

IN THE HIGH COURT OF SINDH AT KARACHI
(CONSTITUTIONAL JURISDICTION)

C.P. NO. D-45 / 2023

03-01-2023

Peer
Additional Registrar (M)

1. **SHAMS MUHAMMAD HAJI**
Son of Muhammad Haji
Muslim, adult, resident of
B-30, Estate Avenue, S.I.T.E.,
Karachi.
Through his duly appointed Attorney
2. **MAIMUNA**
Wife of Shams Muhammad Haji
Muslim, adult, resident of
B-30, Estate Avenue, S.I.T.E.,
Karachi.
Through her duly appointed Attorney
3. **ALI SHAMS HAJI**
Son of Shams Muhammad Haji
Muslim, adult, resident of
B-30, Estate Avenue, S.I.T.E.,
Karachi.
Through his duly appointed Attorney

.....PETITIONERS

VERSUS

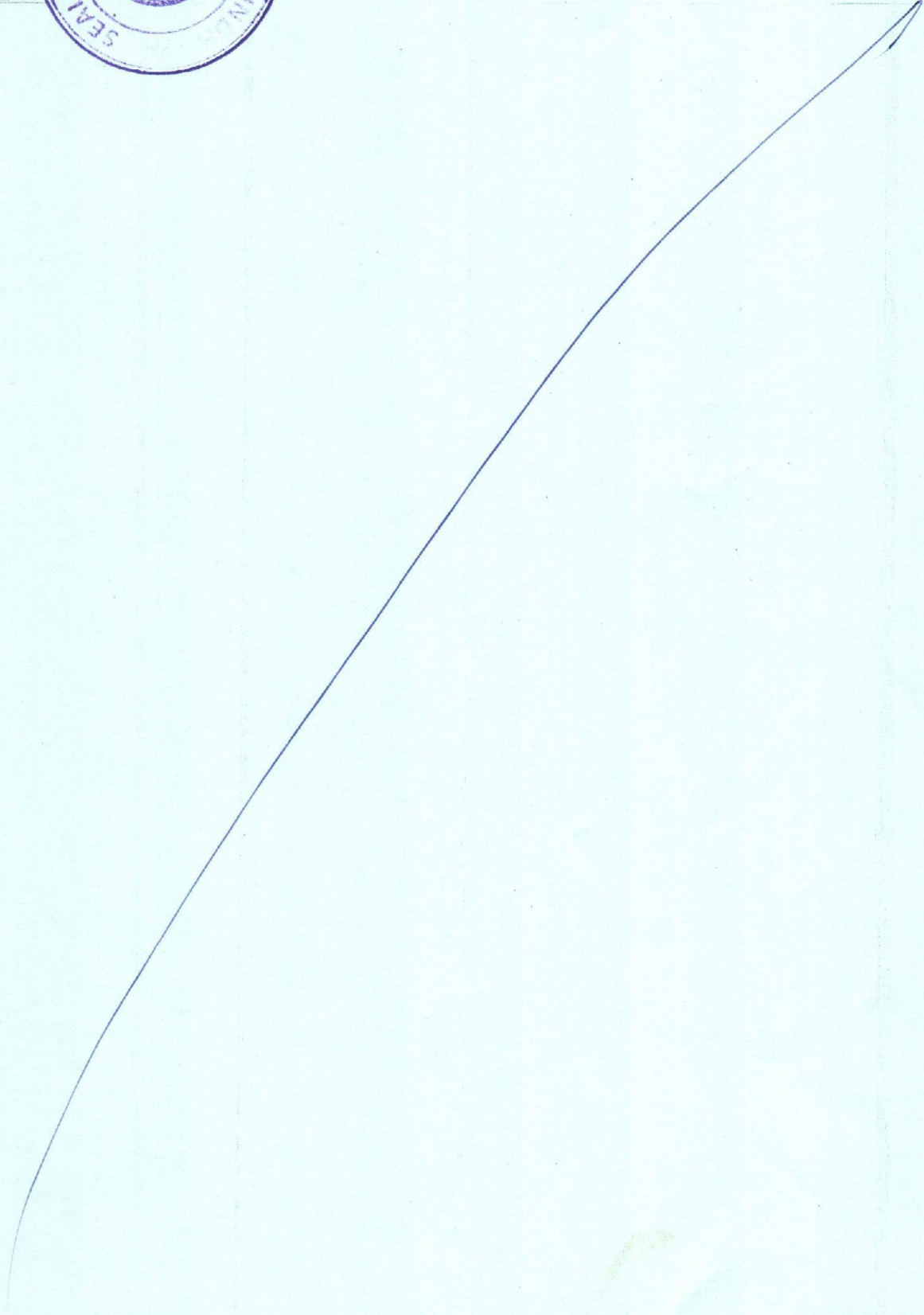


1. **THE FEDERATION OF PAKISTAN**
Through its Secretary,
Ministry of Finance, Economic Affairs,
Revenue and Statistics,
Constitutional Avenue,
Islamabad.
2. **THE FEDERAL BOARD OF REVENUE**
Through the Secretary,
Revenue Division / Chairman,
Inland Revenue House,
Shahra-e-Kamal Ataturk,
Karachi.
3. **ASSISTANT / DEPUTY COMMISSIONER**
Inland Revenue, Unit-AEOI-5, Range B-AEOI, Zone-AEOI
5th Floor, PNSC Building, Lalazar Drive,
M.T.Khan Road,
Karachi.

.....RESPONDENTS



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



ORDER SHEET
IN THE HIGH COURT OF SINDH KARACHI

C.P No. D-45 of 2023

DATE

ORDER WITH SIGNATURE OF JUDGES

Fresh case

1. For orders on Misc. No.146/2023 (Urgent Application)
2. For orders on Misc. No.147/2023 (Exemption Application)
3. For orders on Misc. No.148/2023 (Stay Application)
4. For hearing of Main Case

03.01.2023

Mr. Haider Waheed, Advocate for the petitioners
alongwith Mr. Zoha Sirhindi, Advocate

1. Urgency granted.

2. Exemption granted subject to all just exceptions.

3&4. This petition challenges the legality of the proceedings resulting in the Amended Assessment Orders and Demand Notices issued pursuant thereto passed by the Respondent No.3 under Section 122(1) & (5) and 137(2) of the Income Tax Ordinance, 2001 stating that these amended assessments are in violation of the provisions of the law, which has been clearly explained through Circular No.05 of 2022 dated 30.08.2021 issued pursuant to Section 214 of the Income Tax Ordinance, 2001 (page 359). Counsel states that certain foreign remittances were credited to the accounts of the petitioners through banking channels and translated into Pakistani currency in the Financial Year 2017, which remittances were shown in the wealth statement for that year. Notwithstanding therewith, being unsatisfied with the said explanation Respondent No.3 issued show cause notice to the petitioners alleging certain illegalities, which were duly responded by the petitioners placing reliance on Section 111(4) of the Income Tax Ordinance, 2001 read with Circular No.05 of 2022 both of which not only bar taxation of foreign remittances rather at the same time conclude with the following note:-

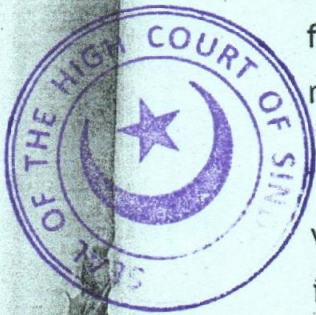
"Foregoing in view, it is clarified that all cases of claim of foreign remittances be disposed of by according lenient interpretation to the conditions stipulated in section 111(4) of the ITO, 2001. Moreover, in order to win the trust of the taxpayers and spare the public resources for more productive use elsewhere, all Departmental appeals filed on the *stricto sensu* interpretation of the law, be withdrawn immediately, and no further appeals be filed if on all fours of this clarification."



Counsel states that the Amended Assessment Orders available at pages 143, 223 and 317 are wholly without jurisdiction and in violation of the guarantee provided by Section 111(4) as explained by the above referred Circular that foreign remittances are exempted from tax as long as three requisites being (a) the remitted amount is in foreign exchange; (b) the amount is remitted into Pakistan through normal banking channels; and (c) the amount is encashed by a scheduled bank as long as a certificate of encashment is obtained. Counsel states that when the petitioners have already qualified these requisites, seemingly the crux of the objections raised by the Department being that the said facility was not available to the petitioners since the remittances were made by their own foreign account of the petitioners is ill-conceived. Counsel states that no such additional requirements are posed through Section 111(4), rather the Circular in para-6 clarifies that sub-section (4) of Section 111 aims to take out requirements of residential status of the remitter and the locus of earning of the amount, which fact has not been considered by the respondent.

To a question that why an appeal has not been filed against the impugned order, counsel states that the factum of the Circular as reproduced in the foregoing is that it mandates the Department to withdraw all appeals filed in the subject matter and that no further appeal are to be filed in the circumstances, which criterion has been fully qualified by the petitioners, per learned counsel, making the notices un-warranted.

In the given circumstances, issue notice to the respondents as well as DAG for 18.01.2023. In the meanwhile, operation of the impugned orders available at pages 143, 223 and 317 is suspended till the next date of hearing, and that no coercive action be taken against the petitioners pursuant to the impugned orders till the next date of hearing.



Sd/- Salahuddin Panhwar
Judge

Sd/- Zulfiqar Ahmad Khan
Judge