

IN THE HIGH COURT OF SINDH AT KARACHI

Suit 897 of 2022 : ARY Communication Limited
vs. Federal Board of Revenue & Others

For the Plaintiff/s : Mr. Abid S. Zuberi, Advocate

For the Defendants/s : Mr. Ameer Bux Metlo, Advocate

Date/s of hearing : 30.08.2024

Date of announcement : 30.08.2024

ORDER

Agha Faisal, J. This suit essentially seeks to assail selection for audit notices, under section 177 of the Income Tax Ordinance, 2001, ostensibly predicated upon specified reasons cited therein¹. *Ad interim* orders subsist herein from the inception hereof, whereby the notices were suspended.

Learned counsel was confronted with respect to the maintainability hereof yesterday and per request the matter was adjourned till today. The counsel was specifically called upon to address the issue of maintainability in view of the Supreme Court judgment in *Allahdin Steel*². Respectfully, he remained unable to do so.

This is no case of first impression and the controversy appears to have been comprehensibly determined by the Supreme Court in *Allahdin Steel*³, wherein it was held 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*⁴.

In *pari materia* circumstances another Division bench of this Court maintained in *Dr. Seema Irfan*⁵ that a mere notice seeking information is not necessarily adversarial and would not *ipso facto* give rise to an actionable cause⁶. Similar findings were recorded by the august Supreme Court in the judgment in *Jahangir Khan Tareen*⁷, approved recently in Judgment dated 15.09.2022 rendered in *DCIR vs. Digicom Trading (CA 2019 of 2016)*. In

¹ Ordinarily subjecting such reasoning to litigation has been disapproved in 2016 PTD 2664.

² Per *Ijaz Ul Ahsan J* in *Commissioner Inland Revenue Sialkot vs. Allah Din Steel & Rolling Mills* reported as 2018 SCMR 1328 / 2018 PTD 1444.

³ *Commissioner Inland Revenue Sialkot vs. Allah Din Steel & Rolling Mills* reported as 2018 SCMR 1328 / 2018 PTD 1444.

⁴ *Pfizer Pakistan Limited vs. Deputy Commissioner & Others* reported as 2016 PTD 1429.

⁵ Per *Muhammad Ali Mazhar J* in *Dr. Seema Irfan vs. Federation of Pakistan* reported as PLD 2019 Sindh 516.

⁶ Reference is also made to 2018 PTD 2208; 2015 PTD 2572; and 2009 PTD 20 in the specific context of audit notices.

⁷ Per *Muhammad Ali Mazhar J* in *Commissioner Inland Revenue vs. Jahangir Khan Tareen* reported as 2022 SCMR 92.

consideration of the foregoing, it is observed that the plaintiff has failed to demonstrate an actionable cause of action.

As has been observed in the *Allahdin* case, audit proceedings provided a forum and opportunity for consideration of any reservation of the plaintiffs. If any adverse order was passed in pursuance thereof the same would be appealable. Default by the plaintiff in submitting to 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 judgments in *Azee Securities*⁸ and *PPL*⁹. Even otherwise, it is not apparent as to how this Court could assume jurisdiction in this matter in view of the binding judgments delineated supra.

In view hereof, and while applying the ratio articulated by the edicts delineated supra, the plaint herein is hereby rejected.

Judge

⁸ Per Muhammad Junaid Ghaffar J in *Azee Securities vs. Pakistan* reported as 2019 PTD 903.

⁹ Per Adnan Iqbal Chaudhry J in *PPL vs. Pakistan* reported as 2022 PTD 1742.