

Form No: HCJD/C-121

JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

W.P. No.3095 of 2021

Altaf Ahmed Gondal

Vs.

The Federation of Pakistan, etc.

Petitioner by : Mr Adnan Haider Randhawa Advocate.

Respondents by : M/s Barrister Atif Rahim Burki and Malik Ittaz Hussain Awan Advocates.
Syed Muhammad Tayyab, DAG.
Mr Tahseen Sadiq Tarar, Additional CIR.
Mr Yousaf Khan, S.O. IR (Legal) RTO.

Date of Hearing : 08.04.2022.

ATHAR MINALLAH, C.J.- Through this order I

shall consider the instant petition alongwith W.P. No. 4498/2021, titled

"Altaf Ahmed Gondal v. The Federation of Pakistan, etc." The

petitioner has assailed the proceedings initiated by the respondents

which subsequently led to registration of FIR no. 04/2021, dated

29.06.2021, under sections 3, 4, 8 and clause XIIA of the Schedule-

1 of the Anti Money Laundering Act, 2010 [hereinafter referred to as

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Registrar
Judicial Section
Islamabad High Court
Islamabad

the "Act of 2010"]. The Impugned FIR was registered by the office of the Director General, Intelligence and Investigation (Inland Revenue). The latter has been established under section 238 of the Income Tax Ordinance, 2001 [hereinafter referred to as the "Ordinance of 2001"]. The Federal Government, pursuant to powers conferred under clause (j) of section 2 of the Act of 2010 has notified the Director General, (Intelligence and Investigation, Inland Revenue) as one of the investigating and prosecuting agencies for the purposes of the aforementioned statute. The said notification was published in the official gazette on 09.06.2016.

2. The Act of 2010 was promulgated in order to provide for prevention of money laundering, combating financing of terrorism and forfeiture of property derived from, or involved in, money laundering or financing of terrorism and for matters connected therewith or incidental thereto. Section 2 has defined various expressions. Section 3 has described the offence of money-laundering and the same is reproduced as follows:

"3. Offence of money laundering.— A person shall be guilty of offence of money laundering, if the person:—

(a) acquires, converts, possesses, uses or transfers property, knowing or having reason to believe that such property is proceeds of

*Copy of the Act of 2010
Authorised under the Act of 2010
Qanoon-e-Shubhat*

- b) conceals or disguises the true nature, origin, location, disposition, movement or ownership of property, knowing or having reason to believe that such property is proceeds of crime;
- c) holds or possesses on behalf of any other person any property knowing or having reason to believe that such property is proceeds of crime; or
- d) participates in, associates, conspires to commit, attempts to commit, aids, abets, facilitates, or counsels the commission of the acts specified in clauses (a), (b) and (c).

Explanation-I.— The knowledge, intent or purpose required as an element of an offence set forth in this section may be inferred from factual circumstances in accordance with the Qanun-e-Shahadat Order, 1984 (P.O. 10 of 1984).

Explanation II.— For the purposes of proving an offence under this section, the conviction of an accused for the respective predicate offence shall not be required."

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Any document
submitted under article-57
of the Constitution of
Pakistan shall be
admissible as evidence
in any court of law
in Pakistan.


The offence of money-laundering has been made punishable under section 4 of the Act of 2010. The august Supreme Court in the cases titled "National Accountability Bureau (NAB) v. M/s Hudalbya Paper Mills Limited, Chairman, Islamabad v. M/s Hudalbya Paper Mills Limited, Lahore and others". [PLD 2018 SC 296] and "Justice Qazi Faez Isa and others v. The President of Pakistan and others" [PLD 2021 SC 1] has

held that in order to attract the offence of money-laundering, there has to be a nexus of the proceeds of crime with one of predicate offences described under the schedule of the Act of 2010. In case the proceeds of crime are not relatable to the predicate offences described in the schedule, then offences under the Act of 2010 would not be attracted.

4. With the assistance of the learned counsels, the impugned FIR, dated 29.06.2021 and show cause notices have been carefully perused. The show cause notices, dated 05.07.2021 and 24.12.2021 and the FIR, dated 29.06.2021 unambiguously show that the allegation against the petitioner was regarding non-declaration or concealment of assets. The respondents have failed to show any material whatsoever to, prima-facie, establish the existence of the ingredients of the offence of money laundering described under the Act of 2010. The proceedings initiated by the respondents that had led to registration of a criminal case relating to money laundering under the Act of 2010 were bereft of jurisdiction, illegal and void. It was a case of alleged concealment of assets and did not attract the offence of money laundering under the Act of 2010.

5. For the above reasons, the petitions are allowed. The FIR no. 04/2021, dated 29.06.2021, and the proceedings relating thereto are declared as illegal, without lawful authority and jurisdiction. The proceedings are, therefore, set aside and the impugned FIR no. 04/2021, dated 29.06.2021, stands quashed. However, the respondent Department would be at liberty to proceed

under the Ordinance of 2021 if it is satisfied that a case of concealment of assets is made out.


(CHIEF JUSTICE)

Tanveer Ahmed/*



APR 2021

Form No: HCJD/C-121

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

W.P. No. 3095 of 2021

Altaf Ahmed Gondal
Vs
Federation of Pakistan, etc.

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
01)	<u>02-09-2021.</u>	Mr M. Mohsin Virk Advocate, for the petitioner.

The petitioner has assailed the proceedings initiated against him under the Anti-Money Laundering Act, 2010 [hereinafter referred to as the "Act of 2010"].

2. The learned counsel has, inter-alia, contended that the Act of 2010 has prospective operation and, therefore, the proceedings initiated against the petitioner are without lawful authority and jurisdiction. The learned counsel has further stated that SRO, dated 20.05.2016 has not been Issued by the competent authority i.e. the Federal Government.

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Examiner
Copy Section
Authorised Officer Article-87 of
Qanoon-e-Shahadat Order 1984
Islamabad High Court
Islamabad

DN 35
10/2/21

C.M. No.02/2021.

Notice, for 09.09.2021.

C.M. No. 01/2021.

Exemption sought for is allowed, subject to
all just and legal exceptions.

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Excellency
Chief Justice
Author
Sandoz
15 APR 2022

sd

(CHIEF JUSTICE)

Tahveer Ahmed/

BEFORE THE HONORABLE ISLAMABAD HIGH COURT, ISLAMABAD

W.P. No. 3095 /2021

Altaf Ahmed Gondal

S/o Bashir Ahmed

Proprietor of Bashir & Sons

Office No. 11, 2nd Floor, Akbar Plaza, Near Ganj Mandi Bridge, Railway,

Workshop Road, Rawalpindi.

NTN: 2809117-5 CNIC: 38401-4992616-9

Petitioner

VERSUS

1. The Federation of Pakistan through Secretary Finance, Revenue Division, Constitutional Avenue, G-5, Islamabad.

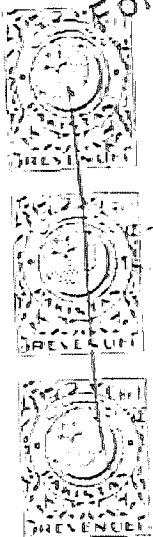
2. The Federal Board of Revenue through its Chairman, Tax House, Constitution Avenue, G-5, Islamabad.

3. The Directorate of Intelligence and Investigation (Inland Revenue), Through its Director General, G-8 Mauve Area G 8/1 G-8, Islamabad.

4. The Investigation Officer, Directorate of Intelligence and Investigation (Inland Revenue), G-8 Mauve Area G 8/1 G-8, Islamabad.

5. The Commissioner Inland Revenue, Zone-City, Regional Tax Office, Rawalpindi, 12-Mayo Road, Rawalpindi.

6. The Assistant/Deputy Commissioner Inland Revenue, Unit-1, Range-I, Zone-City, Regional Tax Office, Rawalpindi, 12-Mayo Road, Rawalpindi.



authority not vesting in the Respondents and that the same is without legal sanctity.

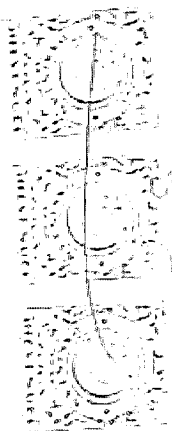
- X. That the actions, omissions and commissions of the Respondents are in violation of the Constitution. The Impugned Report in the context of the challenged vires of the Impugned Notification and the assumption and exercise of powers by the Respondent DG (I&I) IR, are void ab-initio; the Respondent DG (I&I) IR cannot be allowed to proceed with the same inasmuch as the Petitioner is being dealt with in a manner which lacks statutory warrant. The entire action of the Respondents is wholly without jurisdiction and unlawful.
- XI. That the Petitioner challenges the violation of his guaranteed rights under the Constitution; the assumption as well as exercise of unlawful jurisdiction by the Respondent DG (I&I) IR resulting in the issuance of the Impugned Report as well as the Impugned Notification. The issues raised herein relate to an interpretation of constitutional and statutory provisions. The matter relates to the vires of the impugned Notification inter alia. The Petitioner has no and/or other alternate, adequate and/or efficacious remedy except to invoke the extraordinary jurisdiction of this Honorable Court.
- XII. That the Petitioner respectfully reserves the right to raise and/or urge other additional grounds at the time of hearing of the petition.

PRAYER :

In view of the foregoing, it is most respectfully prayed that this Honorable Court may kindly declare and direct the following:

- i. The Impugned Notification SRO 425(1)/2016 dated 20/05/2016 issued by the Respondent Federal Government is without lawful authority and of no effect as it violates the principle laid down in the case reported as PLD 2016 SC 808. The same may be struck down accordingly as being without legal effect.

- ii. The amendments made in the Anti-Money Laundering Act, 2010 especially in sections 2, 21 and 24 through the Anti-Money Laundering




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Islamabad High Court

(2nd Amendment) Act, 2020 promulgated on 24/09/2020 are prospective in nature and that the same cannot be applied retrospectively with reference to past and closed transaction and where vested rights have accrued in favor of the Petitioner.

iii. The assumption and exercise of jurisdiction by the Respondent DG (I&I) IR under the Anti-Money Laundering Act, 2010 with reference to events prior to tax year 2020 and to treat a civil obligation, under the Income Tax Ordinance 2001, as a criminal offence is a patent abuse of statutory authority. Therefore, the registration of the Complaint / FIR First Information Report No. 04/2021 dated 29/06/2021 by the Respondent DG (I&I) IR is mala fide as well as without lawful authority, wholly without jurisdiction and of no legal effect and that the same be declared as such.

iv. During the pendency of the partition, the operation of the Complaint/ First Information Report No. 04/2021 dated 29/06/2021 Application / order No. 04/2021 dated 30/06/2021 and Show Cause Notice No. 04/2021-49 dated 05/07/2021 be stayed / suspended and/or the Respondent DG (I&I) IR / its functionaries be directed to maintain status quo in this regard and/or not proceed against the Petitioner in any coercive manner.

Any other relief as deemed fit and proper in the facts and circumstances of the case may also be graciously granted


Petitioner
Through Counsel

Muhammad Mohsin Virk
Advocate Supreme Court of Pakistan
P.L.D.C.-17799, Enrolment No. 4893
S.C. Nos. 56703-0380366-1 and Mobile No. 0331-4809030

1. Arshad Ahmad
Advocate High Court

2. Farhan Ahmad
Advocate High Court

3. Syed Tanzeel Haider
Advocate High Court

4. Ch. Shoaib Hyat
Advocate High Court

5. Muhammad Farhan
Advocate High Court

6. Farhan Nadeed
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7. Muhammad Talha Goraya
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Dated: 30-08-2021

CERTIFICATE:-

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- i. It is to certify that as per information provided by the petitioner this is first writ petition in the subject matter.

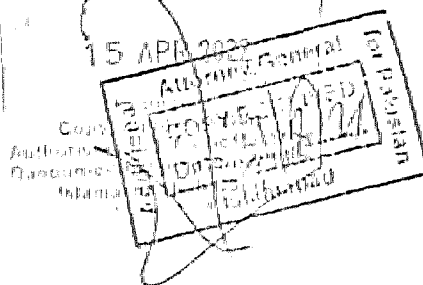
Advocate

List of books

- i. The Constitution of the Islamic Republic of Pakistan, 1973.
- ii. The Anti Money Laundering Act, 2010.
- iii. The Anti Money Laundering (2nd Amendment) Act, 2020
- iv. The Income Tax Ordinance, 2001.
- v.

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Dated: 30.08/2021



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Application No.	
Date of Presentation of Application	08/09/22
Date of Deposit of Fee	
No of Words	
Copyright Fee	
Utility Fee	
Registration Fee	28
Agency Fee	
Court Fee at Application	
Tax	
Amount of Deposit	
Date of Receipt of Cash	15/04/22
Date of Completion of Copy	
Date of Delivery of Copy	15/04/22