

## IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No. D-5165 of 2014

Before : **Mr. Justice Irfan Saadat Khan**  
**Mr. Justice Fahim Ahmed Siddiqui**

Bank Alfalah Limited. .... Appellant.

Versus

Federation of Pakistan and others. .... Respondents.

Date of short hearing : **07.11.2019**  
 Date of Judgment : \_\_\_\_\_

Petitioner Bank Alfalah Limited through Mr. Aijaz Ahmed, advocate.  
 Respondents Federal Board of Revenue through Mr. Kafil Ahmed Abbasi, advocate.

### J U D G M E N T

**FAHIM AHMED SIDDIQUI, J:-** By this petition the petitioner bank seeks a writ in the nature of prohibition or any other appropriate writ, order or direction to the respondents, restraining them from taking any steps or proceedings in pursuance to notice bearing No. ACIR/EC-Unit-4/7-1/LTU/2014 dated 30-09-2014. Through the said notice, respondent No.3 (Assistant Commissioner, Inland Revenue, LTU, Karachi) has sought certain information from the petitioner u/s 176(1)(a) of the Income Tax Ordinance, 2001 (hereinafter referred as 'the Ordinance') in connection with 'Debit/Credit Cards Machines' installed by the petitioner to different commercial establishments at their sales points.

2. The petitioner is a banking company incorporated under the law with its principal office at Karachi. The respondents Nos. 3 to 5 are responsible for issuance of the aforementioned notice, whereby they have sought certain information regarding the issuance of Credit Cards and Debit Cards Machines installed by the petitioner to the commercial

establishments in Karachi. For furnishing such information, a deadline was given but the petitioner beforehand succeeded in getting an interim order.

3. The learned counsel for the petitioner submits that the impugned notice has been issued without lawful authority and the same was having no sanction under the law. According to him, the Ordinance does not provide a blanket power to issue such notices, which amounts to a fishing expedition from the department. He submits that Section 176 of the Ordinance aims to the maintenance of record and audit of the petitioner accounts only while the notice does not relate to any tax obligation of the petitioner. He submits that the merchants regarding whom information was asked did not fall within the jurisdiction of LTU. He emphatically submits that the clients of the petitioner on whose sale points, the Debit/Credit Cards Machines are installed does not fall under the category of large taxpayers, as such the respondent No. 3 has no jurisdiction to seek such information. According to him, the petitioner bank was under a statutory obligation of confidentiality, as provided u/s 33-A of the Banking Companies Ordinance, 1962 and u/s 9 of the Protection of Economic Reforms Act, 1992, as such the petitioner could not pass on the information of their clients. In the end, he prays that the said notice be declared illegal and unlawful and without any authority, as has the same is void ab initio. In support of his contentions, he relied upon the cases of **Caretex vs Collector Sales Tax and Federal Excise (PLD 2013 Lahore 634)**, **Messrs Ghulam Hussain & Co vs Messrs National Bank of Pakistan (2004 CLD 1640)**, **Caretex vs Collector Sales Tax and Federal Excise (2013 PTD 1536)**, **Mohsin Raza vs Chairman, FBR and others (2009 PTD 1507)**, and **Assistant Director, Intelligence and Investigation vs M/s B.R. Herman and others (PLD 1992 Supreme Court 485)**.

4. Conversely, the learned counsel for the respondents submits that there will be no harm to the petitioner if such information was provided to

the revenue authorities. He submits that it will not be proper to construe that the language of Section 176 of the Ordinance is limited to the record an audit of the petitioner only. According to him, the Income Tax Officer is having vast powers to seek such information from the petitioner and it will make no difference that the clients of the petitioner did not fall within the jurisdiction of responding No.3. He submits that if such information will be considered useful for the purpose of collecting revenue, the same could be passed on to the concerned quarters.

5. We have considered the submissions of either side and perused the relevant record. We have also examined the case law relied upon by the learned counsel for the petitioner.

6. The petitioner in the instant petition raised a number of contentions. But the main thrust of the petition is that under Section 176 of the Ordinance, the income tax authorities can only seek information pertaining to accounts and audit of the petitioner bank. According to the petitioner, through the impugned notice, the information regarding the third party could not be sought besides the commercial establishments where the Debit/Credit Card Machines are installed did not fall within the domain of the respondent No.3. Admittedly, the respondents have sought information about the location and other relevant data of those commercial establishments, where the petitioner has installed Debit/Credit Card Machines at their sale points. It is also quite rational that the respondent No.3 is dealing with large taxpayers, as such information collected pertaining to numerous merchants will not come under his domain. We are of the view that the plea of the petitioner regarding jurisdiction of respondent No.3 over such merchants and traders bears no weight. It will make no difference that such information was sought by such authority, who is having no jurisdiction over those merchants and traders. We consider that if some credible information is received by respondents

Nos.3 to 5, they may pass on the same to the concerned income tax officers for further action.

7. The next question for consideration is whether in issuing the notice in the purported exercise of the power conferred on respondent No. 3, the respondent No. 3 has acted without any jurisdiction or committed an error of law apparent on the face of the record? In this respect, the learned counsel emphasized that no such power is vested with the respondent No.3 and he can seek information u/s 176(1)(a) of the Ordinance regarding the books of the petitioner only. For the sake of brevity, we would like to reproduce Section 176(1)(a) of the Ordinance, as under:

***“176. Notice to obtain information or evidence.—(1) The Commissioner may, by notice in writing, require any person, whether or not liable for tax under this Ordinance—***

***(a) to furnish to the Commissioner or an authorised officer, any information relevant to any tax leviable under this Ordinance as specified in the notice.”***

8. From the above quoted statute, it is obvious that the income tax authorities have vast powers in respect of getting information not only about a taxpayer but also a non-taxpayer in order to bring the non-filers in the tax net. Besides, the language of Section 176(1)(a) of the Ordinance, itself indicates that the income tax authorities are justified in issuing "notice to obtain any information or evidence relevant to the any tax leviable under the Ordinance." In our considered view, seeking such information does not amount to getting any financial information of the clients or private account holders of the petitioner bank, as such the same is not privileged by normal banking practice as well as under any statutory obligations under which the petitioner is claiming privilege regarding their clients or to term it fishing expedition. The petitioner is trying to take refuge u/s 33-A of the Banking Companies Ordinance, 1962. We would like to reproduce Section 33-A(1) of the said Ordinance, which reads as:

***“33A. Fidelity and secrecy.—(1) Subject to sub-section (4), every bank and financial institution shall, except as otherwise required by law, observe the practices and usage customary among bankers and, in particular, shall not divulge any information relating to the affairs of its customers except in circumstances in which it is, in accordance with law, practice and usage customary among bankers, necessary or appropriate for a bank to divulge such information.”***

9. We consider that the exception of the above statutory provision rather makes it obligatory to a banker to provide such information if asked in accordance with law. Besides, the respondents have only sought information about the name/business name, NTN or CNIC number and address/location of the commercial establishment, and none of these information pertains to the financial status or personal accounts of the clients of the petitioner, as such the same are surely not under the privileged information of the clients of a banking company. In the existing position of affairs, it is clear that the petitioner is not aggrieved with the impugned notice and he will not sustain any harm by passing such information to the income tax authorities. Hence, we are of the view that the petitioner bank has no *locus standi* in this case as the same is not aggrieved by such notice.

10. It is also our considered view that the impugned notice cannot be termed as 'fishing expedition', since the respondents have only demanded some details of those commercial establishments, where the petitioner has installed the facility of Debit/Credit Card Machines. So far as the citations relied by the learned counsel for the petitioner are concerned, the same are distinguishable to the facts and circumstances of the case in hand.

11. Having regard to the above observations, we are of the view that there is nothing illegal or unlawful in the impugned notice, which renders it invalid or void ab initio, as such we have come to the conclusion that there

is no reason for issuance of any writ in the present petition. We, therefore, dismiss this petition alongwith the listed application with no order as to cost.

JUDGE

JUDGE