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Regional Tax Office, Sargodha
University Road, Sargodha

No.RTO/SG/2012-2013/CC/ 619
Dated: 19-09-12

To:

The Chief (Legal)
Federal Board of Revenue,
Islamabad

SUBJECT: WRIT PETITION NO.7414/2010 IN THE CASE OF M/S NOOR HUSSAIN S/O GHULAM HUSSAIN R/O SAYE ANWALA, DAKHANA KHAS TEHSIL PAYLAN ZILA MIANWALI

Please refer to the subject noted above.

Copy of order of the Honourable Lahore High Court, Lahore dated 07.03.2012 in the subject writ petition is enclosed for information/ record and circulation, if deemed appropriate.

Encl. As above.

(AFTAB AHMAD)
Chief Commissioner (IR)

May kindly be seen at Law Stage.
An important case, in our favour,
where A.T.M collection of fee on auction
of "All goods" has been held to
be valid.

Member (Legal)
20-9-12
Tariq Ahmad Nawaz
Chief (Legal)

may be circulated
and also placed on
w.e.d.

ML
26/9/12

FBR e-Box No. 125243R
Received in Chief (Legal) Office
on 20-09-2012

FBR e-Box No. 125243R
Received in MIL Office on 20-09-12

FBR e-Box No. 125243R
Received in Chief (Legal) Office
on 20-9-12

27/9/12

please see the need
full Assn
28/9

27-9-12
Tariq Ahmad Nawaz
Chief (Legal)

Rana, Khan & Partners
Advocate & Legal Consultants

2/5 Farid Kot Road,
Lahore - Pakistan

Tel: 92-42-37246562
Fax: 92-42-37124398

Ref. No. RKP/LHR/ 287

Dated: 06-09-2012

MR. SHAKEEL AHMAD SHAKEEL,
DEPUTY COMMISSIONER (IR),
LEGAL UNIT, ZONE-1,
REGIONAL TAX OFFICE,
SARGODHA.

SUB: **INTIMATION OF ORDER OF HON'BLE LAHORE HIGH COURT**
DATED 07-03-2012

For record and further action, if any,

The undersigned was assigned to conduct the case before Lahore High Court, Lahore on behalf of the department/Revenue. The cases were heard on 07-03-2012 by Mr. Justice Khalid Menmood Khan.

Bill for legal fee as per Revenue Division's Circular No. 92110-ML/2009 Islamabad, 5th August, 2011 issued by Secretary Legal (Litigation) Government of Pakistan, Revenue Division, Federal Board of Revenue, Islamabad.

SR No.	Case No.	Case Titled	LEGAL FEE	Certified Copy
1.	W.P. 7414/10	M/s. Noor Hussain	Rs. 30,000/-	Rs. 500/-
Total			Rs. 30,000/-	Rs. 500/-

An amount of Rs. 30,000 + Rs. 5,00/- = **Rs. 30,500/-** (Rupees Thirty Thousand & Five Hundred Only) may kindly, directed to be arranged.

Please direct an early action on the bills and oblige.

Thanking you,



RANA ASADULLAH KHAN
Advocate High Court

Rana, Khan & Partners
Advocate & Legal Consultants

*Mr. Hanon Khan
Mr. put up with
Tasleem Raza file*

Receipt No. 155
Dated: 11/9/2012
Encl: _____

11/9/12

Receipt Clerk

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IN THE LAHORE HIGH COURT, LAHORE.

W.P. NO. 7414/10

PRESENT.

MR. JUSTICE MUHAMMAD KHALIL MEEMOOD KHAN

For Private Use
Copy Examiner
Lahore High Court, Lahore

Petition U/Article 199 of the Constitution of the
Islamic Republic of Pakistan 1973.

(PARTY NAMES & PRAY ATTACHED & ORDER P.T.O.)

TRUE COPY.

EX.C.S.S. 04/9/12

10256

Petition No.
Case No.
Date of Presentation of Application 03/9/12
Copy Fee
Urgent Fee 10
Registration Fee 20
Court Fee 2
Total 32
Name of
Date of Filing
Date of Court
Date of Disposal 07-9-12

IN THE LAHORE HIGH COURT, LAHORE

Writ Petition No. 7519 /2010

Noor Hussain s/o Ghulam Hussain r/o Saydanwala, Dakhana Khas Tehsil
Paylan Zila Mianwali

.....Petitioner

Versus

1. Province of Punjab through Secretary, Local Government, Civil Secretariat,
Lahore
2. Tehsil Municipal Administration Bhakkar through Tehsil Nazim/Administrator
Bhakkar
3. Tehsil Municipal Officer, Bhakkar.
4. Tehsil Officer (Finance), Tehsil Municipal Administration, Bhakkar.
5. Taxation Officer, Unit-04, Enforcement and Collection Division-III, RTO, Lahore.
6. Taxation Officer Enforcement-27, RTO, Faisalabad.

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Copy Examined
Lahore High Court

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id
by
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.....Respondents

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

Respectfully Stated -

1. That the addresses of the parties hereto, as far as can be ascertained, have
been provided *supra* correctly for the purposes of effecting service of the
processes issued by this Honorable Court.

Therefore most respectfully prayed that an order may very kindly be made:

i. Declaring the impugned notices to be without lawful authority, without jurisdiction and of no legal effect thereby setting aside the impugned notices;

ii. Declaring that the Thekka/Tax Farmer bestowed upon the petitioner does not fall within the four corners of Section 236A of the Ordinance rendering the Thekka/Tax farmer of the petitioner exempt from the operation of Section 236A of the Ordinance;

iii. Enjoining upon the respondents or any of their subordinates or functionaries to be restrained from demanding any tax in terms of Section 236A of The Ordinance.



[Signature]
Petitioner

Through *[Signature]*
Mian Irfan Akram
Advocate High Court
CC. No. 12431

[Signature]
Sheikh Muhammad Ali
Advocate High Court
CC. No. 22870

[Signature]
Mohsin Mumtaz
Advocate High Court
CC. No. 39919

CERTIFICATE

Certified that the petitioner has invoked the jurisdiction of this honorable court having no other adequate remedy

[Handwritten notes]
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9-35
A.T.

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[Signature]
Copy Supply Section
Lahore High Court, Lahore

[Signature]
Advocate

CERTIFICATE

Certified that the instant petition is the first one on this subject and there has been no Writ petition before on this subject by the petitioner

[Signature]
Advocate

Form No:HCJD/C-121
ORDER SHEET

IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT

Case No:

W.P. No. 2151/2010.

Miss. Mumtaz Ashraf

Versus *Ehsii Municipal Administration.*

S.No. of order Proceeding	Date of order Proceeding	Order with signature of Judge, and that of parties of counsel, where necessary.
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07.3.2012.

Mr. Naveed Ahmad Khawaja Advocate for petitioner.
Mr. Khadim Hussain Zahid Advocate for respondents.
Mr. Asad-ullah Khan Advocate for respondents.

Through this single order I proposed to decide the following writ petitions:-

1. WP.No.2151/2010.
2. WP.No.6632/2010.
3. WP.No.6633/2010.
4. WP.No.20582/2009.
5. WP.No.4438/2010.
6. WP.No.15336/2010.
7. WP.No.11467/2010.
8. WP.No.7417/2010.
9. WP.No.11305/2010.
10. WP.No.9797/2010.
11. WP.No.10955/2010.
12. WP.No.10956/2010.
13. WP.No.10966/2010.
14. WP.No.10967/2010.
15. WP.No.10831/2010.
16. WP.No.10020/2010.
17. WP.No.10021/2010.
18. WP.No.9960/2010.

2. In all the writ petitions the petitioners have assailed a notice issued on 06.10.2009 for payment 5% advance tax on auctioned amount.

3. The petitioner was declared successful bidder for collection of cattle market fee, the auction was confirmed in his favour on 28.4.2009, the petitioner

deposited the auction money. On receipt of notice, petitioner submitted an application to respondent No.4 stating therein that deduction of advance income tax based on Notification No.47 dated 23.7.2009 is applicable on the sale of any property or goods confiscated or attached either belonging to Government, Local Government and any authority. The collection rights of cattle market is not a property or goods as per the said notification and as such advance tax is not payable but instead of withdrawing the said notice, respondents are issuing notices for payment of said amount.

4. Notices were issued to respondents who filed report and parawise comments and stated that provisions of Section 236-A of Income Tax Ordinance, 2001 are applicable against petitioners. The right to collect fee from cattle market and any other levy as to octrai toll etc falls under Section 236-A of Income Tax Ordinance. They have relied on a letter dated 26.9.2010 issued by the Taxation Officer Federal Board of Revenue, Secretary Local Government, Civil Secretariat Lahore.

5. Learned counsel for petitioner submits that under Section 236-A of Income Tax Ordinance, the sale by public auction of any property or goods

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Lahore High Court, Lahore

confiscated or attached either belonging to Government, Local Government and any authority is subject matter of said provision of law whereas petitioner is auction purchaser for collection of fee of cattle market. Learned counsel further submits that collection of fee of cattle market is not a property or goods. Further submits that words used "confiscated or attached" in Sub Section (1) of Section 236-A of Income Tax Ordinance, are not equal to the auction purchase. Further submits that words of statutes of the legislature have to be attributed their plain and simple meaning and each word of the statute has to be given due weight. He has relied on Tanveer Hussain V. Ravi Ryan (2007 SCMR 737). Learned counsel further submits that insertion of words "confiscated or attached" with the words "property or goods" mean that only those goods or properties could be subjected to the levy of advance tax visualized by Section 236-A which either have been confiscated or are attached. The right to collect different tolls leased out to petitioner through a public auction did not in any manner fall within the definition of confiscated or attached. Finance bill 2010 provides that under Clause 66 the word "confiscated or attached property or goods" mean to charge the property or goods

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confiscated or attached only. Learned counsel for petitioner has relied on Messrs Mehran Associates Limited V. The Commissioner of Income Tax, Karachi (1993 SCMR 274) and submits that it is an established principle of interpretation of a fiscal statute is that all charges upon the subject are to be imposed by clear and unambiguous words. There is no room for any intendment nor there any equity or presumption of tax. A fiscal provision of a statute is to be construed liberally in favour of the tax payer and in case of any substantial doubt the same is to be resolved in favour of the citizen.

6. Mr. Khadam Hussan Zahid Advocate, learned counsel for department submits that issue has already been settled by the Hon'ble Supreme Court of Pakistan in [(2005) 91 Tax 425 (S.C Pak)].

7. Heard. Record perused.

8. The issue between the parties is about the interpretation of Section 236-A of Income tax Ordinance, 2001. For better appreciation of said provision of law, it is reproduced as under -

"S.236A- Advance tax at the time of sale through auction. Following is an extract from FBR's Circular No.03 of 2009 dated July 17,2009:-

"53.1 In the past under section 50(7A) of the repealed Income Tax Ordinance, 1979, any person making sale by public auction of any property belonging to the Government a Local Authority etc. was required to collect tax @ 3% of the sale price

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Lahore High Court, Lahore

of such property. No such provision was, however, available in the Income Tax Ordinance 2001. Considering the revenue importance, a new subsection 236A has been inserted to provide that any person making sale through public auction, of any property or goods confiscated or attached either belonging to or not belonging to the:

- a) Government;
- b) Local Government
- c) any authority.
- d) a company.

(2) The credit for the tax collected under subsection (1) in that tax year shall, subject to the provisions of Section 147, be given in computing tax year or in the case of a taxpayer to whom section 98B or section 145 applies, the tax year, in which the "said date" as referred to in that section, falls or whichever is later

Explanation.- For the purposes of this section, sale of any property includes the awarding of any lease to any person, including a lease of the right to collect tolls, fees or other levies, by whatever name called]"

9. The petitioner entered into an agreement for collection of fee from cattle market. The right to collect fee of cattle market was auctioned on 28.4.2009 and operation of said agreement was to commence from 01.7.2009 to 30.6.2010, meaning thereby the effective date of the said agreement is 01.7.2009. Admittedly the finance bill is to be implemented from 01.7.2009.

10. It is an admitted fact that effective date is the material date which will decide the fate of issue. The argument of learned counsel for petitioner is that Section 236-A of Income Tax Ordinance, specifically find mentioned the words "property or goods

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confiscated or attached". the collection of fee of cattle market is not a property or goods confiscated or attached.

11. Perusal of Section 236-A of Income Tax Ordinance, shows that word "property" is an independent meaning. "goods confiscated" are independent and "attached" is a separate one. Meaning thereby in three situations tax is payable. Now the question arose whether collection of lease money or collection of fee from the cattle market is a property or not.

12. Explanation of Section 236-A of Income Tax Ordinance provides that sale of property includes the awarding of any lease to any person including the lease of right to collect tolls, fees or other levies. The perusal of said explanation shows that right to collect the tolls fee and other levies falls within the mischief of section 236-A of Income Tax Ordinance. Perusal of agreement for collection of cattle market fee shows that it is a lease contract for collecting the fee from the owners of animals who bring their animals in market. The land is provided by the TMA and the TMA is providing every facilities for managing the market, the contractor has to recover the fee from the animal owners and as such the payment by the animal owners

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W.P.No.2151/2010.

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falls within the definition of lease and also a fee. In these circumstances, the petitioners are liable to pay the advance tax in terms of Section 236-A of Income Tax Ordinance, 2001.

13. The upshot of above discussion is that all these petitions fails and dismissed.

(Signature)
(Muhammad Khalid Mehmood Khan)
Judge

Imran

Announced in open Court on 26/3/2012.

(Signature)
(Muhammad Khalid Mehmood Khan)
Judge

Imran

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In Case No:
(Signature)
09/8/12
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Lahore High Court, Lahore