

IN THE LAHORE HIGH COURT, LAHORE

W.P. No. 112029-17

Present Mr. Justice Shahid Karim

For Private Use
Copies of Judgment
Lahore High Court

Petition Under Article 199 of the Constitution of 11-4-88
the Islamic Republic of Pakistan 1973.

Party Name, Pray and Order Attached.

Shahid Karim

ORDER SHEET

IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Case No. W.P No.112029/2017

M/s Al-Nakhal Arabian Cuisine Pvt. Ltd. Vs Federation of Pakistan etc

S.No.of order/ Proceeding	Date of order/ Proceeding	Order with signature of judge, and that of parties or counsel, where necessary.
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04.04.2018 Mr. Arif Hussain Ijaz, Advocate for the petitioner.
Mr. Shahid Usman, Advocate for the respondents.
Mr. Tahir Mahmood Ahmad Khokhar, D.A.G.

This petition challenges the notice dated 24.8.2017 which has been issued under Section 214 D of the Income Tax Ordinance, 2001.

2. The precise submission of the learned counsel for the petitioner is that section 214 D was inserted through Finance Act, 2015 and was to apply prospectively. The tax year in respect of which the impugned notice has been sent to the petitioner is 2015 and thus no notice in terms of section 214 D could have been issued to the petitioner.

3. Having heard the learned counsel for the parties, I do not find any substance in the contentions raised by the learned counsel for the petitioner. Admittedly, the audit is sought to be done for the tax year 2015 as also that section 214 D was added by the Finance Act, 2015. However, by its very terms, the said provision was intended to be applied retrospectively to the past tax years as an audit can only be carried out in respect of past tax years and not for the future. Moreover, the last date for the filing of the return by the petitioner was 31.12.2015

ATTESTED
Copy of the order
Lahore High Court, Lahore
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and which was in any case after the promulgation of the Finance Act, 2015 which came into effect in July, 2015. Be that as it may, the petitioner filed its return on 27.9.2016 i.e. much after the insertion of section 214 D in the Ordinance, 2001 and in any case at the time when the return was filed by the petitioner, the amendment had already been brought in the Ordinance, 2001 and section 214 D was already on the statute book. Thus, the selection of the case for audit is without exception and does not suffer from any illegality.

4. In view of the above, the instant petition is without merit and is, therefore, dismissed.

(Signature)
 (SHAHID KARIM)
 JUDGE

*
 Rafaqat Ali

TRIAL COPY
 In Case No. 112029/17
(Signature)
 Examiner (W.P. Branch)
 Lahore District Court, Lahore.

99252
 Examiner Copy Supply Section
 Authorized Under Article 87 of
 Qanun-e-Shahadat Order, 1988
 11/4

Application No.
 Case No.
 Date of Presentation of Application. 6/9/18
 Copy Fee.
 Urgent Fee.
 Registration and Postage Fee.
 Court Fee in Application.
 Total.
 Name of Copiest.
 Date of Receipt of F.R.
 Date of Completion of Copy.
 Date of Delivery of Copy.

(Signature)
(Signature)

IN THE LAHORE HIGH COURT, LAHORE

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Writ Petition No. 112029 /2017

M/s Al-Nakhal Arabian Cuisine (Pvt) Ltd, 52 G.C.P. Society, Johar Town, Lahore,
through Khalid Mahmood Naz (Company Secretary).

PETITIONER

VERSUS

1. Federation of Pakistan through Secretary, (Revenue Division), Federal Board of Revenue, Government of Pakistan, Islamabad.
2. The Chairman, Federal Board of Revenue, Constitutional Avenue, Islamabad.
3. The Commissioner Inland Revenue, Zone-VI, Corporate Regional Tax Office, Tax House Syed Mauj-e-Darya Road, Lahore.
4. The Deputy Commissioner Inland Revenue (Audit), Unit-III, Range-I, Zone-VI, Corporate Regional Tax Office, Tax House Syed Mauj-e-Darya Road, Lahore.

RESPONDENT

ATTESTED
Comp Examinor
Lahore High Court, Lahore

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

Respectfully Sheweth:-

1. That the addresses of the parties as mentioned above are correct and complete for the purposes of service of notices or any other process of the Honorable Court.
2. That M/s Al-Nkhal Arabian Cuisine (Pvt) Ltd, (hereinafter called "the petitioner") is a private Limited (Small) Company engaged in the business of restaurant, function management and catering services.

4. That representation letter dated 13/11/2017 was submitted by the petitioner to the respondent # 3 for request to drop the audit proceeding initiated on the basis of section 214D for Tax Year 2015 but this representation was rejected by the respondent # 3 through letter No 740 dated 16/11/20017
5. That the Respondent # 4 issued the notice dated 22/10/2017 u/s 177(1) for call for record/documents/books of account, further notice dated 08/11/2017 u/s 177(6) for notice on issues arising out of Audit and subsequent show cause notice dated 16/11/2016 u/s 122(9) for amendment of assessment of the Income Tax Ordinance, 2001 on the strength of the illegal and void notice dated 24/08/2017 u/s 214D read with section 177 of the Income Tax Ordinance, 2001
6. That the respondent # 4 on the request of petitioner adjourned the case for final hearing for 30/11/2017
7. That the petitioner has no efficacious alternate remedy available except to invoke this extraordinary constitution jurisdiction of this honorable Court hence this petition.

Prayer

In view of the above-mentioned facts, circumstances and assertions, it is most respectfully prayed that the instant writ petition may kindly be accepted and the impugned notice u/s 214D read with section 177 of the Income Tax Ordinance, 2001 dated 24/08/2017 and rejection letter dated 16/11/2017 issued by the respondent # 3 may graciously be declared as illegal, unlawful and void ab initio.

The notice dated 22/10/2017 u/s 177(1) for call for record/documents/books of account, further notice dated 08/11/2017 u/s 177(6) for notice on issues arising out of Audit and subsequent show cause notice dated 16/11/2016 u/s 122(9) for amendment of assessment of the Income Tax Ordinance, 2001 issued by the respondent No.4 on the strength of the illegal and void notice dated 24/08/2017 u/s 214D read with section 177 of the Income Tax Ordinance, 2001 for automatic selection of audit, may kindly also be declared void and without lawful authority.

During the pendency of the present petition, the operation of notice dated 24/08/2017 u/s 214 read with section 177 of the Income Tax Ordinance, 2001 issued by Respondent No. 3 may be suspended and the notice dated 22/10/2017 u/s 177(1) for call for record/documents/books of account, further notice dated 08/11/2017 u/s 177(6) for notice on issues arising out of Audit and subsequent show cause notice dated 16/11/2016 u/s 122(9) for amendment of assessment of the Income Tax Ordinance, 2001 issued by the respondent No.4 on the strength of the illegal and void notice dated 24/08/2017 u/s 214D read with section 177 of the Income Tax Ordinance, 2001 for automatic selection of audit, may also be suspended and Respondent No. 4 may be restrained from taking any unlawful action and further proceeding of the case in the meanwhile.

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Copies of Section 177(1) & 177(6) & 122(9) & 214D

Any other relief that the honorable court thinks fit and proper in the circumstances of the case may also be allowed to the petitioner.

Kulshukuf
Petitioner

Through

ARIF HUSSAIN EJAZ

ARIF HUSSAIN EJAZ
Advocate High Court
61/2 Kacha Ferozepur Road, Mozang
Chungi, Lahore
C.C. No. 19951

CERTIFICATE

It is certified as per the instructions of the client that this is the first writ petition on the subject matter by the petitioner.

ARIF HUSSAIN EJAZ
(Advocate)

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Lahore High Court
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Date: 16/11/18