

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI  
Suit No. 2406 of 2015.

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Date	Order with signature of Judge
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1. For hearing of CMA No.17706/2015 (Under S.76 of SCCR [OS])

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07.03.2016.

Mr. Mushtaque Hussain Qazi, Advocate for Plaintiff.  
None for the defendants.

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Through this Suit the plaintiff has challenged the freezing of its Bank Accounts without issuance of notice under Section 138 of the Income Tax Ordinance, 2001, during pendency of appeal before the Commissioner (Appeals). Learned Counsel submits that no bank account can be frozen without issuance of a notice under Section 138 of the Ordinance, *ibid*, hence such action is unlawful and without jurisdiction and this Court may declare it to be so. However, he admits that the plaintiff has already filed an appeal by availing alternate remedy insofar as merits of the case is concerned, and this Suit is only to the extent of declaration in respect of non-issuance of a mandatory notice as required in terms of Section 138 of the Ordinance.

However, with respect the contention of the learned Counsel is not appropriate, rather misconceived, inasmuch as no declaration of that sort can be granted by this Court, when the plaintiff has already availed alternate remedy by filing an appeal before the Commissioner Appeals. Moreover, even otherwise, the plaintiff admits in the appeal filed before the Commissioner Appeals that a notice of demand in terms of Section 137(2) had been issued which provides a period of 30 days to pay the demand based on the assessment order. In the circumstances, since the defendants have not initiated any proceedings for attachment of property as provided under Section 138 *ibid*, hence such notice was neither issued nor required, whereas, the notice issued to the Banks is under Section 140 of the Ordinance, for recovery of tax from persons holding money on behalf of a taxpayer, and that is to be done without any direct intimation to the tax payer. Accordingly the contention so raised on behalf of the plaintiff appears to be misconceived and cannot be entertained by this Court.

Be that as it may, since an alternate remedy by way of appeal has already been availed and this Court has already passed an interim order dated 7.12.2015, whereby the recovery proceedings have been stayed and such order continues till date, it would be in the interest of justice to dispose of this Suit with certain directions as has been done in a number of cases by this Court in similar circumstances as keeping this Suit pending would not serve any useful purpose.

In the circumstances the Suit is disposed of along with all pending applications by directing the Commissioner (Appeals) or the Appellate Tribunal Inland Revenue, (Counter Affidavit of defendants says that appeal is pending before the Tribunal) as the case may be, to decide the pending appeal of the plaintiff arising out of Order bearing No 31/134 dated 23.9.2015 preferably within a period of 60 days from today and till then the defendants shall not take any coercive action against the plaintiff for recovery of the impugned demand.

Suit stands disposed of along with all pending applications in the above terms. Office is directed to send a copy of this order to Deputy Commissioner Inland Revenue, E&C Unit 3 & 4, Zone-II, Large Taxpayers Unit, PRC, Towers, 32-A, Lalazar, M. T. Khan Road, Karachi for information.

*Judge*

Ayaz