

# IN THE HIGH COURT OF SINDH, KARACHI

*Const. Petition No. D – 722 of 2018*

PRESENT:

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

*Munib Abdul Rauf*

*Vs.*

*Federation of Pakistan & others*

*Petitioner:* through Mr. Ajeet Sundar, advocate

*Respondents:* through Mr. Pervaiz Ahmed Memon, advocate  
*and* Mr. Mir Hussain,  
Assistant Attorney General

*Date of Hearing:* 05.11.2018.

*Date of Order:* 05.11.2018.

## ORDER

**Aqeel Ahmed Abbasi, J:** Through instant petition, the petitioner has challenged the selection of petitioner's case for sales tax audit for the year 2011-2012 in terms of Section 72B read with Section 25 of the Sales Tax Act, 1990, and has also impugned the Notice issued pursuant to such selection of case for Audit on 01.11.2017 for having been issued after expiry of period of limitation. In support of such claim, learned counsel for the petitioner has placed reliance in the case of **Commissioner Inland Revenue, Zone-II v. Fecto Cement (2017 PTD 1253)** and has prayed that instant petition may be allowed

in the similar terms and the Audit proceedings against the petitioner may be declared to be without lawful authority.

2. Notice of instant petition was issued to the respondents and the DAG, pursuant to which, comments have been filed on behalf of the respondents, whereby, it has been stated that the case of the petitioner was selected for sales tax audit by the Federal Board of Revenue (FBR) under Section 72B of the Sales Tax Act, 1990, on 13.09.2013, for the Tax Year 2011 & 2012 and not through Notice dated 01.11.2017 as stated in the instant petition. It has been further stated in comments that the petitioner was duly confronted with such selection of the case for total audit and was also issued Show Cause Notice in this regard from time to time, whereas, no objection was raised by the petitioner in this regard. From perusal of comments and record, it also transpired that the impugned Notice as referred to hereinabove, is neither a fresh Show Cause Notice, nor it is case of second audit as alleged by the petitioner, on the contrary, it has been issued in continuation of earlier proceedings which could not be completed in view of non-compliance by petitioner.

3. While confronted with hereinabove position, learned counsel for the petitioner could not submit any reasonable explanation nor could deny the fact that the Audit proceedings, which have been impugned through instant petition, were in fact, initiated within the period of limitation as provided under Section 11(5) of the Sales Tax Act, 1990, whereas, the current proceedings are in fact, continuation of earlier proceedings. From perusal of the contents of memo of petition and the documents attached with the petition, it appears that the petitioner has not disclosed the entire facts relating to selection of petitioner's case for total audit through random balloting by the

FBR in terms of Section 72B vide letter dated 13.09.2013, nor the documents relating to continuity of the audit proceeding have been attached. On the contrary, a letter dated 01.11.2017, has been attached to create an impression that as if, fresh proceedings for Audit have been initiated against the petitioner for the period from July 2011 to June 2012, so that the same may be declared as time barred in view of Section 11(5) of the Sales Tax Act, 1990, whereas, reliance in this regard has been placed on the judgment of this Court in the case of **Commissioner Inland Revenue, Zone-II v. Fecto Cement (2017 PTD 1253)**. It is pertinent to note that even in the impugned Notice dated 01.11.2017, it has been stated that the case of the petitioner was selected through computer ballot for audit by the FBR on 14.09.2015 under Section 72B of the Sales Tax Act, 1990, and if period of limitation is counted from such date, even then, such selection of petitioner's case for total audit is within time. Learned counsel for the petitioner was directed to satisfy this Court as to maintainability of instant petition, in view of hereinabove disputed facts, however, he could not controvert above factual position, nor could submit any reasonable explanation, as to why, complete facts have not been disclosed in the Memo of petition. On the contrary, learned counsel insisted that the impugned Notices dated 01.11.2017 and 23.01.2018 may be declared to be illegal for being time barred.

4. After hearing the learned counsel for the parties and from perusal of the record, it has transpired that complete true facts have not been disclosed by the petitioner, rather certain material facts have been concealed, whereas, the entire Audit proceedings in the case of petitioner have not been filed along with instant petition. If the averments made by the petitioner in the Memo of Petition, and

the reply submitted by the respondents are put in juxta-position, it has emerged that seriously disputed facts have been agitated by the petitioner, whereas, material facts have been concealed, to seek a declaration to the effect that impugned Notice is time barred in terms of Section 11(5) of the Sales Tax Act, 1990. Moreover, through impugned Notices, petitioner has been provided an opportunity to explain his position, however, instead of submitting response to the impugned Notices by raising all such factual and legal objections, petitioner has invoked the constitutional jurisdiction of this Court under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973. This Court, in number of similar Constitutional Petitions, has already deprecated such practice and dismissed the same on the point of maintainability alone. Reference in this regard can be made to the following case law:-

- i) *Messrs Maritime Agencies ((Pvt.)) Ltd v. Assistant Commissioner-II of SRB and 2 others (2015 PTD 160).*
- ii) *Messrs Pakistan Mobile Communications Ltd. v. Sindh Revenue Board and 2 others (2014 PTD 2048).*
- iii) *Roche Pakistan Ltd. v. Deputy Commissioner of Income-Tax and others (2001 PTD 3090).*
- iv) *Sitara Chemical Industries Ltd. v. Deputy Commissioner of Income Tax (2003 PTD 1285).*

5. Accordingly, we don't find any substance in the instant petition, which contains disputed facts, therefore, is liable to be dismissed. Accordingly, instant petition was dismissed vide our short order dated 05.11.2018 with cost of Rs.10,000/- (Rupees Ten thousand only) to be deposited in the High Court Clinic, and above are the reasons for such short order.

**JUDGE**

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