

ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

C.P No.D- 6600 of 2017 alongwith
C.P Nos.D- 7214, 8050 & 8792 of 2017

DATE

ORDER WITH SIGNATURE OF JUDGE

Priority:

1. For hearing of Misc. No. 27382/17.
 2. For hearing of main case.
-

06.11.2020.

Mr. Hyder Ali Khan, Advocate for Petitioners in all Petitions.
Mr. Kafeel Ahmed Abbas, DAG.
Mr. Zubair Hashmi, Advocate for department in CP No.D-8050/2017.

In all these petitions the petitioners have impugned notices issued to them pursuant to filing of their estimate of advance tax under Section 147 of the Income Tax Ordinance, 2001. The precise case of the Department is to the effect that such estimates are incorrect and accordingly petitioners have short paid such advance tax; and has worked out the liability of the tax-payers and instructed them to pay such tax immediately. On the other hand, the case of the petitioners is that notwithstanding any short payment, since it is only an estimate of advance tax on quarterly basis, no liability can be determined until the final tax return for that particular year is filed and assessment is made accordingly. According to them s.147 (7) ibid does not cater for this and department has erroneously assumed that since s.147 (7) states that provisions of the Ordinance shall apply to advance tax as if such amount were tax due under as assessment order, they have the power to directly recover any amount of advance tax at the time an estimate under s.146 (6) is submitted.

It appears that time and again this type of notices are being issued by the Department. Even when the erstwhile 1979 Ordinance was in field, under the then applicable provision such notices were

issued and were challenged before this Court and was decided in favor of the taxpayers by this Court in the case reported as ***Pak Saudi Fertilizer V. Commissioner of Income Tax (1999 P T D 4061)***. Thereafter similar action was impugned under the 2001 Ordinance and again a Division Bench of this Court decided the issue in favor of the taxpayers in the case reported as ***Karachi Port Trust V. Commissioner Inland Revenue Karachi (2011 P T D 1996)***. It further appears that another Division Bench of this Court vide its order dated 26.06.2014 in C.P. No. D-3304/2014 (in which of us Muhammad Junaid Ghaffar, J, was also a member) has also decided this issue by following the aforesaid judgment in the case of ***Karachi Port Trust (Supra)***. In that particular case, after issuance of notice even an order was passed which was set aside. It is needless to mention that these notices are issued every quarter, whereas, as of today the petitioners have filed their annual / final tax returns, and advance tax, if any, stands adjusted, as the case may be.

In view of hereinabove facts and circumstances, coupled with the fact that this issue already stands settled by this Court as above, whereas, the department has failed to justify their impugned action, the petitions are allowed and the impugned notices issued by the Department in terms of Section 147 *ibid* are declared to be without lawful authority.

All listed petitions are allowed in the above terms. Office is directed to place copy of this order in all listed files.

Judge
Judge