDH, KARACHI

**Const. Petition No. D – 1691 of 2018**

PRESENT:

**MR. JUSTICE AQEEL AHMED ABBASI.  
MR. JUSTICE ZULFIQAR AHMED KHAN.**

***Sultan Ahmed***

***Vs.***

***Province of Sindh & others***

***Petitioner:*** through Mr. Muhammad Suhail Hassan, advocate.

***Respondents:*** through Mr. Zulfiqar Ali Khan, advocate.

Mr. Saifullah, AAG & Mir Hussain, Asstt. Attorney General.

***Date of Hearing:*** 28.11.2018.

***Date of Order:*** 28.11.2018.

## **ORDER**

**Aqeel Ahmed Abbasi, J:-** Through instant petition, petitioner has expressed his grievance against respondent No.2/Sub-Registrar, North Nazimabad Town, Karachi, for demanding income tax under Section 236W, which has been inserted through Income Tax (Amendment) Act, 2016, in respect of two sub-lease deeds executed and presented to the Sub-Registrar for its Registration prior to insertion of Section 236W through Income Tax (Amendment) Act, 2016, whereas, following relief(s) has been sought:-

Prayer

*“It is therefore, prayed by the Petitioner above named that this Honourable Court be pleased to allow the instant Petition of the Petitioner and hold and declare that the documents namely Sub-Lease deed (Annexure “P/3” and “P/4”) does not require any levy of Tax in law under Section 236W inserted through Income Tax (Amendment) Act, 2016 and direct the Respondent No.3 to clear the same for Digital Scanning and grant any further better relief which this Honourable Court may be deemed just, fit and proper in the circumstances of the case.”*

2. Briefly, the facts as stated in the Memo of petition are that petitioner is engaged in the business of construction, development and sale of immovable property, including flats and shops in Karachi, who has constructed a multi-storeyed building known as “Saima Paari Residency” on Plot No. D-8, Block-N, North Nazimabad, Karachi, and after completion the construction work of the said project, petitioner obtained Completion Certificate from the concerned authority and started to sale out the flats and shops to his customers/clients on consideration. The petitioner also executed sub-lease deeds to his customers/clients, which were got registered in the office of Sub-Registrar, North Nazimabad Town from time to time. Accordingly, on 17.11.2016, two separate sub-lease deeds were also presented and executed by the petitioner in the office of respondent No.2, after payment of required stamp duty vide Receipt Serial No.6495 and 6496, whereas, such sub-lease deeds were executed in favour of respondents No.4 and 5 respectively. Such documents were subsequently admitted for Registration by the Sub-Registrar, North Nazimabad Town, Karachi, vide Registration Nos.695 and 696 dated 16.02.2017. Subsequently, respondent No.2

forwarded the above sub-lease deeds to the office of respondent No.3 i.e. Inspector of Registration Offices, Karachi Division, Board of Revenue, Karachi for further processing and digital scanning, however, respondent No.3 failed and neglected to process the above documents (i.e. two sub-lease deeds available as Annexure P/3 and P/4) for digital scanning, therefore, petitioner was compelled to write a letter dated 09.02.2018 to respondent No.3 i.e. Inspector of Registration Offices, Karachi Division, Board of Revenue, Karachi for clearance of both the documents, as all the required stamp duties and applicable taxes were paid thereon. In response to such letter, respondent No.3 issued a letter dated 15.02.2018 requiring the petitioner to make payment of income tax in terms of Section 236W also, as according to respondent No.3, on purchase of the immovable property, income tax in terms of Section 236W is to be paid/collected at the time of Registering or attesting of a document.

3. Being aggrieved by such letter dated 15.02.2018 issued by the Inspector of Registration Offices, Karachi Division, Board of Revenue, Karachi, petitioner has filed instant petition with a prayer to hold that both the sub-lease deeds which are subject matter of instant petition do not require levy of Income Tax under Section 236-W of the Income Tax Ordinance, 2001. It has been contended by the learned counsel for the petitioner that subject lease deeds were duly presented, executed and signed in the office of Sub-Registrar, North Nazimabad Town, Karachi after completion of all codal formalities and payment of applicable duty and taxes including CVT, Registration fee etc. on 17.11.2016 vide Receipt Serial No.6495 and 6496 issued by the respondent No.2. Per learned counsel, no objection whatsoever, was ever raised or intimated to the petitioner by the respondent No.2 i.e. Sub-Registrar, North Nazimabad Town,

Karachi either at the time of execution of sub-lease deeds or issuing receipts, nor at the time of registration of lease deeds vide Registration Deeds Nos. 695 and 696 dated 16.02.2017 in favour of respondents No. 4 and 5 respectively. Whereas, per learned counsel, both the sub-lease deeds were forwarded by respondent No.2 to the office of respondent No.3 i.e. Inspector of Registration Offices, Karachi Division, Board of Revenue, Karachi for further processing and digital scanning of both the documents. Learned counsel has argued that since both the sub-lease deeds were properly executed after completion of all the codal formalities, therefore, both the documents were duly Registered by respondent No.2 and were sent to respondent No.3 for completion of procedural requirement i.e. Digital Scanning etc., however, respondent No.3 failed to complete the further process within a reasonable time period, therefore, petitioner wrote a letter dated 09.02.2018 to respondent No.3 with the request to issue the registered sub-lease deeds to the petitioner. However, respondent No.3 instead of realizing the mistake and to justify the delay, issued the impugned letter dated 15.02.2018, requiring the petitioner to make further payment in terms of Section 236W of the Income Tax Ordinance, 2001. It has been vehemently argued by learned counsel for the petitioner that admittedly, all the relevant documents including sub-lease deeds were duly executed, signed by seller, purchaser, witnesses and the Sub-Registrar of immovable properties on 17.11.2017, whereas, all the requisite duty and taxes applicable thereto, including CVT, Income Tax under Section 236K, Registration Charges, Scanning Fee etc. were also paid on 17.11.2016 and 24.11.2016 respectively, whereas, no objection whatsoever was raised or intimated to the petitioner either from the office of respondent No.2 i.e. Sub-Registrar, North Nazimabad Town,

Karachi, or from the office of respondent No.3 i.e. Inspector of Registration of Offices, Karachi Division, Board of Revenue, Karachi until the petitioner has written a letter dated 09.02.2018 through his counsel to respondent No.3 for clearance of both the documents i.e. sub-lease deeds duly admitted vide Registration Deeds Nos. 695 and 696 Book No.I, by Sub-Registrar, North Nazimabad Town, Karachi. Learned counsel for petitioner has further argued that in terms of Section 47 of the Registration Act, 1908, a registered document operates from the time from which, it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration. Per learned counsel, the date of presentation and execution of documents (i.e. sub-lease deeds) before the Registrar, after fulfillment of all the codal formalities and payment of duty and taxes, is the relevant date for the purposes of Registration of a document, whereas, subsequent endorsement or processing of the document, including digital scanning as in the instant case, is simply a procedural requirement and cannot affect the rights and title acquired by the executant of such document at the time of its execution and admission by Registrar, through subsequent amendment in law, by applying the same retrospectively. In support of his contention, learned counsel for the petitioner has placed reliance in the case of ***Ghulam Rasool and others v. Akbar Ali and others (2011 SCMR 794)*** and ***Dy. District Officer (Revenue) Lahore and others v. Raja Muhammad Yousuf and others [2016 SCMR 203]***.

4. Conversely, learned Assistant Advocate General Sindh [AAG] has argued that unless a document is processed after completion of all the codal formalities, the said document cannot be considered as a Registered document, whereas, the relevant period for the purposes

of application of duty and taxes will be the period when such document is actually registered. It has been further contended by the learned AAG that through impugned letter dated 15.02.2015, the respondent No.3 has required the petitioner to comply with the provisions of Section 236W, introduced through Income Tax (Amendment) Act, 2016, when such documents were not finally registered and the same were pending for procedural requirements i.e. digital scanning before Respondents. In support of his contention, learned AAG has referred to Section 17 of Registration Act, 1908 and relied upon in the case of ***Abdul Sattar Noor Muhammad & Co. and others v. Federation of Pakistan and others (1999 SCMR 2345)***.

5. We have heard the learned counsel for the petitioner and the learned AAG, examined the record with their assistance and have also gone through with the relevant provisions of Registration Act, 1908, provision of Section 236W of the Income Tax Ordinance, 2001 and also the case law as relied upon by the learned counsel for the petitioner and the learned AAG in support of their contention. The facts as stated in the instant petition and argued by the learned counsel for the petitioner relating to presentation and execution of two sub-lease deeds under reference, as well as payment of required duty and taxes, including CVT, Income Tax under Section 236K, registration fee and scanning fee by the petitioner at the time of execution of such documents before the Sub-Registrar, North Nazimabad Town, Karachi i.e. respondent No.2, have not been disputed by the respondents and the learned AAG, therefore, do not require any detailed scrutiny by this Court, whereas, a legal controversy has to be resolved through interpretation of provisions of Registration Act, 1908, and also to examine the applicability of

provisions of Section 236W of the Income Tax Ordinance, 2001, inserted through Income Tax (Amendment) Act, 2016 to sub-lease deeds executed prior to such insertion.

6. However, chronology of presentation and execution of subject sub-lease deeds is required to be examined for the purposes of resolution of legal controversy in hand. The precise facts of the case are that after payment of CVT on 12.11.2016, petitioner paid Registration fee in respect of both sub-lease deeds on 16.11.2016, whereafter, both the documents were presented before the Sub-Registrar, North Nazimabad Town, Karachi, on 17.11.2016, amount of income tax u/s 236-K was deposited on 18.11.2016, whereas, scanning fee was also paid on 24.11.2016. Record further reveals that all the above endorsements have been made by the Sub-Registrar, North Nazimabad Town, Karachi, on both the sub-lease deeds through proper stamps under his signatures, whereas, eventually, vide endorsement dated 16.02.2017, it has been acknowledged by the Sub-Registrar, North Nazimabad Town, Karachi, that both the documents are complete in all respect and Registered through Registration Nos.695 Book No.1 and 696 Book No.1, both dated 16.02.2017. It is clear from hereinabove facts that execution of both the sub-lease deeds in the instant case, and compliance of other codal formalities, including payment of CVT and Income Tax under Section 236-K, Registration Fee and Scanning Fee etc. endorsement through stamping under the signatures of the Sub-Registrar, North Nazimabad Town, Karachi, on 16.11.2016, 17.11.2016, 15.02.2017 and 16.02.2017 respectively, stood completed in the record of Sub-Registrar, North Nazimabad Town, Karachi, in Book No.1 in respect of subject properties. Whereas, neither there was any objection with regard to compliance of any of the codal formality required for the

purposes of registration of a document, nor there was any endorsement by the Sub-Registrar, North Nazimabad Town, Karachi, to the effect that these documents are “pending” for further compliance by the executant, either on account of any deficiency in the document itself, or there is some short document or compliance to be made by its executants.

7. In order to comprehend the effect of presentation and execution of documents, payment of required duty and taxes, including CVT, Income Tax, Registration fee and scanning fee etc. it will be advantageous to refer to the judgment of the Hon’ble Supreme Court in the case of ***Ghulam Rasool and others v. Akbar Ali and others (2011 SCMR 794)*** as relied upon by the learned counsel for the petitioner in the instant case, wherein, elaborate finding has been recorded by the Hon’ble Supreme Court in this regard. The relevant finding as contained in paragraphs 4, 5 and 6 are reproduced hereunder for the sake of ready reference:-

4. *We have heard the learned counsel for the parties and examined the available record. Admittedly, Gobind Ram executed sale-deed on 9-11-1946 favouring Andal Khan, which was registered on 3-3-1947 before the Sub-Registrar. The case of the appellants is that as the said document was registered on 3-3-1947, therefore, it will only operate and create rights favouring vendees from date of registration of the document notwithstanding the fact that the sale deed bears the date i.e. 9-11-1946. Section 47 of the Registration Act reads as under:-*

*"47. Time from which registered document operates:---A registered document shall operate from the time from which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration."*



*A bare perusal of the said provision of law manifests that a registered document shall operate from the time, day, when it was written and signed and it will create right, title and interest in favour of the transferee from the date of execution and not from the date of registration. In this case, as noted above, the sale-deed was written and signed on 9-11-1946, however, it was registered on 3-3-1947, therefore, perforce of section 47 of the Registration Act it will deem to operate from 9-11-1946 and not from 3-3-1947. The learned High Court rightly relied upon the case of "Attaullah Malik v. The Custodian, Evacuee Property (PLD 1964 Supreme Court 236) in which it was inter alia held that even if the sale-deed was registered on subsequent date though, it was executed on prior date then after the registration, the transfer operates in the words of section 47 not from the date of registration but from the date on which it would, if no registration was needed, have taken effect. It would be advantageous to refer to the case of "Muhammad Sadiq v. Muhammad Ramzan (2002 SCMR 1821)", wherein this Court held that "There is no cavil to the proposition that the registered document will have precedence over the unregistered document if it was executed earlier in time as the title is determined from the date of execution and not from the date of registration of the document." This Court in another case reported as "Fazal Karim v. Muhammad Afzal (PLD 2003 Supreme Court 818)" adopted the same view and held as under:--*

*"20. The transaction had initiated from a registered agreement to sell dated 1-10-1979 while sale-deed was executed on 30-12-1979. Such deed was registered on 23-8-1981 while the proceedings before the First Appellate Court ended on 7-4-1981 due to the compromise discussed above. A confusion might arise at any stage that the transaction became effective on 23-8-1981 due to the attestation thereof by the Sub-Registrar, while, the list was not pending at that time, having been disposed of on 7-4-1981. This idea is negated by section 47 of the Registration Act which clearly lays down that a registered document shall operate from the time from*

*which it would have commenced to operate if no registration thereof had been required or made, and not from the time of its registration. In this legal aspect of the matter, the transaction in hand, if genuine otherwise, would be deemed to be operative with effect from 30-12-1979, if not 1-10-1979."*

*Supreme Court of Azad Jammu & Kashmir in the case of "Muhammad Ghazan v. Asghar Hussain (1999 YLR 2480)" after referring to plethora of the case-law on the subject concluded that "in view of section 47 of the Registration Act, its application cannot be confined only to the parties to the document; it equally applies to a third person or for that matter to a pre-emptor.*

*Thus in view of provisions of section 47 of the Registration Act and the afore-noted case-law, it is held that the sale deed executed between Gobind Ram and Andal Khan will be operative and create right, title and interest of the transferee/vendee in the said property from 9-11-1946 and not from 3-3-1947.*

5. *Now coming to the next contention of the learned counsel in respect of applicability of section 47 or 49 of Registration Act, suffice it to say that this plea was never raised by the appellants before the learned High Court rather their case before it, as canvassed by .the learned counsel, recorded in para 9 of the impugned judgment, was that in view of section 47 of the Registration Act the registered document would operate from 3-3-1947, the date of registration of the document. In view whereof, the appellants are now precluded from taking a contradictory plea. In this behalf reference can be made to "Hashwani Hotels Ltd. v. Government of Pakistan (2007 SCMR 1131)" wherein it was held that if the impugned judgment is silent regarding ground raised before this court presumption would be that such ground was not raised' and agitated before the High Court at the time of arguments.*

6. *Section 49 of the Registration Act reads as under:--*

*"49. Effect of non-registration, of documents required to be registered.---No document required to be registered under this Act or under any earlier law providing for or relating to registration of document shall,---*

*(a) operate to create, declare assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, to or in immovable property, or*

*(b) confer any power to adopt unless it has been registered."*

*Upon reading the said provision of law, it is clear that it does not apply to the facts and circumstances of the present case. In this case the question involved as to whether the sale-deed, which was executed on 9-11-1946 and registered on 3-3-1947 would operate from the date of its execution or registration, was amply covered under section 47 of the Registration Act. Section 49 of the Registration Act has different dimensions and has no applicability under the facts and circumstances of the present case. The plea of the learned counsel has no substance, as Section 49 of the Registration Act was not attracted in the present case, more so, when the appellants before the learned High Court themselves relied upon section 47 of the Registration Act."*

8. Further reference in this regard can be made to provisions of Part X and XI of the Registration Act, 1908, particularly to Section 47, 52, 53 and 58 to 61 of Registration Act, 1908, whereby, the entire procedure for the purposes of Registration of a document e.g. lease/sub-lease deeds including presentation, execution and registration of documents, as well as the duties and obligations of the Registering Authority has been defined. The cumulative effect of hereinabove legal provisions and the judgment of the Hon'ble Supreme Court in the above referred cases is that a registered document operates from the time, when it was presented and executed before the concerned Sub-Registrar, after completion of all

codal formalities and payments of required duty and taxes and fee etc. and not from the date of registration of the document. It is pertinent to note that the transfer of an immoveable property and its registration before the Registrar/Sub-Registrar, immoveable property, is governed under the Registration Act, 1908, therefore, in order to examine the effect of execution and registration of a document, reference has to be made to the provisions of Registration Act, 1908, whereas, interpretation of any provision of law, including provisions of Section 236W of the Income Tax Ordinance, 2001, as in the instant case, has to be made in harmony with the parent law i.e. Registration Act, 1908. While applying the above principle of interpretation of Statute, the term “at the time of registering, recording or attesting the transfer” as used in Section 236W of the Income Tax Ordinance, 2001, is required to be interpreted in terms of provision of Registration Act, 1908, and the judgment of the Hon’ble Supreme Court as referred to hereinabove, according to which, the date, when the document is presented and executed for registration before the Registrar, is the material date for the purposes of Registration and not the date of its actual Registration. Reliance in this regard can also be made to the judgment of the Hon’ble Supreme Court in the case of **Dy. District Officer (Revenue) Lahore and others v. Raja Muhammad Yousuf and others [2016 SCMR 203]** , wherein, Hon’ble Supreme Court has been pleased to hold as under:-

“11. The impugned judgments to the extent that they have determined the applicable stamp duty on the basis of the sale consideration mentioned in a sale agreement which culminated in a decree or took the date of filing of the suit for specific performance, travelled beyond the provisions of the Stamp Act. A document which is presented for registration is required to be stamped as per the stamp duty applicable on such date, and it makes no difference whether the document

*was voluntarily presented by the executants thereof or has been prepared pursuant to a decree. The registering officer examines the document to determine whether it bears the requisite stamps or the requisite stamp duty has been paid. The date the document is presented for registration is the material date, and it is immaterial whether it has been prepared pursuant to a decree of a court. And, if a valuation table has been notified pursuant to section 27-A(1) of the Stamp Act then the amount of the stamp duty is to be calculated on the basis of such notional/deemed valuation. This is the only conclusion that can be reached from a consideration of the applicable legal provisions mentioned above, including sections 10, 17, 27 and 27-A of the Stamp Act.”*

9. In view of hereinabove facts and circumstances of the case, we are of the considered opinion that respondents were not justified to withhold the documents of the petitioner for such long period, when all the required duty and taxes including CVT, income tax, registration fee and scanning fee etc. were paid either before the presentation or at the time of execution of such documents before the Sub-Registration, North Nazimabad Town, Karachi, nor they could require the petitioner to make further payment of income tax u/s 236W of the Income Tax Ordinance, 2001, which was inserted through amendment in the Income Tax Ordinance, 2001, however, after execution of the above sub-lease deeds, while applying such provisions retrospectively, in respect of transaction which stood completed for all practical and legal purposes prior to such amendment through Income Tax (Amendment) Act, 2016, in the Income Tax Ordinance, 2001. Accordingly, instant petition was allowed vide our short order dated 28.11.2018 and above are the reasons for such short order.

**JUDGE**

Nadeem

**JUDGE**