

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

C.P. No. D-468 of 2017

DATE	ORDER WITH SIGNATURE OF JUDGES
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Present
Mr. Justice Muhammad Ali Mazhar.
Mr. Justice Adnan Iqbal Chaudhry.

Muhammad Imran Petitioner

Versus

Federation of Pakistan & others..... Respondents

Hearing / Priority.

1. For order on Office Objection No. 1.
2. For hearing of CMA No. 2193 of 2017.
3. For hearing of Main Case.

Date of hearing: 05.10.2018

Mr. Mushtaq Hussain Qazi, Advocate for the Petitioner.
Mr. Kafeel Ahmed Abbasi, Advocate for the Respondents.
Mr. Suleman Huda, Advocate for Respondent No. 11.

Muhammad Ali Mazhar, J: The petitioner has challenged the notice issued under Section 176 of the Income Tax Ordinance, 2001 on 22.11.2016 and the actions taken pursuant thereto. In this notice the petitioner was called upon to furnish information/documents as according to the Inland Revenue Officer, Directorate of Intelligence & Investigation (IR), Karachi some definite information was received that the petitioner has purchased some properties in D.H.A. Phase-VIII, Karachi. In the notice the petitioner was called upon to furnish the information such as date of purchase of plot with a copy of sale agreement or copy of allotment order, actual value of plot with mode of payment and copies of cheques/pay orders/demand

draft. In response to this notice, the petitioner submitted few documents on 28.11.2016 i.e. agreement of sale, pay order copy and transfer order however, he again received a notice from Inland Revenue Officer, Directorate of Intelligence & Investigation (IR), Karachi in continuation on 26.12.2016, in which the petitioner was again called upon to submit similar information which the petitioner responded on 02.01.2017. The main cause of concern of the petitioner is that on 19.01.2017 the Assistant Director, Directorate of Intelligence & Investigation (IR), Karachi issued a notice to eight (08) Financial Institutions (respondents No. 05 to 12) under Section 176 of the Income Tax Ordinance, 2001 in which certain information was directed to be furnished in relation to the petitioner's account. The learned counsel for the petitioner referred to the case of Assistant Director, Intelligence & Investigation, Karachi v. M/s B.R. Herman and others (PLD 1992 Supreme Court 485). Though this case pertains to Section 26 of the Customs Act, but the apex court dilated upon the issue as to when and how an authorized officer under the Customs Act can issue notice under Section 26 of the Customs Act, 1969. Relevant portion of the judgment is reproduced as under: -

“The authority can only for specific purposes of determining the legality or illegality call for such information as required by section 26. The authorised officer can call upon any importer or exporter to furnish information in case where such determination is required. It cannot make a roving inquiry or issue a notice by merely shooting in the dark in the hope that it will be able to find out some material out of those documents and then charge the party of irregularity or illegality. The authority has to state and disclose in the notice, the purpose for which the party is required to produce those documents or supply information. Unless such purpose is specified in the notice, it will be a matter of anybody's guess and the accused party will be put to inquiry without any specific allegation or fact

disclosed to him. It does not permit any authority to employ the provisions of section 26 to make indiscriminate, roving and fishing inquiry irrespective of the fact whether any determination of legality or illegality in import, export or funds with which the goods were acquired is to be determined".

Learned counsel for the Tax Department at the very outset argued that the above judgment referred to by the learned counsel for the petitioner has no direct nexus or proximity with the case in hand in which a notice was issued under Section 176 of the Income Tax Ordinance, 2001 on the basis of some definite information and for collecting some information for the satisfaction of the concerned officer either to take further action or to drop it.

Letters of the law made it clear that under Section 176 of the Income Tax Ordinance, 2001 the Commissioner may issue a notice in writing requiring a person to furnish the Commissioner or authorized officer some information. It is also well within the jurisdiction of the officer to require a person to attend at the time and place designated in the notice for the purpose of to be examined and the Commissioner or the authorized person may also ask the person examined to produce any accounts, documents or computer stored information in the control of such person. According to the petitioner he has already furnished the required documents but he was never called upon to attend the proceedings, whereas the learned counsel for the Tax Department submits that the petitioner assailed the notice in this court, therefore, no further action was taken. In our understanding of law on the basis of notice issued under Section 176 of the Income Tax Ordinance, 2001 when a person has submitted the required documents those should have been

examined first after providing opportunity of hearing to the petitioner. At this juncture, the learned counsel for the Tax Department submits that the documents produced by the petitioner will be considered by the officer and in addition to the already furnished documents, the petitioner may also be asked to produce bank statements of his accounts relevant to the property mentioned in the notice issued under Section 176 of the Income Tax Ordinance, 2001 and after confronting the entire matter to the petitioner and providing him an ample opportunity of hearing the further action may be taken by the Tax Department in accordance with the law. The learned counsel agreed to this proposal. The petition is disposed of accordingly alongwith pending application(s).

JUDGE

JUDGE

*SHUIBAN/PA**