JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Writ Petition No. 1900 of 2022

Commissioner Inland Revenue

Versus

President of Islamic Republic of Pakistan through Secretary and others.

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Petitioner By	:	M/s Arooj Zaib Abbasi and Hajra Zakir Shah, Advocates
Respondents By	:	Mr. Almas Ali Jovinda and Muhammad Arif Hymuyoon, Advocates for respondent No.2. M/s Ms Raheema Khan, M. Sannan Khan, and Muhammad Sanaullah, Advocates for respondent No.3 Mr. Khalid Mehmood Dhoon, AAG.
Date of Hearing	:	19.09.2022

ARBAB MUHAMMAD TAHIR, J: Through the instant writ petition, petitioner seeks setting aside the impugned orders dated 25.03.2022 and 03.11.2022 passed by respondents 1 and 2 (President Islamic Republic of Pakistan, Federal Tax Ombudsman) respectively being *coram-non-judice* and of no legal effect.

2. Brief facts giving rise to the instant writ petition are that respondent No.3 drives income from manufacturing of medicine, filed Income Tax Returns under Section 114 of the Income Tax Ordinance for the year 2010-11, claiming refundamounting to Rs.393,195/- and Rs.1,192,896/-. The applications of the respondent No.3 were processed and decided vide orders dated 19.03.2013 and 20.05.2013. Department rejected the claim of respondent No.3,and issued part refund amounting to Rs.0.135 and Rs.0.258 million respectively.

3. Being aggrieved of the said orders,respondent No.3 filed appeals before the Commissioner Inland Revenue under Section

127 of the Ordinance. The appeals filed by the respondent No.3 were rejected vide consolidated order dated 24.03.2014. Respondent No.3 then preferred appeal before the Appellate Tribunal Inland Revenue (A.T.I.R) under Section 131 of the Ordinance. The A.T.I.R vide order dated 18.11.2015 allowed the appeals of the respondent No.3.

4. The petitioner/department had assailed the said order dated 18.11.2015 of A.T.I.R. by way of filing Income Tax Reference No.70 and 71 of 2016, which are pending before this Court. Respondent No.3 filed complaintsbearing No. 1401 & 1526 /ISB/IT/2021 under Section 10 (1) of the Federal Tax Ombudsman Ordinance **"F.T.O**" for issuance of refund as determined vide order dated 18.11.2015 by A.T.I.R. Notices were issued and comments were filed by the petitionerbefore F.T.O. The prime question that was raised by the petitioner before the F.T.O was that of lack of jurisdiction in view of Section 9(2) of theOrdinance.

5. The same was decided against the petitioner and petitioner was directed to pay the refund amount. Against the said order, petitioner preferred representation before the respondent No.1, which also met the same fate. Hence, the instant writ petition against the impugned orders.

6. The learned counsel for the petitioner argued that F.T.O lacks jurisdiction under Section 9(2) as no maladministration has occasioned on behalf of the petitioner and no such reason has been recorded by F.T.O or by the Appellate Authority. Thus in view of the above, the impugned orders assailed through the instant writ petition are liable to be set aside. Learned counsel has placed reliance upon unreported judgment of this Court passed in writ petition No.2332 of 2021 titled ***Abdul Waheed Khan, etc Vs. Federal Tax Ombudsman etc.***, ***2017 PTD 2019 and 2019 PTD 25.***

7. Learned counsel for respondent No.2 while arguing the matter stated that F.T.O has all the jurisdiction vested in it through the Ordinance, 2000, as petitioner by not implementing

the order of ATIR as acted in maladministration. Learned counsel further argued that by not implementing the order dated 18.11.2015, petitioner has acted in violation of their obligations as mandated by law therefore, respondent had jurisdiction to issue directions for implementation of the order of refund. Learned counsel further submitted that the directions passed by respondent No.2 have been complied with by the petitioner in other cases of like nature, but for the reasons best known to the petitioner, is reluctant to comply with the directions in the instant matter.

7. Learned counsel for respondents No.2&3 while briefly stating the facts had relied upon the judgment of this Court and that of the other High Courts and stated that mere pendency of I.T.Rs before this Court from the year 2016 would not be construed as an embargo for issuance of appropriate orders by F.T.O. He further stated that mere pendency of the I.T.R. No.70 and 71 of 2016 before this Court from the year 2016 and non-issuance of any injunctive order cannot be construed to debar the jurisdiction of F.T.O from issuance of appropriate orderson to the petitioner. Learned counsel further apprised the Court that maladministration on the part of the petitioner is evident from the record as the petitioner is not complying with the directions of the Appellate fora dated 18.11.2015. Learned counsel placed reliance upon the judgments reported as ***2005 PTD 1825 Lahore, 2007 YLR Note 224 Lahore, 2007 CLC 304, Lahore, 2008, PTD 1921 FTO, 2013 PTD 1770 FTO, 2011 PTD 1391 FTO, 2013 PTD 2341 FTO, 2019 PTD 1198 FTO, unreported judgment of the Lahore High Court, passed in W.P. No.3764 of 2004 titled M/s Universal Footwear v Deputy Commissioner Income Tax, unreported judgment of Lahore High Court in W.P. No.6037 of 2001 titled State Cement Corporation of Pakistan V Chairman, Penal 01 special zone, etc., unreported judgment of this Court passed in I.T.R No.17 of 2020.***

8. Heard, record perused.

9. Perusal of the record would reveal that respondent No.3 filed Income tax return for the year 2010-11 claiming refund amounting to Rs.3,93,195/- and Rs.11,92,896/-. The applications filed by the respondent No.3 were processed and same were rejected by department vide orders dated 19.03.2013 and 20.05.2013 on account of tax reduction in respect of tax deductible under Section 153(i)(a) read with clause 24(a) of Part-II of the 2nd Schedule of the Ordinance 1960 and issued part refund amounting to Rs.0.135 and Rs.0.258 millions.

11. Respondent No.3 agitated the refund orders by way of filing an appeal under Section 127 of the Ordinance of 1960. Appeals filed by the respondent No.3 stood rejected vide consolidated order dated 24.03.2014, the said orders were assailed before the Appellate Tribunal Inland Revenue (A.T.I.R) under section 131 of the Ordinance. The Appellate Tribunal while accepting the appeals filed by the respondent observed as under:-

> *"The activity of a person as a distributor is not affected because of his being a manufacturer, or importer etc. The reduction in rate of tax deductible u/s 153(1)(a) of the Ordinance under Clause 24A of part-II of the 2nd schedule is available to all distributors of pharmaceutical products without any prequalification of the same. In our considered opinion the appellant taxpayer being a manufacturer cum distributor."*

12. The order passed by the ATIR dated 18.11.2015 allowing the appeals filed by the respondent No. 3has been assailed before this Court by way of filing Income Tax References No. 70 & 71 of 2016 by the petitioner, which are pending adjudication before this Court. The perusal of the I.T.R. Nos.70 & 71 of 2016 would reveal that the matter was taken up on 14.04.2016 and the learned counsel who appeared on behalf of the petitioner/Commissioner Inland Revenue, RTO, Islamabad sought time to document the said references properly.

13. Respondent No.3 filed applications before respondent No.2 under Section 10(1) of the Federal Tax Ombudsman Ordinance 2000, against delay in implementation of the order dated

18.11.2015. The respondent No.2 while allowing the complaint observed as under:-

> *"9. Delay in allowing appeal effect to the ATIR Islamabad's order dated 18.11.2015 and failure to dispose of refund applications for Tax Years 2010 and 2011, under Section 170(4) of the Ordinance, within the stipulated time, tantamounts to maladministration, in terms of Section 2(3)(ii) of the FTO Ordinance.*
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> ***RECOMMENDATIONS:-***
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> *10. FBR to direct:-*
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> *(i) the Commissioner-IR, RTO, Islamabad to allow appeal effect to CIR, (Appeals-III) Islamabad's order dated 18.11.2015 subject to the decision of Hon'ble Islamabad High Court, in lieu of surety bond, to the satisfaction of CIR concerned and a settle balance refund for Tax Years 2010 and 2011 alongwith additional payment for delayed refund in terms of Section 171(2)(a) of the Ordinance, after providing opportunity of heading, as per law; and*
> *(ii) report compliance within 45 days."*

14. Being aggrieved of the said orders of the respondent No.2, petitioner preferred representation before respondent No.1 which was dismissed while upholding the orders of F.T.O dated 03.11.2021.

15. The sole ground for filing of the instant writ petition is that the respondent No.2 lacks jurisdiction in view of section 9(2) of the F.T.O. Ordinance 2000 as no maladministration had occasioned on behalf of the petitioner and there was no justification for issuance direction for implementation of the orders dated 28.11.2015 as the same had been assailed before this Court by way of filing ITRs No.70 & 71 of 2016.

16. It is my view that mere pendency of ITRs against the impugned orders would not be suffice to suspend the obligation of refund. Guidance is solicited from **2005 PTD 1825(Lahore),** wherein it has been held as under:-

> *Ïn sofar as reference filed by the respondents against the order passed by the learned Income Tax Appellate Tribunal is concerned, learned counsel for the petitioner after consulting the record states that there is no stay application therein, nor has any order of stay been passed by the learned Bench of this Court dealing with the said matter. The foregoing reasons given for the respondents do not provide any justification to withhold the refund amount adjudicated in favour of the petitioner. Reference is made to the orders passed in Writ Petition No.3764 of 2004 titled Messers Universal Foot Wear v. Deputy Commissioner of Income-tax and Writ Petition No.6037 of 2001 titled State Cement Corporation of Pakistan v. Chairman Land Zone, Lahore wherein this Court allowed the prayer of refund after holding that the mere fact of pendency of proceedings against the order of refund do not suffice to suspend the obligation to refund."*

17. The dictum ibid guides to hold that the refund claim order is still in field hence the department was under obligation to implement the same. In such circumstances, the pendency of any proceedings before any other forum had hardly any relevance. It is noted that the impugned order although is subject matter of the ITRs pending before this Court but there is no injunction/restraining order issued by this Court in the above captioned ITRs, since the orders impugned are in field, therefore, liable to be implemented.

18. This Court while deciding the matter in I.T.R. No.17 of 2020 has observed in paragraph No. 25, which is as under:-

> *"25. Before parting with this judgment, this Court comes to an irresistible conclusion that the FBR has to look into the affairs of the refund claim by exercising the powers in terms of Section 4(c)(g)(j)(k)(s) of the Federal Board of Revenue Act, 2007 for effective implementation of tax reforms, including the enforcement of refund orders, take appropriate measures, including internal control to combat corruption within the organization. The Board may also check and to ensure integrity of employees dealing with the affairs of refund claim and shall introduce accountability perform based system of the employees so that the tax payers confidence be restored and they started believing in the system of the tax, their claims of refund may also be decided effectively, as a result of the same, their grievances and complaints shall be settled within the legislative timeframe provided in Sections 170 and 171 of the Income Tax Ordinance, 2001, therefore, the Board shall issue necessary directions to the following effect:*

1. A Committee be constituted to overview the refund applications, which are pending with the tax department where officials are not adjudicating upon the claims within the prescribed period under the law.
2. The Committee so constituted shall suggest the reforms to eliminate the delay in the pending refund claims after thorough probe with recommendations, including but not limited to conduct of officials.
3. The Committee shall also give recommendation for timely decision of refund applications, including the criteria of compensation."

19. Since the petitioner has not been able to point out any defect in the order passed by the F.T.O. or that of Appellate Authority.Therefore, the instant writ petition stands **dismissed.**

(ARBAB MUHAMMAD TAHIR)
JUDGE

A.R.ANSARI

Announced in the open Court on ___.10.2022

JUDGE.