

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Suit 401 of 2022

Date

Order with signature of Judge(s)

1. For hearing of CMA No.4144/2023.

11.09.2023

Mr. Rehan Kayani, advocate for the plaintiff.

Present suit challenges a selection for audit, dated 09.11.2021, under section 177 of the Income Tax Ordinance, 2001, available at page 53 of the court file. Nothing could be demonstrated to befall the same out of the purview of the provision where under it was issued. The notice also provides an opportunity for redress of any reservation that the plaintiff may have, however, the plaintiff opted to avoid that recourse and has filed this suit instead.

The august Supreme Court held in *COMMISSIONER OF INLAND REVENUE, SIALKOT VS ALLAH DIN STEEL AND ROLLING MILLS* reported as *2018 SCMR 1328* that once a taxpayer was selected for audit and till such audit was completed the taxpayer was provided ample and multiple opportunities at every step to defend his position, support his returns and offer explanations for the information provided and entries made in the tax returns. Even if a discrepancy was discovered taxpayer was provided yet another opportunity to explain his position before his assessment was revised. In summation, the honorable Supreme Court has held that such selection is not *per se* illegal. A Division bench of this Court has earlier dismissed a similar claim in the *Pfizer* case reported as *2016 PTD 1429*. In *pari materia* circumstances another Division bench of this Court maintained in *PLD 2019 Sindh 516 (Dr. Seema Irfan vs. Pakistan)* that a mere notice seeking information is not necessarily adversarial and would not *ipso facto* give rise to an actionable cause. Similar findings were recorded by the august Supreme Court in the judgment reported as *2022 SCMR 92 (Commissioner Inland Revenue vs. Jahangir Khan Tareen)*. In consideration of the foregoing read with paragraph 8 of the plaint, it is observed that the plaintiff has failed to demonstrate a cause of action.

As has been observed in the *Allahdin* case, the audit notice provided a forum and opportunity for consideration of any reservation of the plaintiff. If any adverse order was order passed in pursuance thereof the same would be appealable. Default by the plaintiff in seeking recourse before the statutory hierarchy could not be demonstrated to denude the statutory forum of its jurisdiction; or confer the same upon this court. Similar views were taken by learned Single judges in order dated 27.09.2022 rendered in Suit 855 of 2015 and the judgment reported as 2022 PTD 1742 (PPL vs. Pakistan). Even otherwise, the plaintiff's learned counsel remained unable to demonstrate as to how this Court could assume jurisdiction in this matter in view of the binding judgments delineated supra.

This Court is constrained to observe that an identical matter, advocated by the present learned counsel, was dismissed for the same reason vide order dated 31.01.2020 in Suit 1208 of 2020. It appears that the learned counsel did not bring the same to the notice of this Court.

In view of the reasoning and rationale deliberated, the pending application is dismissed and the plaint herein is rejected.

JUDGE