

Chief (L-II)
Pl. placed on website
and circulate
in groups.

IN THE LAHORE HIGH COURT, LAHORE

16 APR 2022

From

The Addl. Registrar (Judl)
Lahore High Court, Lahore.

[Handwritten signature]

Chief (L-I)
S-Lit(SC)
S(A&A)
S(A)

To



Chief (L-II)
S-Lit(SC)
S(L-DT)
S(L-IDT)
Chief (L-III)
S(PA)
S(TO-II)
S(L-II)
S(S)

- 1. Ovais Ali Shah, in court, 214-Clifton Center Block V, Clifton, Karachi
- 2. FOP, through Secretary Revenue Division Ex-Officio Chairman, FBR Islamabad
- 3. FOP through the Commissioner, IR. Zone-I - Range-I, Large Tax Payer office Multan
- 4. Additional Commissioner (Audit) Inland Revenue Zone I - Range - I large Tax Payer office Multan
- 5. DCO, Lahore

SUBJECT: - WRIT PETITION NO:-

36126-21

Sir,

In continuation of this Court letter No _____ dated _____

I am directed to forward for information and immediate compliance a copy of this Court's Order/Judgment dated 23-03-22 passed in the above noted case.

Yours faithfully

[Handwritten signature]

ASSISTANT REGISTRAR (WRIT)
FOR ADDL. REGISTRAR (JUDL)

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& circulate in groups*

M KH

[Handwritten signature]

80129-1

FBR e-Dox No
Received in W(L) Office on 19 APR 2022

FBR e-DOX Dy No. 80129-1
Received in Chairman's Sectt.
on 16 APR 2022

Form No:HCJD/C-121

ORDER SHEET

**IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT**

Case No. W. P. No. 36126 of 2021.

Fatima Fertilizer Company Ltd. **Versus** Federation of Pakistan etc.

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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05. 28.03.2022. Mr. Ovais Ali Shah, Advocate for the petitioner.
Ms. Ambreen Moeen, Deputy Advocate Attorney
General for Pakistan.
Syed Zain-ul-Abideen Bokhari, Advocate for respondent
No.3.

Preliminary objection is raised by learned Deputy Attorney General for Pakistan, as well as, learned counsel for respondent No.3 that this is second petition on the subject and certificate, signed by learned counsel, is deceptive and defective. Learned DAG has read paragraph No.27 of the petition in support, which is reproduced hereunder:-

"27. Thereafter the Court was pleased to dismiss the Writ Petition bearing No. 259390 of 2018 vide Judgment dated 30.11.2020 which also included other connected matters. However, no decision was passed on the vires of the law. Being dissatisfied with the Judgment dated 30.11.2020 passed in W.P. No. 259390 of 2018, the Petitioner filed an Intra Court Appeal bearing No. 2539 of 2021 which is pending adjudication. Notices to the Respondents were issued on 25.01.2021 in Intra Court Appeal No. 2539 of 2021 by the Honourable Court. Copy of the Judgment dated 30.11.2020 in W.P. No. 259390 of 2018 is attached and marked as Annexure K."

2. The above paragraph shows that vires of provisions of Section 113C of the Income Tax Ordinance, 2001 ("Ordinance of 2001") were challenged through Writ Petition No. 259390 of 2018 and the grounds were turned down by learned Single

Bench through judgment dated 30.11.2020, paragraph No.4 of which is reproduced hereunder:-

"4. Section 113C provides that ACT shall be paid by a company on the accounting income less any amount to be excluded as provided under sub-section 8 where ACT is higher than the corporate tax. This tax is applicable to companies only, such that the company is to pay ACT or the corporate tax whichever is higher. The basic ground for challenge of the vires of Section 113C is Article 24 of the Constitution which is the fundamental right for protection of property whereby no person can be deprived of his property saved in accordance with law. It is settled law that taxing provisions do not deprive any one of their property rights and that the right under Article 24 is subject to the provisions of the law. Therefore as such this ground is not made out to the extent that Section 113C is ultra vires the Constitution. The imposition of ACT is on accounting income which means the accounting profit before tax for the tax year. The Petitioners explained that calculating 'accounting income' would amount to denial of claims under Sections 22, 23, 56 and 57 of the Ordinance. None of the Petitioners have been able to explain actually what they have been deprived of and their apprehension is based on the fact that the Act was introduced to discourage perpetual declaration of losses or low income to evade tax. However, the Commissioner is empowered to make adjustments and compute the accounting income, hence at this stage the Petitioners cannot assert that they have been deprived of any property."

(emphasis supplied)

3. Learned counsel is confronted with the certificate of the petition, alongwith judgment reported in Mst. Hira Dar v. Govt. of the Punjab etc. (PLD 2021 Lahore 495).

The certificate is reproduced hereunder:-

"It is certified that this is the first Writ Petition filed by the Petitioner on the subject for Tax Year 2015."

4. Learned counsel, confronted with this situation, has not denied that the issue, after being decided, is pending before learned Division Bench in Intra Court Appeal. However, submits that the certificate is to the

extent of tax year 2015. He has also not denied that he was counsel in the earlier petition as well. Contends that petitioner has also filed Writ Petition No.45357 of 2020 on the same issue, which was not decided by learned Single Bench. Explaining the deceptive certificate, learned counsel submits that every year is a different year, therefore, the certificate is given year wise.

5. The explanation, offered by learned counsel for the petitioner, does not commensurate with the requirements of certificate. It has already been held in Mst. Hira Dar's Case (*supra*) that signing of certificate is the sole professional responsibility of a counsel and any incorrect certificate leads to disciplinary action against the counsel in respective Bar Councils, in addition to filing of FIR. The concept of litigation relating to tax year is only before the hierarchy under the Ordinance of 2001 and not for writ jurisdiction. Admittedly, the matter after decision, on the issue of vires, through paragraph No.4, *ibid*, is pending before learned Division Bench and the legal objections including non-entertainment of plea of *ultra vires* can be raised before learned Division Bench, however, the petitioner, as well as, learned counsel took a chance by filing another writ petition and that too with deceptive and false certificate, which is highly deplorable, therefore, depreciated.

6. Since learned counsel belongs to Sindh and is appearing before this Court, therefore, a lenient view is taken by not referring the matter to respective Bar Council. Learned counsel is warned to be careful in future. However, the petition is dismissed with costs of Rs.200,000/- (Rupees Two Hundred Thousand only), to

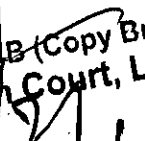
be deposited in national exchequer within thirty days and receipt thereof be placed on record. In case of failure, the amount of costs be recovered as Arrears of Land Revenue.


(Shahid Jamil Khan)
Judge

A.W.

TRUE COPY

Examiner J.C.B (Copy Branch)
Lahore High Court, Lahore



IN THE LAHORE HIGH COURT, LAHORE
(Writ Jurisdiction)

W. P. No. 36126 / 2021

Fatima Fertilizer Company Limited
A company incorporated under the
Companies Ordinance, 1984
Having Office at E-110, Khayban e Jinnah,
Lahore Cantt, Lahore
Through its Chief Financial Officer
Mr. Rizwan Qamar s/o Sana Ullah Qamar
Bearing CNIC No. 61101-9224670-7

Petitioner

Versus

- R
1. **Federation of Pakistan**
Through Secretary Revenue Division and
Ex-Officio Chairman, Federal Board of Revenue,
Islamabad.
 2. **Federal Board of Revenue,**
Through the Commissioner, IR
Zone-I-Range-I,
Large Tax Payer Office
Multan.
 3. **Additional Commissioner (Audit)**
Inland Revenue
Zone I-Range-I
Large Tax Payer Office
Multan.

Respondents

(TAX YEAR 2015)

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

The Petitioner respectfully submits as follows:-