

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Suit No. 1180 of 2018

| DATE | ORDER WITH SIGNATURE OF JUDGE |
|--|-------------------------------|
| For hearing of CMA No. 8874/18 (U/O 39 Rule 1 & 2 CPC) | |

12.09.2019.

Mr. Ahmed Hussain, Advocate for Plaintiff.
Mr. S. Mohsin Imam Wasti, Advocate for Defendant No.2.
Mr. Ameer Bux Metlo, Advocate for Defendant No.3.
Mr. Ayaz Sarwar Jamali, Advocate for SRB.

Muhammad Junaid Ghaffar J. Through this Suit, the Plaintiff has primarily impugned Show Cause Notice dated 24.01.2017 issued by Deputy Commissioner Inland Revenue, Lahore / Defendant No.4 through which it has been alleged that during audit proceedings for the period July 2012 to June 2016, various discrepancies were observed and the Plaintiff has been asked to respond to the Show Cause Notice. However, the Plaintiff, instead of responding to the said show cause notice, has impugned the same before this Court and on 01.06.2018, the defendants were restrained from passing any final order pursuant to the said Show Cause Notice.

2. On 6.2.2019, learned Counsel for Defendants had raised an objection regarding territorial jurisdiction of this Court in respect of a show cause notice issued by an officer in Lahore, and on this Plaintiff's Counsel was confronted as to maintainability of this Suit vis-à-vis the show cause notice in question. Thereafter on various dates Counsel sought time to assist the Court and on 7.8.2019 he was partly heard and today he has finally made his submissions. His main contention is that it is not only the show cause notice, which has been impugned; but so also certain letters /

clarifications issued by FBR, and therefore, this Court has jurisdiction to decide the controversy. He has further argued that plaintiff is involved in providing services and is not a manufacturer; hence, does not fall within the jurisdiction of Commissioner Inland Revenue. Lahore. In support of his contention he has relied upon the cases reported as *Sh. Abdul Sattar Lasi v. Federation of Pakistan through Secretary, Ministry of Law, Justice and Parliamentary Affairs, Islamabad and 6 others* reported as **2006 CLD 18** and *LPG Association of Pakistan through Chairman v. Federation of Pakistan through Secretary, Ministry of Petroleum and Natural Resources, Islamabad and 8 others* reported as **2009 CLD 1498**.

3. On the other hand, learned Counsel for the defendants has vehemently opposed the very maintainability of this Suit on the ground that this Court lacks territorial jurisdiction, whereas, the controversy already stands decided in a number of cases. In support of his contention he has relied upon the cases reported as *Messrs land Mark Associates through partner v. Sindh Industrial Trading Estate Ltd. through Chief Executive Officer and another* reported as **2018 YLR 2143**, *Sandalbar Enterprises (Pvt.) Ltd. v. Central Board of Revenue and others* reported as **PLD 1997 Supreme Court 334** and *Messrs Ibrahim Fibres Ltd. through Secretary/Director Finance v. Federation of Pakistan through Secretary/Revenue Division and 3 others* reported as **PLD 2009 Karachi 154**.

4. I have heard all the learned Counsel and perused the record. Insofar as instant Suit is concerned, it appears that the plaintiff has primarily impugned show cause notice dated 24.1.2017, issued by Deputy Commissioner, Inland Revenue, Lahore and on 1.6.2018 obtained an Ex-parte order restraining the Defendants

from passing any final order pursuant to the impugned show cause notice. Along with this the Plaintiff has also impugned certain letters / clarification's issued by FBR as being contrary to law. The moot question, therefore, is that in the given facts can any jurisdiction be exercised by this Court in respect of a show cause or an action, which has been initiated by defendant No.4 who is admittedly outside the territorial jurisdiction of this Court. Though the learned Counsel for the plaintiff did made an attempt to argue on merits of the case as well; however, insofar as the objection of maintainability of instant Suit is concerned, it is only to the extent of the territorial jurisdiction of this Court as noted in the earlier orders. Therefore, I am not inclined to give any findings either on merits of the case or for that matter its maintainability, except on the territorial jurisdiction of this Court. Before proceeding any further, one thing is to be kept in mind that this is a Civil Suit under Section 9 CPC, and not a Constitutional Petition under Article 199 of the Constitution. Therefore, the issue in hand is to be decided by considering the implications provided under Section 20(c) of Civil Procedure Code which confers jurisdiction on this Court in a Civil Suit when the cause of action arises wholly or in part within the territorial jurisdiction of a Court. A Suit is competent before a Court where even a part or fraction of a cause of action arises. It is a settled proposition that in deciding such matters it is only the contents of the plaint which are to be looked into and on perusal of the same it appears that in Para 7, the plaintiff itself has narrated its cause in the following manner:-

7.) Presently Plaintiff is registered with FBR Lahore, however, it is registered in Karachi with SRB. The Plaintiff's registered office as per SECP is at Karachi as shown in the title of

the plaint. The entire factory of the Plaintiff is situated in Karachi, while the Plaintiff only undertakes business at Karachi. Despite the above, the FBR, for malafides reasons in not transferring the jurisdiction of the Plaintiff from Lahore to Karachi.

5. The aforesaid part of the plaint very clearly reflects that insofar as Plaintiff's registration with Inland Revenue Lahore is concerned, the same is admitted. It further reflects that in the show cause notice the period involved is from 2012 to 2016, whereas, as per Para 5 of the plaint the Plaintiff got itself registered with Sindh Revenue Board ("SRB") after 2015. Notwithstanding this, even otherwise the show cause notice has been issued pursuant to audit proceedings in which the Plaintiff has admittedly participated; hence, this ground of being registered with SRB and payment of sales tax as a service provider has no relevance with the alleged short payment of sales tax as mentioned in the show cause notice. It is settled principle of law that in such matters it is to be seen that what is the main relief which is being sought by the plaintiff and admittedly the main relief in the instant matter is legality and jurisdiction in issuing the show cause notice by defendant No. 4 and merely for the fact that some letters / clarifications issued by FBR have also been impugned, no cause of action can be claimed to have accrued within the territorial jurisdiction of this Court. A learned Division Bench of this Court in the case reported as ***Murlidhar P. Gangwani (Engineer v. Engineer Aftab Islam Agha and others (2005 MLD 1506)*** has been pleased to observe as under:-

"Indeed, it is elementary principle of law that for examining the question of maintainability of the suit with reference to or on the analogy of the provisions of Order VII, rules 10 and 11 C.P.C., the averments made in the plaint are to be taken as whole and with presumption of correctness attached thereto. But at the same

time, it is also pertinent to mention that for determining the question of territorial jurisdiction with reference to the cause of action, whether accrued wholly or in part, the averments of the plaint are to be read in conjunction with the relief sought by a party in the suit and such reading of plaint should be meaningful, rational to the controversy and not merely formal. With these broad principles in mind, when the averments of the plaint In Suit No.427 of 2004 are perused, it is not difficult to conclude that the main relief sought in the suit is relief of declaration with reference to the Notification dated 15-12-2003 issued by the defendant No.2, to the effect that it is void ab initio illegal and violative of fundamental rights of the appellant as well as violative of the provisions of section 16-A of the Societies Registration Act and the other reliefs sought in the plaint are only consequential to such main relief of declaration. Keeping in view this position when the facts relating to the cause of action, as stated in the plaint, are carefully examined, the only possible just and logical conclusion is that for such reliefs no cause of action or any part thereof has accrued to the appellant within the territorial jurisdiction of this Court, as the office of respondent No.2, the Issuing Authority of notification dated 15-12-2003, is at Punjab, the person nominated as administrator of respondent No.4 through this notification is resident of Punjab and the Notification has also been issued and implemented in Punjab. Moreover, the facts stated in para. 19 of the plaint relating to the alleged illegal exercise of powers by respondent No.1, allegedly disturbing the working of Karachi Centre on the basis of impugned Notification have not been questioned or challenged in the present suit so as to conclude that part of cause of action has accrued to the appellant within the territorial jurisdiction of this Court. The observations of the Honourable Supreme Court of Pakistan in the case of *Ilaji Abdul Malik* (supra) that the essential factor for the determination of jurisdiction for the purpose of entertaining the suit would be judged from the contents of the plaint and the dispute subject-matter of suit and not from the consequences flown from the suit, are quite apt to fortify this view.”

6. Similar view has been expressed by a learned Single Judge of this Court in the case reported as ***Messrs Dewan Scrap (Pvt.) Limited and another v. Customs, Central Excise And Sales Tax Appellate Tribunal and others (2003 PTD 2127)*** wherein, the plaintiff had challenged some orders passed by the Customs Tribunal, Quetta, having a sitting at Karachi in the following manner:-

“The prayer clause (a) above is in respect of a vessel and a Bill of Entry in respect thereof was filed in Baluchistan. The exemption claimed is in respect of the same vessel, show-cause notice

which has been impugned in clause (c) was issued by the Customs Authorities stationed at Baluchistan. The Order-in-Original has been challenged before the Tribunal at Quetta. Mere fact that some of the sittings of the Tribunal took place at Karachi will not give cause of action at Karachi. In such a situation, it is dominant cause of action that will govern- the jurisdiction in such matter and the reliance could be placed on (i) Sandalbar Enterprises (Pvt) Ltd. v. Central Board of Revenue PLD 1997 SC 334), (ii) Abdul Rahim Baig v. Abdul Haq (PLD 1994 Karachi 388), and (iii) Mehboob Ali Soomro v. S.R.T.C. (1999 CLC 1722). Therefore, for all intents and practical purposes dominant or the principal cause of action, p if any, subject-matter of the suit had arisen in Baluchistan and even this Court lacks of territorial jurisdiction in respect of the subject-matter of the suit." (Emphasis supplied)

7. In the instant matter, though the learned Counsel for the plaintiff has made an attempt that part of cause of action has accrued within the territorial jurisdiction of this Court in view of the fact that Plaintiff is working in Karachi and is also registered with SRB now; however, I am of the view that mere existence of Plaintiff within the territorial jurisdiction of this Court will not confer any such jurisdiction as no cause of action has accrued within the territorial jurisdiction of this Court, either partly or wholly. The plaintiff's entire case is against defendant No.4, directly, and it is only a consequential relief which at the most is being claimed against other defendants, but then again it will only be available once such relief is granted as prayed against defendant No.4, which I am afraid cannot be granted by this Court. The case law relied upon by the learned Counsel for the plaintiff is of no help as the facts are quite distinguishable. In view of above facts and circumstances of this case, I am of the view that the objection raised by this Court must sustain as this Court has no territorial jurisdiction to pass any judgment and or decree against defendant No.4 whose action has been primarily impugned through instant Suit and therefore, the plaint is hereby returned under Order VII

Rule 10 CPC, for presentation before a Court of competent jurisdiction.

8. In view of such position office is directed to act accordingly.

J U D G E

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