

ORDER SHEET
THE HIGH COURT OF SINDH AT KARACHI
CP No.D-8642 of 2017
a/w CP Nos.D-5809/2017, 6637/2017, 7154/2017,
5725/2018, 640/2018 & 2203/2019

DATE

ORDER WITH SIGNATURE OF JUDGE

1. For hearing of CMA No.29134 of 2018
2. For hearing of CMA No.36187 of 2017
3. For hearing of main case

17.09.2021

Mr. Yousuf Ali, Adv for Petitioner in CP No.D-8642 of 2017
Mr. Muhammad Tamoor Ahmed, Adv for Petitioners in
CP No.D-7154 of 2017, 640 of 2018, 2203 of 2019 a/w
Mr. Inzimam Shareef, Advocate
Mr. Imran Baksh Metlo, Advocate holding brief for Mr. Ameer
Baksh Metlo, Advocate for respondents
Mr. Ghulam Asghar Pathan, Advocate for respondents
Mr. Mohsin Imam Wasti, Advocate for respondents
Mr. Kafeel Ahmed Abbasi, DAG a/w Mr. Hussain Bohra,
Asstt. Attorney General

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Muhammad Shafi Siddiqui, J.- Through these petitions an attempt has been made to set the process at knot from initiating the proceedings as undertaken by the department in terms of Section 176(1)(b) of Income Tax Ordinance, 2001. The impugned notices, which in fact are summons under Section 176(1)(b) of Income Tax Ordinance were issued by the Deputy Director of Intelligence & Investigation (IR) who has been empowered in terms of an SRO No.115(I)/2015 dated 9th February, 2015.

The case of the petitioner is that such powers could not have been conferred upon the concerned Deputy Director to issue notices for calling the evidence and explanation under Section 176(1)(b) of Income Tax Ordinance and even the assignment and designation has not been expressed in the ibid SRO which is under challenge.

Learned counsel for the petitioners submit that under the garb of the impugned notices/summons, it appears that the authority has already made up their mind that it is not only the case of tax evasion

but also the case of laundered money. However, nothing has been addressed about the vires of the subject SRO.

We have heard the learned counsel and perused the available record.

The summons were issued under Section 176(1)(b) of Income Tax Ordinance, by the Deputy Director who was empowered through the SRO No.115(I)/2015. In terms of Section 230 of Income Tax Ordinance, the Directorate General of the Intelligence & Investigation (IR) consists of a Director General and as many Directors, Additional Directors, Deputy Directors and Assistant Directors as the board may deem and may notify them in the official gazette. The board was also empowered to specify functions and jurisdiction of the Directorate General and its officers and confer such powers and authorities as specified in terms of Section 207 of the Income Tax Ordinance.

This primarily is not objected nor it is the frame of this petition that such powers by the board could not be delegated to the officers/income tax authorities as described u/s 207 of the Income Tax Ordinance. For convenience, the role of the Deputy Director, who issued the impugned notices/summons is illuminated at Sr.No.26. Column 3 of SRO No.115(I)/2015 describes the designation of the officers of the Inland Revenue, whereas columns 4&5 provide powers and functions conferred and the jurisdiction assigned to the Deputy Director concerned.

The powers and jurisdiction are conferred in relation to Sections 174, 175, 176 & 177 (other than the powers to select the case for audit), 178, 179, 180, 181 & 182 Part III, Part XI of Chapter X, Sections 205 and 221.

The moot question, however, remains that the department by taking advantage of the provision went on to travel beyond the aforesaid provision primarily required for evidence and explanation,

by conceiving the undisclosed amount as laundered money. No one could deny powers and jurisdiction of the concerned officer requiring explanation of an amount which is not taken into consideration for taxation purposes, however, it is a pre-conceived idea that such amount is considered as laundered money. Some of the proceeds/amounts which may at a given time formed part of the account, as it came in and gone out of the account and was not taken into account for taxation purposes and the assessee may have reason to explain, however, it may require explanation from an assessee first. We are clear in our minds that unless and until such explanation is forwarded and an opportunity is given to the petitioners to explain the un-accounted amounts, not made part of the taxable income, it would be premature to consider the amount as laundered money. Non-declaration of an asset by an assessee under the Ordinance is not a scheduled offence, unless proved otherwise as required under the relevant law which in this case is Anti-Money Laundering Act, 2010 [AMLA-2010] which requires an independent exercise.¹ However, we are not in agreement with the petitioner`s counsel that the officers concerned had no jurisdiction to issue notices/summons under Section 176(1)(b) of Income Tax Ordinance, for calling an explanation.

For the ease of understanding, Section 176(1)(b) of Income Tax Ordinance, is reproduced hereinbelow:

176. *Notice to obtain information or evidence*

1 (a) ...

(b) *to attend at the time and place designated in the notice for the purpose of being examined on oath by the Commissioner or an authorised officer concerning the tax affairs of that person or any other person and, for that purpose, the Commissioner or authorised officer may require the person examined to produce any accounts, documents, or computer-stored information in the control of the person*

(c) ...

¹ PLD 2021 SC 1 [Para 107]

Under Anti-Money Laundering Act, 2010, a person is presumed to be guilty of offences of money laundering if he acquires, converts, possesses, uses or transfers property, knowing or having reason to believe that such property is proceeds of crime or conceals or disguises the true nature, origin, location or if he holds or possesses on behalf of any other person any property with knowledge that such property is proceeds arising out of some offences and lastly participate and associates or conspires to commit or attempts to commit the commission of the acts specified and explained in Section 3 of the Anti-Money Laundering Act, 2010. Under Section 5 of ibid Act, National Executive Committee is required to be constituted by the Federal Government within thirty [30] days of the commencement of the Act through notification in the official gazette and the committee is required to oversee such object which includes suspicious transaction and the finances that concerns with terrorism. The department feels this exercise as extraneous to which we disagree.

Learned counsel has not cited a single provision of law which could have empowered the officer issuing notices under Section 176(1)(b) of Income Tax Ordinance that could simultaneously declare any money, not accounted for or not considered by the assessee as taxable income, to be a laundered money.

The powers primarily were exercised under Section 176(1)(b) of Income Tax Ordinance, whereas investigation undertaken in terms of Section 9(1) of Anti-Money Laundering Act, 2010 by the investigating officer could commence, provided that the investigating officer acted, not later than seven days from the date of order of attachment made under sub-section (1) of section 8 or, seizure of property under section 14 or section 15, on service of a notice of thirty days on the person concerned which may also be an assessee, however, no such pre-qualification exists.

We are therefore, of the view that unexplained amount which came in and went out of the account, could be inquired about and an

explanation could be sought but until and unless an explanation is forwarded by the assessee to the dissatisfaction of the officer concerned, it is inconceivable at the said premature stage that it was laundered money which is defined under Anti-Money Laundering Act, 2010. Any amount which is not accounted or not considered as taxable amount not necessarily be the laundered money having meaning under AMLA-2010

We, therefore, in view of facts and circumstances of the case, consider the impugned notices as notices simply under Section 176(1)(b) of Income Tax Ordinance, 2001 and dispose of these petitions with direction that the petitioners/assesses may forward their reply alongwith documents and explanation as required in the impugned notices/summons and opportunity of hearing be provided to them to enable the respondents/department to reach a just and fair conclusion.

In the above terms, the petitions are disposed off alongwith pending applications.

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