

ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

C.P No. D-6485 of 2022

DATE	ORDER WITH SIGNATURE OF JUDGES
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Fresh case

1. For orders on Misc. No.27462/2022 (Urgent Application)
2. For orders on Misc. No.27463/2022 (Exemption Application)
3. For orders on Misc. No.27464/2022 (Stay Application)
4. For hearing of Main Case

25.10.2022

Mr. Muhammad Vawda, Advocate for the petitioner

1. Urgency granted.

2. Exemption granted subject to all just exceptions.

3&4. Through this petition, notice dated 12.10.2022 (page 181) has been challenged where a demand for advance tax has been raised by the department being quarterly installment under section 100D of the Income Tax Ordinance, 2001. Per learned counsel, the petitioner is not liable to make payment against this demand, as it is a Special Purpose Vehicle created under the Real Estate Investment Regulations, 2015 and being an SPV, its income is exempt from tax under clause (99) in Part-I of the IInd Schedule to the Income Tax Ordinance, 2001 and due to this exemption, no advance income tax under section 100D/147 is payable, which position is however not acknowledged by the department which has created the instant demand. Per learned counsel, short payment, if any, would be created at the end of the year, when the petitioner would file his return of the detailed income and only than any liability, if any, would be created or arisen, and as held through a number of judgments/orders of this Court¹ no coercive action can be taken against the petitioners at this stage. He states that the petitioner has filed a skeleton reply (pages 185-189), which the department is not considering,

¹ Order dated 25.06.2014 passed by this Court in C.P No.D-3374/2014, order dated 27.11.2017 passed by this Court in C.P No.D-8050/2017, order dated 18.10.2017 passed by this Court in C.P No.D-3422 of 2014 (and others) and order dated 06.11.2020 passed by this Court in C.P No.D-660 of 2017 (and others).

and after detailed arguments he consented that he would be satisfied if the department passes a speaking order, once a detailed response is filed by the petitioner, and it being given a fair opportunity to plead its case.

In this background, let notices be issued to the respondents as well as DAG for 09.11.2022. The petitioner in the meanwhile is directed to furnish a complete and comprehensive reply in respect of the impugned notice whereunto the department to proceed in the matter as per law and may pass a just assessment order (after hearing the petitioner), but the demand created in the impugned notice would not be recovered till the next date of hearing.

Judge

Judge