

IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(SPECIAL ORIGINAL JURISDICTION)

WRIT PETITION NO. 6229 OF 2024.

IN THE MATTER OF :

An application under Article 102 of the  
Constitution of People's Republic of Bangladesh.

And

IN THE MATTER OF :

University of Asia Pacific and another

.....Petitioners

-VS-

National Board of Revenue and others

.....Respondents

Dr. Chowdhury Ishrak Ahmed Siddiky with  
Mr. Syfullah Al Muzahid, Advocates

.....For the petitioners

Mr. A.M Amin Uddin, Attorney General for  
Bangladesh with

Mr. Nawroz Md. Rasel Chowdhury, DAG with

Mr. Md. Azizul Hoque,

Ms. Tahmina Polly, and

Mr. Prince-Al-Masud, AAGs.

....for the respondent No. 2

**Present :**

**Mr. Justice Zafar Ahmed**

**And**

**Mr. Justice Sardar Md. Rashed Jahangir**

**Heard and Judgment on: 04.06.2024.**

**Zafar Ahmed, J.**

In the instant writ petition, this Court issued a Rule Nisi on 23.05.2024 calling upon the respondents to show cause as to why the Memo being নথি নং-১২১৭৮৫৬৫৯২২৩/সা-২৩৩/কঃঅঃ-১১/২০২৩-২০২৪/১৪৪ dated 21.03.2024 issued by the respondent No. 2 attaching /freezing the petitioner No. 1's bank accounts (Annexure-A) and Memo being No. নথি নং- ১২১৭৮৫৬৫৯২২৩/ সার্কেল-২৩৩/কঃঅঃ-১১/ ২০২৩-২০২৪/২৬১ dated 06.05.2024 issued

by the respondent No. 2 directing the respondent Nos. 3 and 4 to pay the demanded income tax by way of pay order from the bank accounts of the petitioner No. 1 (Annexure-A1) should not be declared to be done without any lawful authority and are of no legal effect insofar as they relate to the Assessment Years 2008-2009, 2013-2014 and 2014-2015 for which appeals before the Commissioner (Appeal) are pending.

At the time of issuance of the Rule Nisi, this Court passed an interim order directing the parties to maintain status-quo in respect of frozen accounts in question for a period of 3(three) months from date.

The matter appeared in today's daily cause list for order as per prayer of the learned Attorney General. Since the learned Attorney General has appeared in the matter on behalf of the respondent No. 2 (Deputy Commissioner of Taxes, Tax Circle-233 (Companies) Tax Zone-11, Dhaka), the Rule is treated as ready for hearing by Court's order.

By the impugned Memo dated 21.03.2024 (Annexure-A) the respondent No. 2 passed an order under the provisions of Section 221 of the Income Tax Act, 2023 attaching/freezing the bank accounts of the petitioner No. 1 University of Asia Pacific, which is a private university, maintained with the respondent No. 3 Southeast Bank for realization of Tk. 28,64,08,307/- as unpaid income tax and penalty. By another impugned Memo dated 06.05.2024 (Annexure-A1) the respondent No. 2 directed the respondent No. 3 bank to pay the said demanded income tax and penalty by way of Pay Order from the accounts of the petitioner No. 1 University. Be it mentioned that the impugned Memos (Annexure-A and A1) are silent about the Assessment Years.

It appears from records that after receipt of the respective demand notices issued under Section 135 of the then Income Tax Ordinance, 1984 (since repealed by the Income Tax Act, 2023) in respect of Assessment Years 2008-2009, 2013-2014 and 2014-2015 the petitioner university filed separate appeals on 22.04.2024 and 24.04.2024 respectively before the Commissioner of Taxes (Appeals) which are now pending for disposal.

Section 214(6) of the Income Tax Act, 2023 provides that when an assessee presents an appeal in respect of assessment of imposition of tax or of the amount thereof, the Deputy Commissioner of Taxes shall treat the assessee as not being in default for so long as such appeal is not disposed of. Similar provision was contained in the proviso to Sub-Section 3 of Section 135 of the repealed Income Tax Ordinance, 1984.

In the backdrop of above-stated facts and the provisions of law, the learned Attorney General prays for disposal of the instant Rule with modification allowing the respondent No. 2 to proceed with the matter in accordance with the provisions of Section 221 of the Income Tax Act, 2023 excluding the demand of tax and penalty so far as it relates to the Assessment Years 2008-2009, 2013-2014 and 2014-2015 for which separate appeals are pending for disposal. The learned Advocate appearing for the petitioner could not lay his hands on the submissions of the learned Attorney General.

In view of the above, in particular considering the fact that the impugned Memos dated 21.03.2024 (Annexure-A) and 06.05.2024 (Annexure-A1), are silent about the demand of the Assessment Years, those are set aside. The respondent No. 2 is at liberty to proceed with the

matter in accordance with law in respect of the demand of taxes and penalty, if any, for the Assessment Years for which no appeal is pending. Since, separate appeals are pending for the Assessment Years 2008-2009, 2013-2014 and 2014-2015 respectively, the respondent No. 2 is directed not to proceed with the matter, if any, in respect of those Assessment Years.

With the above observations and directions, the Rule is disposed of.

**Sardar Md. Rashed Jahangir, J.**

I agree.