

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

JUDICIAL DEPARTMENT

18362 / Writ
23-Jun-2022

From,

The Deputy Registrar(Judicial),
Islamabad High Court,
Islamabad.

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

S(A)
Chief (L-II)

S-Lit(KC)
S(L-DT)

S(L-IDT)
Chief (L-III)

S(PA)
S(TO-I)

S(TO-II)
PS

1_FOP THROUGH SECRETARY FIANCE, REVENUE DIVISION

M/O FINANCE, PAK SECTT. ISLAMABAD

2_MEMBER [LEGAL] FBR

CONST. AVENUE, ISLAMABAD

3_COMMISSIONER IR

ZONE CORPORATE RTO, ISLAMABAD, 20 KHAYABAN-E-SUHARWARDY SERVICE ROAD SOUTH, MAUVE AREA, G-9/1, ISLAMABAD

4_ASSISTANT/DEPUTY COMMISSIONER [AUDIT I] IR

UNIT IV, RANGE II, LTO, ISLAMABAD, 20 KHAYABAN-E-SUHARWARDY SERVICE ROAD SOUTH, MAUVE AREA, G-9/1, ISLAMABAD

Subject: W.P. 2758/2021 Tax & Banking Tax (SB)

Xian Senshe Electronic-VS-FOP etc

27/6
Dear Sir,

Please place on website and report.

I am directed to forward for information and immediate compliance a copy of this Court's order dated **20-06-2022** passed by **Hon'ble** Mr. Justice Babar Sattar in the above noted case.

Yours Faithfully,

Assistant Registrar (Writ)

For Deputy Registrar (Judicial)



Decided Matter

FBR e-Box No. 144681-R
Received in M/1 Office on 27 JUN 2022

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IN THE HONOURABLE ISLAMABAD HIGH COURT,
ISLAMABAD.

W.P. No. 2758 /2021

In the matter of: -

Xian Senshe Electronic Technology Corporation Pvt Ltd
through its manager Faheem Khan S/o Gul Afzal. House #
377, Street 25, E-11/4, Islamabad.

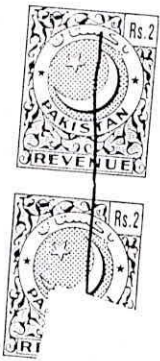
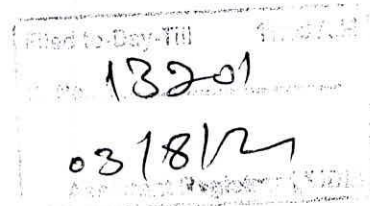
Petitioner

Versus

1. Federation of Pakistan through Secretary of Finance,
Revenue Division, Ministry of Finance, Pakistan
Secretariate, Islamabad.
2. Federal Board of Revenue through, Member (Legal),
FBR, Constitutional Avenue, Islamabad.
3. Commissioner inland revenue, zone-corporate rto
islamabad, 20 khayaban e suhrawardy service road
south g-9 mouve area g-9/1 Islamabad.
4. Assistant / deputy commissioner (audit-i) inland
revenue, unit iv-range ii, range-ii lto islamabad, 20
khayaban e suhrawardy service road south g-9 mouve
area g-9/1 Islamabad.

Respondents

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



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Islamabad

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Writ Petition No. 2758/2021

Xian Senshe Electronic Technology Corporation Private Limited.

Versus

Federation of Pakistan through Secretary of Finance, Revenue Division
& others.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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(03)

20.06.2022

Mr. Muhammad Musawar Gill, Advocate for the petitioner.
Mr. Asad Hussain Ghalib, Advocate for the respondents.
Ch. Ishtiaq Mehrban, DAG.

The petitioner has impugned notices dated 31.05.2019, 05.10.2020 and 15.06.2021 issued by respondents No.3 & 4.

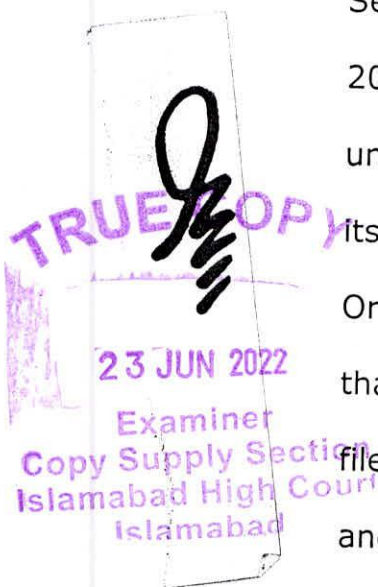
2. The learned counsel for the petitioner stated that the notice dated 31.05.2019 was issued under Section 214D of the Income Tax Ordinance, 2001 ("**Ordinance**"), which provision was repealed pursuant to the Finance Act, 2018. Notwithstanding the repeal of the provision, respondent No.4 issued notice dated 05.10.2020 seeking record of the petitioner for purposes of Section 177 of the Ordinance. Subsequently, the Show Cause Notice dated 15.06.2021 was issued under Section 122(9) of the Ordinance in exercise of powers and jurisdiction originally assumed under the repealed Section 214D. The learned

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counsel for the petitioner stated that the impugned notices thus suffer from jurisdictional defect as the original exercise of authority under Section 214D of the Ordinance was flawed.

3. The learned counsel for the respondents submitted that the repeal of Section 214D of the Ordinance is irrelevant for purposes of present petition as initial notice for purposes of selection of audit under Section 214D was issued by the tax department on 14.06.2018, as recorded in the impugned notice under Section 122(9) of the Ordinance dated 15.06.2021, which was prior to the repeal of Section 214D of the Ordinance by Finance Act, 2018. He further submitted that an audit was undertaken by tax department in exercise of its authority under Section 177 of the Ordinance. And it was subsequent to the audit that it was found that the self-assessment filed by the petitioner required to be amended and consequently the notice under Section 122(9) of the Ordinance was duly issued.

4. The basic claim of the petitioner is that the demand sought to be generated by the tax department against the petitioner is based on a notice issued under Section 214D of the Ordinance which was repealed by Finance Act,



2018. And as the foundation on which subsequent audit proceedings were based and impugned notice under Section 122(9) of the Ordinance was issued suffers from legal infirmity the super-structure build on such notice ought to fall along with such foundation.

5. What is evident from the record is that Section 214D was repealed by Finance Act, 2018, which was after the issuance of first notice to the petitioner under Section 214D on 14.06.2018. Section 214D provided for audit of certain taxpayers and the notice under such provision was issued for tax year 2016 when the said provision was in the field. The repeal of Section 214D is not to be given effect retrospectively and would not invalidate notices duly issued under such provision at a time when the provision was in the field.


6. The record also reveals that none of the notices under Section 214D of the Ordinance issued on 14.06.2018 or 31.05.2019 were challenged by the petitioner, neither were the audit proceedings initiated pursuant to such notice or notices under Section 176(1) seeking information and record from the petitioner by letter dated 05.10.2020 were challenged by the petitioner. It is only when a notice to



amend the assessment dated 15.06.2021 under Section 122(9) of the Ordinance was issued that the petitioner challenged the same.

7. The learned counsel for the petitioner has failed to point out how the said notice suffers from any infirmity or jurisdictional defect. The law on show cause notice is well settled. To the extent that there is any jurisdictional objection to the notice issued such objection can be taken and the response to be filed by the petitioner in answering the show cause notice issued to it. It is only where a jurisdictional defect is such that renders a show cause notice palpably without authority and jurisdiction that a challenge can be brought against it under Article 199 of the Constitution. No such defect in the impugned SCN has been identified by the petitioner.

8. This Court is therefore not convinced that the challenge to the impugned show case is maintainable before this Court in its Constitutional jurisdiction. The petition is therefore **dismissed** for not being maintainable.


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(BABAR SATTAR)
JUDGE

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