

ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No. 464 of 2016

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DATE

ORDER WITH SIGNATURE OF JUDGE

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1. For Orders on CMA No.2906/16 (If granted)
2. For orders on CMA No2907/16 (U/O 39 Rule 1 & 2 C.P.C.)

22-02-2016.

Mr. Ovais Ali Shah, Advocate for the plaintiff.

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1. Granted.
2. Through this Suit, the Plaintiff has challenged Notice dated 15.02.2016 issued UNDER Section 221 of the Income Tax Ordinance, 2001 on the ground that the same is without any lawful authority and jurisdiction. Counsel for the Plaintiff submits that the impugned notice has been issued under Section 221, which relates to rectification of mistakes in an Assessment Order, whereas, the notice itself is not in effect for rectification of a mistakes in the Plaintiff's Assessment Order as the same has been issued for recovery of Super Tax imposed under Section 4(B) of the Ordinance, 2001. Per Counsel if any amount of tax has not been paid by the Assesse, the proper recourse is to either amend the Assessment Order under Section 122 of the Ordinance, 2001, or as is the case in the instant matter, under Section 4(B) *ibid*, which independently provides for passing an Order to such effect. Counsel submits that even otherwise the impugned Notice is itself an order, whereby, the plaintiff instead of being asked to show cause has been directed to deposit the impugned amount. Counsel further submits notwithstanding, the impugned levy of Super Tax under Section 4B is already under challenge before this Court, and therefore,

it cannot be termed as mistake on record which otherwise could be rectified in terms of Section 221 of the Ordinance, 2001. Counsel has also referred to Judgment dated 29.03.2014, passed in ITR No.219 of 2011 by a Division Bench of this Court, in respect of powers which are to be exercised under Section 211 ibid, wherein, the Court has observed as follows:-

“The jurisdiction which is allowed to be exercised in terms of Section 221 of the Ordinance is very limited, restricted and could not be stretched or extended by the taxation officer to adjudicate the same to the detriment of the party having substantial effect on the liability of the tax or otherwise. In our view if this is permitted and the taxation officer is allowed to rectify assessment orders under Section 221 of the Ordinance in such manner, then the provisions of Section 122 of the Ordinance would be redundant which orders to, and has an inbuilt mechanism for amendment of assessment orders under various different situation. After examining the entire record placed before us we are of the view that the issues so raised by the taxation officer, could not be said to be a mistake apparent on record, and therefore, in the given facts and circumstances of the instant case, the taxation officer had no jurisdiction in the matter to exercise the powers under Section 221 of the Ordinance for rectification of the deemed assessment order. For this reason we had answered the reframed question No.2 in the affirmative against the applicant and in favour of the respondent as aforesaid.

Let notice be issued to the defendants as well as DAG for 07.03.2016. Till then the defendants shall not take any coercive action pursuant to impugned Notice dated 15.02.2016 available at page-13 of instant file.

J U D G E

Ayaz