

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Adnan Iqbal Chaudhry
Mr. Justice Muhammad Jaffer Raza

Constitution Petition No. D – 1915 of 2025
(Shaikh Hisham Mehmood & another v/s Federation of Pakistan & others)

Constitution Petition No. D – 1916 of 2025
(Shaikh Hisham Mehmood & another v/s Federation of Pakistan & others)

M/s. Abdul Rahim Lakhani and Atta Muhammad Qureshi, Advocates
for the Petitioners.

Mr. Mushtaq Ahmed Advocate holding brief for Mr. Mukesh Kumar
Khatri, Advocate for Respondents 3 & 4.

Ms. Rabia Khalid, Assistant Attorney General.

Date of Hearing : 17.09.2025.

Date of Judgment : 26.09.2025

JUDGMENT

MUHAMMAD JAFFER RAZA, J: The case of the Petitioners, as laid out in the memo of the instant petitions, is that the Impugned notices, both dated 14.06.2024, were issued under Section 140¹ of the Income Tax Ordinance, 2001 (“**Ordinance**”) without following the mandatory procedure as laid down under Sections 138² and 139³ of the Ordinance.

¹ 140. Recovery of tax from persons holding money on behalf of a taxpayer.— (1) For the purpose of recovering any tax due by a taxpayer, the Commissioner may, by notice, in writing, require any person – (a) owing or who may owe money to the taxpayer; or (b) holding or who may hold money for, or on account of the taxpayer; (c) holding or who may hold money on account of some other person for payment to the taxpayer; or (d) having authority of some other person to pay money to the taxpayer, to pay to the Commissioner so much of the money as set out in the notice by the date set out in the notice³ [.]

² [138. Recovery of tax out of property and through arrest of taxpayer.— (1) For the purpose of recovering any tax due by a taxpayer, the Commissioner may serve upon the taxpayer a notice in the prescribed form requiring him to pay the said amount within such time as may be specified in the notice.

³ 139. Collection of tax in the case of private companies and associations of persons.—(1) Notwithstanding anything in the 3 [Companies Act, 2017 (XIX of 2017)], where any tax payable by a private company (including a private company that has been wound up or gone into liquidation) in respect of any tax year cannot be recovered from the company, every person who was, at any time in that tax year —

(a) a director of the company, other than an employed director; or

2. It has been argued by the learned counsel appearing for the Petitioners that the Petitioners are directors and shareholders of the company namely Karim Ghee & Oil Mills (Private) Limited (**“Taxpayer”**). It has further been argued that the Impugned notices issued by the Respondents have resulted in attaching the bank accounts of the above noted Petitioners without complying with the requirement of issuing notice under section 138 of the Ordinance, which according to the learned counsel, is mandatory. He has further contended that the tax liability, if any, is of the Taxpayer and no recovery proceedings can be initiated against the present Petitioners separately, given the fact that no mandatory notice was ever issued to them.

3. Conversely, learned counsel appearing for Respondents 3 and 4 argued that the notice under section 138 of the Ordinance was issued to both the Taxpayer and the Petitioners. He has further argued that under section 139 of the Ordinance the tax liability of a private limited company is “transferred” to the directors/shareholders subject to certain prerequisites noted therein. He has lastly averred that the bank accounts of the Petitioners are attached, however no recovery has been made due to restraining orders passed in the instant petitions.

4. We have heard both the learned counsels and perused the record with their able assistance. We would like to bifurcate the present adjudication into two separate limbs for effective adjudication. The first limb is in reference to Section 138 of the Ordinance and whether notice was given to the Petitioner. The second

(b) a shareholder in the company owning not less than ten per cent of the paid-up capital of the company,

shall be jointly and severally liable for payment of the tax due by the company.

(2) Any director who pays tax under sub-section (1) shall be entitled to recover the tax paid from the company or a share of the tax from any other director.

(3) A shareholder who pays tax under sub-section (1) shall be entitled to recover the tax paid from the company or from any other shareholder to whom clause (b) of sub-section (1) applies in proportion to the shares owned by that other shareholder.

limb is in reference to whether the prerequisites of Section 139 were fulfilled by the Respondents, prior to initiation of recovery proceedings against the Petitioners.

5. In respect to the first limb we have noticed judgments by other High Courts⁴ to the effect that a notice under Section 138 of the Ordinance ought to be sent prior to initiating recovery proceedings under Section 140 of the Ordinance. However, in the facts of this case, we do not see the need to examine that aspect. Perusal of the record, particularly with the assistance of learned counsel appearing for the Respondents 3 and 4, reveals that the said notice(s) were infact dispatched to the Petitioners as well as the Taxpayer. In this respect, the plea taken by the learned counsel for the Petitioners is misconceived and merits no consideration.

6. Prior to adjudicating on the second limb, as mentioned above, it will first be expedient to highlight the scheme envisaged under Section 139 of the Ordinance. The words *“cannot be recovered from the company”* are of significance, indicating therein that no recovery proceedings can be initiated against the shareholders/directors of a private limited company (or association of persons) unless efforts have been made to affect recovery proceedings against the said company and the same have failed. In this light we directed the counsel appearing for Respondents 3 and 4, vide order dated 28.08.2025, to place on record documents to demonstrate that efforts were made to recover the tax from the Taxpayer. At the same time, we had also called upon the Petitioner vide order dated 09.09.2025 to file the balance sheet of the company/taxpayer. The learned counsel for Respondents 3 and 4 in this regard filed a statement dated 09.09.2025 placing on record documents to demonstrate the efforts made to enforce recovery against the Taxpayer. On the other hand, the balance sheet of the company/taxpayer placed on the record is only up till 30.06.2019. Learned counsel

⁴ Sardar Waseem Ilyas versus Federation of Pakistan and others reported at **2025 PTD 282**.
 China Machinery Engineering Corporation, Pakistan Branch Versus Federation of Pakistan and Others reported at **2024 PTD 242**.
 Pakistan LNG Limited versus Federation of Pakistan reported at **2022 PTD 1763**. Fouzia Razzak Versus Federal Board of Revenue and others reported at **2021 PTD 162**.

for the Petitioners concedes that thereafter the company had disposed of its assets and ceased business.

7. It is apparent from the perusal of the documents filed with the noted statement that the Respondents have made diligent efforts to enforce recovery from the Taxpayer, failing which notices have been issued against the Petitioners. Admittedly, the company/taxpayer does not possess assets that can be attached to recover outstanding tax. The department is therefore justified in invoking section 140 of the Ordinance. In this regard also, the instant petitions merit no consideration.

8. In light of what has been held above, the instant petitions are dismissed along with all pending applications.

JUDGE

JUDGE