

**ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI**

Suit No. 390 of 2023

Date: Order with signature of the Judge

For hearing of CMA No.13726/2023

10.10.2023

Mr. Zeeshan Ahmed Qazi, advocate for the plaintiff
Mr. Javed Ali Sangi, advocate for defendant
Mr. Irfan Mir Halepota, advocate for defendant
Mr. Aamir Zeb Khan, Assistant Attorney General

By consent, this restoration application is allowed. This suit is restored to the stage for arguments upon maintainability.

The present suit assails show cause notice dated 25.01.2023 issued by the FBR. At the very onset, plaintiff's counsel was confronted with the maintainability hereof in view of the judgment of a Division bench of this Court reported as *PLD 2019 Sindh 516 (Dr. Seema Irfan vs. Pakistan)* and the judgment of the august Supreme Court reported as *2022 SCMR 92 (Commissioner Inland Revenue vs. Jahangir Khan Tareen)*. Learned counsel had no cogent response. It hardly merits reiteration that the edicts are binding law for this Court.

Admittedly, the notice provided a forum and opportunity for adjudication of any grievance of the plaintiff. Any order passed in pursuance thereof was also appealable. Default by the plaintiff in seeking recourse before the statutory hierarchy could not be demonstrated to denude the statutory forum of its jurisdiction; or confer the same upon this court. Even otherwise, the plaintiff's learned counsel remained unable to demonstrate as to how this Court could assume jurisdiction in this matter in view of the Judgment reported as *2022 SCMR 92 (Commissioner Inland Revenue v. Jahangir Khan Tareen)*, as approved by the Supreme Court recently in Judgment dated 15.09.2022 rendered in *DCIR vs. Digicom Trading (CA 2019 of 2016)*. Similar views were articulated by learned Single judges in order dated 27.09.2022 rendered in Suit 855 of 2015 and the judgment reported as *2022 PTD 1742 (PPL vs. Pakistan)*.

It is imperative to denote at this juncture that impugned show cause notice has also been adjudicated and an assessment order, being assessment order No. 5 of 2023¹, has been rendered on 16.03.2023. Per learned counsel, an appeal against the assessment order has also been preferred before the Commissioner Appeals. Once again the learned counsel could not justify the maintainability of this suit in the presence of alternative remedy being pursued.

In view of the foregoing, the plaint herein is rejected per Order VII rule 11(d) CPC

JUDGE

¹ Copy whereof has been placed on file by the plaintiff's counsel.