

IN THE HIGH COURT OF SINDH AT KARACHI

Suit 536 of 2022 : Imran Rahim vs. Federation of Pakistan & Others

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For the Plaintiff : Mr. Mushtaque Hussain Qazi, Advocate

For the Defendants/s : Barrister Ghazi Khan Khalil, Advocate

Ms. Rabia Khalid
(Assistant Attorney General)

Date/s of hearing : 08.08.2024

Date of announcement : 08.08.2024

ORDER

Agha Faisal, J. These suits assail notices issued per section 176 of the ITO 2001, albeit for tax years 2019, 2020 and 2021 successively, issued by the Department to the same person. It is stated that the controversy in all three suits is identical, tax year being the only distinguishable feature *inter se*, hence, these suits were listed and proceeded conjointly and shall be determined vide this common order.

2. Learned counsel for the plaintiff articulated no cavil to the jurisdiction of the officer / department issuing the impugned notices and there was no argument that the same suffered from any substantive or procedural impropriety. The entire case was rested on the bald assertion that the information sought was already available with the department, hence, the same ought not to be sought again.

3. The notices impugned duly convey the departmental rationale, for seeking the same, and no exception in such regard could be demonstrated before this Court. The plaintiff remains at liberty to reply to the notices and challenge any order rendered in pursuance thereof before the proper forum, if aggrieved, however, no case has been made out to call the impugned notices into question before this court.

4. The notices could not be demonstrated to give rise to any cause of action, because the same could not be shown to amount to an adverse order; which affects the rights of any party. It is quite possible that after considering the reply to the notice, the authority concerned may drop the proceedings. This Court ought to be careful to ensure that the statutory functionaries, especially and specifically constituted for the purpose, are not denuded of powers and authority to initially decide the matter. Abstinence from interference at the stage of issuance of such notices, in order to relegate the

parties to the proceedings before the concerned authorities, is the general rule.¹

5. There is yet another aspect to consider in this matter. The plaintiff was issued four (4) notices per section 176 ITO 2001 for tax years; 2018, 2019, 2020 and 2021. The plaintiff assailed the notice for the tax year 2018 vide CP D 2464 of 2021 ("Petition"), however, failed to get any interim relief and on the fourth date of hearing the Petition was disposed of vide order dated 13.10.2022; with directions to the petitioner (current plaintiff) to avail alternate remedy. Despite all four (4) notices being similar in nature and notwithstanding the pendency of the Petition, the subsequent three notices were challenged in the present suits, instituted during the pendency of the Petition. The pleadings and prayer clauses of the suits and Petition appear to be identical, save for tax year. No rationale was articulated by the learned counsel for such conduct; *prima facie* appearing to be a concerted effort at *bench picking*. The order by which the petition was determined was never placed on record before this Court. Only upon insistence by the Court today was the order disclosed and that also after the relevant file had been summoned from the record room.

Such conduct ought to entail imposition of exemplary costs, as observed by *Syed Mansoor Ali Shah J* recently in order dated 30.07.2024 in *Asma Haleem vs. Abdul Haseeb Chaudhry & Others (CPLA 3300 of 2024)*, however, the same is abjured presently with a warning to the plaintiff to be careful in the future.

6. In view hereof, the respective complaints are hereby rejected per Order VII rule 11(a) CPC. The office is instructed to place a copy hereof in each connected suit.

Judge

¹ Per *Muhammad Ali Mazhar J.* in *Dr. Seema Irfan & Others vs. Federation of Pakistan & Others* reported as *PLD 2019 Sindh 516*.