

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH AT KARACHI**  
**C.P.No. D-7609 of 2017**

---

Order with signature of Judge

---

Present: **Mohammad Ali Mazhar and Agha Faisal, JJ.**

**Muhammad Yahya**  
vs.  
**Federation of Pakistan and others**

1. For hearing of CMA 31648 of 2017
2. For hearing of main case

**24.05.2019**

**Mr. Zain A. Jatoi, Advocate for the Petitioner.**  
**Mr. Kafeel Ahmd Abbasi, Advocate for Tax Department.**  
**Mr. Hussain Bohra, Assistant Attorney General.**

**Mohammad Ali Mazhar J.-** The petitioner has approached this Court for declaration that the assessment order No.17/2017-18 dated 13<sup>th</sup> October, 2017 passed by the respondent 3 is illegal and without lawful authority. Further declaration has been sought that the audit intimation dated 31<sup>st</sup> October, 2017 and 2<sup>nd</sup> November, 2017 in terms of Section 25 of the Sales Tax Act, 1990 (“Act”) is illegal.

2. The learned counsel for the petitioner argued that the Show Cause Notice was issued to the petitioner as to why the differential amount of sale tax in the sum of Rs.19,580,253/- shall not be recovered under section 11(2) of the Sales Tax Act alongwith default surcharge under Section 34 and penalty under section 33(5) of the Act. He further argued that the reply was submitted, however, on 30<sup>th</sup> October, 2017 assessment order was passed by Mr. Imran Qadeer, Additional Commissioner Inland Revenue. After passing the assessment order the petitioner filed the appeal to the Commissioner Appeals which is

pending adjudication. However, on 31.10.2017, intimation was given to the petitioner, who is proprietor of Messrs EKADA Corporation, with regard to selection of the case for audit under section 25 of the Act by the Commissioner Inland Revenue for the same tax period for which the assessment order was passed on 13.10.2017. On 02.11.2017, notice was also issued by the Additional Commissioner Inland Revenue to the petitioner for submission of the record under section 25 of Act. The Learned counsel for the petitioner articulated that on one hand the assessment order was passed under section 11 of the Act and at the same time, notice was issued under Section 25 of the Act. He specifically pointed out subsection 3 of Section 25 of the Act, which envisages that “After completion of Audit under this Section or any other provision of this Act, the officer of Inland Revenue may, after obtaining the registered person’s explanation on all the issues raised in the audit shall pass an order under section 11.” He further referred to the comments filed by the Tax Department which shows that hearing was conducted by the Commissioner Inland Revenue Mr. Naib Ali Pathan, but the order was passed by Mr. Imran Qadeer Additional Commissioner Inland Revenue. To meet this situation, the Tax Department have taken the plea in paragraph 3 and admitted that hearing did take place before the Additional Commissioner Inland Revenue Mr. Naib Ali Pathan but the assessment order was passed by Mr. Imran Qadeer, who is the incumbent Additional Commissioner Inland Revenue and there was nothing strange as transfer and posting is a routine matter in the Government Departments.

3. Mr. Kafeel Ahmed Abbasi, learned counsel for the Tax Department argued that though the assessment order has already been passed, but if the audit is conducted the Tax Authorities may pass further orders under section 11 sub-section (1), (2) and (3) of the Income Tax Ordinance.

4. Be that as it may, The appeal of the petitioner is pending and the grounds raised by the learned counsel for the petitioner and in rebuttal by the learned counsel for the Tax Department may be taken into consideration by the Appellate Authority including the ground raised by the counsel for the petitioner that the hearing was conducted by Mr. Naib Ali, Additional Commissioner Inland Revenue but the order was passed by Mr. Imran Qadeer, Additional Commissioner Inland Revenue without hearing. The propriety of such order may be considered by the Appellate Authority and all other crucial issues may be argued before the appellate authority by both the parties and since the appeal is pending, we do not want to give any finding on merits. As a result of above discussion, this appeal is disposed of with directions to the learned Commissioner Appeals to preferably decide the pending appeal of the petitioner within a period of 45 days. Till such time the audit proceedings shall remain suspended.

**J U D G E**

**J U D G E**