

THE HIGH COURT OF SINDH KARACHI

Present:

Mr. Justice Adnan Iqbal Chaudhry &
Mr. Justice Jawad Akbar Sarwana.

High Court Appeal No. 290 of 2024

[Mian Pervez Akhtar v. FOP and others]

Appellant : Mian Pervez Akhtar son of Mian
Muhammad Rafiq Anwar through Mr.
Mushtaque Hussain Qazi, Advocate.

Date of hearing : 29-08-2024

Date of order : 29-08-2024

JUDGMENT

Adnan Iqbal Chaudhry J. - Application for urgent hearing is granted. This High Court Appeal is from order dated 06.08.2024 passed by a learned single Judge of this Court in Suit No. 47/2015 rejecting the plaint under Order VII Rule 11(d) CPC.

2. By way of suit, the Appellant had challenged two notices dated 31.12.2014 calling upon him to show-cause against provisional assessment under the erstwhile section 122-C of the Income Tax Ordinance, 2001 [ITO] for tax years 2011 and 2012. It was the Appellant's case that he had filed income tax returns for those tax years in 2014 under an incentive scheme dated 20.12.2013 (SRO 1065(1)/2013), which provided that no further assessment would be made. On the other hand, the Inland Revenue contended that the incentive scheme was for tax payers who had not filed income tax returns from 2008 to 2012, whereas the Appellant had filed returns manually for tax years 2009 and 2010, and therefore the incentive scheme did not apply to him. The Appellant disputed the authority of the person who had filed those returns on his behalf.

3. Be that as it may, admittedly, just before the suit was filed, the subject show-cause notices were decided against the Appellant and had culminated in orders dated 06.01.2015 and 07.01.2015 passed by the Deputy Commissioner Inland Revenue under section 122-C of the

ITO, followed by notices of demand of the tax evaded. Therefore, the suit against the preceding show-causes had become infructuous.

4. We are conscious that at the relevant time, between 2012 and 2017, section 127 of the ITO had excluded an appeal against an order of provisional assessment passed under section 122-C. But, that aspect of the matter could have been considered by the learned single Judge had the Appellant made an attempt to file an appeal, or in the very least taken such a plea to amend the plaint to challenge those orders in the suit. He did neither, and continued to agitate show-cause notices that had already been determined. That was ground enough to reject the plaint.

5. Before concluding the matter, it is relevant to note here that in the case of *Commissioner Inland Revenue, Peshawar v. Tariq Mahmood* (2021 SCMR 440), the Supreme Court had dealt with the provision that had omitted an appeal against an order passed under section 122-C of the ITO between the period of Finance Acts of 2012 and 2017. The Supreme Court had struck down such amendment as discriminatory and observed that: "The result is that at all times material for present purposes the right of appeal under section 127(1) had the form that it took as a result of FA 2011". Therefore, even if the Appellant had argued that an appeal under section 127 of the ITO was not available to him in 2015, that argument could not be made after the pronouncement in *Tariq Mahmood (supra)*.

6. With the above observations, this High Court Appeal is dismissed in *limine*.

JUDGE

JUDGE

SHABAN*