

# IN THE HIGH COURT OF SINDH AT KARACHI

CP D 715 of 2018 : Celandgene Pharmaceuticals Int.  
vs. Federation of Pakistan & Others

For the Petitioner : Mr. Haider Naqi, Advocate

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

Mr. M. Aqeel Qureshi, Advocate

Date of hearing : 18.11.2020

Date of announcement : 18.11.2020

## JUDGMENT

**Agha Faisal, J.** This petition assails the selection of the petitioner for audit, vide impugned notice dated 27.11.2017 (“Impugned Notice”), on the premise that the selection did not fulfil the criteria of Section 177(7) of the Income Tax Ordinance 2001 (“Ordinance”). The text of the statutory provision under reference is reproduced herein below:

“177. Audit (1) The Commissioner may call for any record or documents including books of accounts maintained under this Ordinance or any there law for the time being in force for conducting audit of the income tax affairs of the person and where such record or documents have been kept on electronic data, the person shall allow access to the Commissioner or the officer authorized by the Commissioner for use of machine and software on which such data is kept and the Commissioner or the officer may have access to the required information and data and duly attested hard copies of such information or data for the purpose of investigation and proceedings under this Ordinance in respect of such person or any other person ...

(7) The fact that a person has been audited in a year shall not preclude the person from being audited again in the next and following years where there are reasonable grounds for such audits.”

(Underline added for emphasis.)

2. The petitioner’s entire case was premised on the argument that there were no reasonable grounds to call for the audit since a similar exercise had been carried out in respect of a period preceding the period denoted vide the Impugned Notice. The respondents submitted that S.177(7) specifically permitted audit in respect of successive tax years and in any event the previous audit had highlighted discrepancies leading to an amended assessment, that was accepted by the petitioner since no appeal was ever preferred in such regard.

3. We have heard the respective learned counsel and have also considered the record to which our surveillance was solicited. It is considered

pertinent to initiate this deliberation by referring to the settled law in such regard.

4. A Division Bench of this Court has maintained<sup>1</sup>, in the very context of Section 177 Ordinance, that the obligation of a person to pay the correct quantum of tax meant that a vested right had accrued to the State to examine the books of the tax payer since audit of accounts was the most effective way of determining the correct tax liability. The august Supreme Court held<sup>2</sup> that the statutory framework of audit coupled with the overarching umbrella of Constitutional guarantees furnished adequate and sufficient safeguards to the tax payer; hence, the lawful exercise of the power to conduct an audit could not be denied. A judgment of this Court (authored by one of us, *Muhammad Junaid Ghaffar J*) in the *PPL case*<sup>3</sup> sieved the plethora of authority on the subject under scrutiny and maintained that where the notice provided sufficient reasoning for selecting a case for audit, the law did not provide for a *voir dire* upon the tax payer's objections to the rationale invoked. It was further held that the tax payer remained at liberty to avail the statutory hierarchy if aggrieved by the conclusion of the audit proceedings.

5. In the present facts and circumstances it is apparent that the audit contemplated is in respect of a new tax year and the Impugned Notice lays out the reasoning<sup>4</sup> for issuance thereof and thereafter denotes that "*Please be ensured that the audit proceedings would be closed if nothing adverse is discovered from the examination of the relevant documents and the books of account*".

6. We are of the deliberated view that selection of the petitioner for audit in respect of previous tax years did not preclude the department from initiating audit proceedings for a subsequent period, especially in view of Section 177(7) of the Ordinance; no case has been set forth before us to suggest that the grounds invoked for audit, vide the Impugned Notice, are not reasonable; and finally it is observed that it was never the case of the petitioner that any vested Constitutional rights have been infringed by its selection for audit vide the notice impugned before us.

7. In view of the reasoning herein contained, we find this petition to be devoid of merit, hence, the same, along with pending application/s, was

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<sup>1</sup> Per *Faisal Arab CJ* (as he then was) in *Pfizer Pakistan Limited & Others vs. Deputy Commissioner & Others* reported as 2016 PTD 1429.

<sup>2</sup> Per *Ijaz Ul Ahsan J* in *Commissioner of Inland Revenue Sialkot & Others vs. Allah Din Steel and Rolling Mills & Others* reported as 2018 SCMR 1328.

<sup>3</sup> *Pakistan Petroleum Limited vs. Federation of Pakistan & Others* reported as 2016 PTD 2664.

<sup>4</sup> Delineated in paragraphs 1 till 4 of the Impugned Notice.

dismissed vide our short order announced in Court earlier this afternoon.  
These are the reasons for the aforementioned short order.

JUDGE

JUDGE