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IN THE LAHORE HIGH COURT, LAHORE.

W.P. NO. 7663-17

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Lahore High Court, Lahore

PRESENT MR JUSTICE. Shahid Jamil Khan

PETITION UNDER ARTICLE 199 OF THE CONSTITUTION
OF THE ISLAMIC REPUBLIC OF PAKISTAN, 1973.

PARTY NAME, PRAY AND ORDER ATTACHED.

27/3/17

Form No. HC5B/C-121
ORDER SHEET
IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT

Case No. W.P.No.7663 of 2017

Zeshan Ahmed Mahmood

Versus

The Federation of Pakistan

S.No. of order/ Proceedings	Date of order/ Proceedings	Order with signature of Judge and that of Parties of counsel, where necessary.
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22.03.2017

Mr. Muhammad Mohsin Virk, Advocate for the petitioner.

Mr. Shahid Sarwar Chahil, Advocate for the respondents Karamat Ullah, Commissioner Inland Revenue, Zone-II, RTO-II, Lahore.

Syed Abdul ur Rehman, Assistant Commissioner Inland Revenue, Unit-04, Zone-V, RTO, Lahore.

Mian Tariq Ahmad, Deputy Attorney General for Pakistan, on Court's call.

Notice dated 16.02.2017 under Section 140 of the Income Tax Ordinance, 2001 ("**Ordinance of 2001**") is challenged through this petition.

Perusal of impugned notice shows that combined notice is issued to 26 banks for attachment of accounts of 79 taxpayers.

2. Upon notice, the Commissioner concerned is present alongwith Assistant Commissioner Inland Revenue, who issued the notice. He is confronted with earlier order dated 14.02.2017 passed in Writ Petition No.1768 of 2017. Relevant part is reproduced hereunder:-

"2. Upon notice, Deputy Commissioner who issued this notice, appeared. He was asked whether collective notice under Section 140 of the Ordinance of 2001 could be issued to forty taxpayers, he could not explain satisfactorily, therefore, Commissioner concerned was called to explain. It is admitted before the Court that such a collective notice could not have been issued under the law. The Commissioner submits that he has verbally asked the Deputy Commissioner for withdrawal of this notice.

3. Petitioner has substituted his counsel, who on last date of hearing levelled serious allegations against the Deputy Commissioner. The substituting counsel has apprised that coercive measures have been withdrawn.

4. Heard. Record perused.

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Lahore High Court, Lahore.

5. Perusal of record shows that respondents are exercising their powers under the Ordinance of 2001 in haste without understanding the spirit of law. When confronted with the situation and the way Deputy Commissioner has exercised powers in this case, the Commissioner has ensured that this shall not be happened in future. He is directed to apprise FBR in writing about this case. The FBR shall issue instructions or shall make rules for fair and transparent exercise of power under Section 122C of the Ordinance of 2001 and for invoking the recovery provisions. Compliance shall be communicated to Deputy Registrar (Judicial) of this Court not later than sixty days."

3. It is explained by the Commissioner that combined notice is issued to save expenses to be incurred for posting these notices through courier service. He submits that amount, reflecting against each taxpayer's name, is sufficient reason, required under the law. He has also apprised that procedure for recovery of tax under Section 137 and 138 of the Ordinance of 2001 has been complied with before issuance of impugned notice.

It is also apprised that extreme measures of recovering tax through attachment of accounts are taken in pursuance of order under Section 122C of the Ordinance of 2001.

In earlier order dated 14.02.2017 in W.P.No.1768 of 2017 (reproduced above) it was alleged by learned counsel for the petitioner (in that case) that similar notices u/s 140 and assessment orders under Section 122C were being withdrawn by the Taxation Officer, after taking bribe, therefore, the matter was directed to be reported to Chairman, Federal Board of Revenue.

4. It is noticed that this practice is continuing in the department. It is necessary, under the circumstances that Chairman FBR, should respond about the steps taken in pursuance of the order dated 14.02.2017 in W.P.No.1768 of 2017. If no step is taken to curb such practice and apparent excess of powers, the Chairman FBR shall appear in person to justify that the practice of issuing

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notice under Section 140 for attachment of account of number of taxpayers through single notice is permissible under the law.

Learned Deputy Attorney General shall communicate this order to the Chairman FBR and shall assist the Court on his behalf.

Adjourned to 31.03.2017. Interim relief already granted shall continue, till next date.

(Shahid Javed Khan)
Judge

Sharif

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In Case No. 7663/17
Examiner: TIS
Lahore High Court, Lahore

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