

# IN THE HIGH COURT OF SINDH AT KARACHI

CP D 4556 of 2017 : Mian Shahzad Ahmed vs.  
Province of Sindh & Others

For the Petitioners : Mr. Abdul Rahim Lakhani, Advocate  
Mr. Abdul Jabbar Mallah, Advocate

For the Respondents : Mr. Kafeel Ahmed Abbasi  
Deputy Attorney General

Mr. Saifullah  
Assitant Advocate General

Mr. Muhammad Aqeel Qureshi  
Advocate for respondent no. 6

Date/s of hearing : 26.10.2020

Date of announcement : 26.10.2020

## JUDGMENT

**Agha Faisal, J.** The petitioner has assailed the collection of advance tax upon registration of a Form “B” Lease (“B Lease”) predicated upon the premise that no conveyance takes place pursuant to the said instrument, hence, no collection is permissible within the confines of section 236(K) (“S.236(K)”) of the Income Tax Ordinance 2001 (“Ordinance”).

2. The case of the petitioner<sup>1</sup> is that a Form “A” Sub-Lease (“A Lease”) was executed in favour of the petitioner and the same constituted as the instrument of conveyance. Thereafter, the subsequent B Lease conferred no additional right or privilege, hence, was not subject to advance tax.

3. The respondents<sup>2</sup> submitted that the case set forth by the petitioner was based upon misinterpretation of the law. It was argued that the A Lease was a mere license and it was the B Lease that was the actual instrument of conveyance. The verbiage of the two instruments, available on file, was pointed out in support of the foregoing. The text of S.236(K) was read out to assert that the collection of advance tax was sanctioned by the law.

4. We have appreciated the respective arguments and considered the law and documentation to which our attention was solicited. The scope of this determination is ring fenced to consider whether collection of advance tax is

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<sup>1</sup> Per Mr. Abdul Rahim Lakhani, Advocate.

<sup>2</sup> Per Mr. Kafeel Ahmed Abbasi, Deputy Attorney General; Mr. Saifuddin, Assistant Advocate General; and Mr. Muhammad Aqeel Qureshi, Advocate.

permissible upon execution of a B Lease and it is, thus, considered appropriate to reproduce the pertinent constituent of S.236(K) as a precursor to the deliberation herein:

“236K. Advance tax on purchase or transfer of immovable property. (1) Any person responsible for registering, recording or attesting transfer of any immovable property shall at the time of registering, recording or attesting the transfer shall collect from the purchaser or transferee advance tax at the rate specified in Division XVIII of Part IV of the First Schedule...”

(Underline added for emphasis.)

5. The relevant “A” Lease was placed before us and it *prima facie* stipulates that, notwithstanding the nomenclature, the said instrument merely authorizes a person to enter upon the designated plot of land for the purpose of construction thereon, to be undertaken in accordance with the approved plan and within a specified time. Clause 2 thereof expressly states as follows:

“It is hereby agreed that on completion of the building in accordance with the said terms and conditions and on the Sub-Lessee complying with the said rules, he shall be entitled to a lease of the said plot for 99 years in Form “B” appended to the lease and IT IS HEREBY FURTHER AGREED that until such lease has been granted by the Lessor the Sub-Lessee shall not have any right or interest in the said plot except that of a bare licensee...”

The relevant “A” Lease has admittedly been executed in favor of the petitioner and it stipulates that the only right conferred thereunder is that of a bare licensee. Learned counsel has graciously acknowledged that no advance tax was sought from or paid by the petitioner upon execution of the instrument under reference.

6. The B Lease, under scrutiny, is clearly an instrument of conveyance<sup>3</sup> and transfers exclusive rights upon the lessee therein. Since the B Lease demonstrably contemplates transfer of an immovable property, hence, any person responsible for registering, recording or attesting the same is required to collect advance tax from the purchaser or transferee thereunder.

7. In view of the reasoning herein contained, we find that the present petition is devoid of merit, hence, the same (along with pending application) is hereby dismissed.

JUDGE

JUDGE

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<sup>3</sup> *Ata ur Rehman vs. Faheem Ahmed* reported as 2009 YLR 1672.