

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Constitution Petition No. D-3066 of 2023

Date	Order with signature of Judge
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Priority:

1. For hearing of CMA No. 14578/23 (Exp)
2. For hearing of CMA No. 14579/23 (stay)
3. For hearing of main case.

02.05.2024.

Mr. Emadul Hasan, Advocate for Petitioner.
Mr. Ameer Bakhsh Metlo, Advocate for Respondent.

MUHAMMAD JUNAID GHAFFAR J.- Through this petition, the Petitioner has though prayed for several relief(s); however, in essence, the Petitioner has impugned an Order passed under Section 221(1) of Income Tax Ordinance, 2001 dated 30.03.2023.

On 04.12.2023, Petitioner's Counsel was confronted as to maintainability of this petition, as apparently the above order cannot be impugned directly under Article 199 of the Constitution of Islamic Republic of Pakistan and today again the Counsel has been confronted; but he has not been able to satisfactorily respond or satisfy as to the maintainability of this petition. He has contended that since the applicability of Section 4C of Income Tax Ordinance, 2001 has been decided by this Court in the case reported as ***Shell Pakistan Limited Vs. Federation of Pakistan (2023 PTD 604)***; hence, the petition is maintainable.

Heard Counsel for the Petitioner and perused the record. With respect we are unable to agree with the contention of the Petitioner's Counsel which appears to be misconceived as to placing any reliance on the case of ***Shell Pakistan (supra)*** so as to justify the maintainability of this petition in the given facts and circumstances. It is an admitted position that the Petitioner had never impugned or challenged vires of Section 4C (ibid) before this Court; whereas, the Petitioner was issued a Show Cause Notice on 20.01.2023, which was contested and thereafter an order has been passed under Section 221(1) of the Income Tax Ordinance, 2001. Record further reflects that not only this, certain other orders have

also been passed against the Petitioner including order under Section 124 of the Income Tax Ordinance, 2001 as well as an Appellate Order under Section 129 of the Ordinance dated 21.12.2023 and the Petitioner has itself stated in the memo of petition that the Petitioner is planning to avail further remedy in accordance with law. But despite this, instant petition has been filed and an attempt has been made to circumvent the departmental proceedings and an indulgence has been sought from this Court on the basis of judgment rendered in the case of **Shell Pakistan (supra)**. Such conduct on the part of the Petitioner is not appreciable inasmuch as it is settled law that the Petitioner cannot, at the same time, avail two different remedies to seek redressal of its grievance. The Petitioner was at liberty to approach this Court directly by challenging the vires of Section 4C (ibid) as has been done by various other taxpayers, and if not, then the Petitioner cannot, in between the departmental proceedings, file a Constitution Petition and seek adjudication of the Show Cause Notices or even orders passed by the department under its hierarchy. The settled principles of the *doctrine of election*¹ denote that the election to commence and follow an available course, from concurrent avenues, vests with a suitor, however, once an option is exercised then the suitor is precluded from re-agitating the same *lis* in other realms of competent jurisdiction. Counsel for the Petitioner was given an option today to withdraw this petition; but he has chosen not to do so.

In view of hereinabove facts and circumstances, the petition is misconceived and is an attempt to waste Court's precious time; and therefore, was dismissed today in the earlier part of the day with cost of Rs.25,000/-, to be deposited in the account of High Court Clinic within seven days' time and these are the reasons thereof.

Judge

Judge

Ayaz P.S.

¹ Per *Mushir Alam J* in *Trading Corporation of Pakistan vs. Dewan Sugar Mills Limited & Others* reported as *PLD 2018 Supreme Court 828*