

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Writ Petition No.2155 of 2015

Supernet Limited through Deputy General Manager
Vs.
Federation of Pakistan through Secretary
Finance, Islamabad & two others.

Petitioner's by: ***Hafiz Arfat Ahmed Ch., Advocate***
Respondents by: ***Malik Waris Khokhar, Advocate***
Date of hearing: ***13.07.2015.***

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AAMER FAROOQ, J.- Through the instant petition under Article 199 of the Islamic Republic of Pakistan, 1973 the petitioner has assailed order dated 10.06.2015 whereby respondent No.3 has directed Bankers of the petitioner that the accounts of the petitioner shall remain attached to effect recovery of Rs.137,913,652/- from the petitioner as well as recovery notice dated 18.05.2015.

02. Respondent No.3 issued a notice under section 137(2) of the Income Tax Ordinance, 2001 (the **Ordinance**) to the petitioner on 26.05.2014 raising a demand of Rs.274,840,530/- with respect to Tax Year 2013. The said notice was assailed by the petitioner

before the Commissioner Inland Revenue (Appeals). The appeal filed by the petitioner was allowed vide order dated 31.12.2014 and the matter was remanded. In the post-remand proceedings while adjudicating the matter on 31.03.2015, the referred respondent also passed order pertaining to tax years 2008 to 2010 and 2012. A demand of Rs.68413777/-, Rs.16785626/-, Rs.11571628/- and Rs.97463429/- was created by virtue of the referred order. The petitioner challenged order dated 31.03.2015 before Federal Tax Ombudsman by filing a complaint under section 9 of the Establishment of the Office of the Federal Tax Ombudsman Ordinance, 2000. During pendency of the complaint, respondent No.3 issued a recovery notice dated 18.05.2015 under section 140 of Income Tax Ordinance, 2001. The referred notice was assailed through Writ Petition No.1917/2015 which was disposed of by this Court on 16.06.2015. On 18.06.2015 Federal Tax Ombudsman accepted the complaint filed by the petitioner and held that passing of the orders for the tax years 2008 to 2010 and 2012 is in violation of section 124-A of the Ordinance and tantamount to maladministration under section 2(3) (2) of the Federal Tax Ombudsman Ordinance, 2000. On 10.06.2015 respondent No.3 issued an order whereby the Bankers of the petitioner were directed to attach the accounts of the petitioner for effecting recovery of sum of Rs.137913652/-.

03. During the course of arguments the learned counsel for respondents has produced letter dated 12.06.2015 addressed to the Bankers of the petitioner whereby notice dated 23.05.2015 was withdrawn.

04. The learned counsel for the petitioner, inter alia, submitted that the recovery notice dated 18.05.2015 is not valid inasmuch as the Federal Tax Ombudsman on 18.06.2015 allowed the complaint of the petitioner and observed that inclusion of tax years 2008 to 2010 and 2012, while adjudicating the matter in post remand proceedings, is in violation of section 124-A of the Ordinance and recommended the Federal Board of Revenue to direct the Commissioner Inland Revenue (LTU), Islamabad to revisit impugned order for Tax Years 2008 to 2010 and 2012 in accordance with Appellate Tribunal Inland Revenue direction for tax year 2011.

05. The learned counsel for respondents No.2 & 3, inter alia, submitted that recovery notice to the extent of Rs.137913652/- has been withdrawn whereas the notice dated 18.05.2015 cannot be withdrawn as the Department is assailing the decision/finding by the Federal Tax Ombudsman.

06. The petitioner filed a complaint before Federal Tax Ombudsman assailing determination of the tax liability while adjudicating the matter pertaining to tax year 2013, with respect to tax years 2008 to 2010 and 2012 before the Federal Tax Ombudsman. The referred complaint was allowed and it was observed that the impugned order is in violation of section 124-A of the Ordinance. The Federal Tax Ombudsman directed respondent No.2 to revisit the impugned order. The office of Federal Tax Ombudsman was created under section 3 of Establishment of Office of Federal Tax Ombudsman Ordinance,

2000 to investigate any allegation of maladministration on part of the Revenue Division or any tax employee. In this behalf maladministration has been defined in section 2(3) of the referred Ordinance and inter alia includes a decision which is contrary to law, rules and regulations or is perverse, arbitrary and unjust. The Federal Tax Ombudsman if finds that maladministration has taken place can make recommendations for implementation to the said effect and in case of defiance with regard to implementation of recommendations the Federal Tax Ombudsman may refer the matter to the President who may, in his discretion, direct the Revenue Division to implement recommendations and inform the Federal Tax Ombudsman, accordingly. In the instant case, the Federal Tax Ombudsman recommended respondent No.2 to direct the Commissioner Inland Revenue (LTU), Islamabad to revisit the order with respect to the tax years 2008 to 2010 and 2012. The notice impugned in the present writ petition dated 18.05.2015 is with respect to the tax liability for the referred tax years. The effect of the recommendations made by the Federal Tax Ombudsman is not to set aside the order passed by the statutory body/persons under various Tax Laws, however, it has the power to make recommendation only, which are binding, unless set aside. The impugned notice is in direct conflict with the recommendations made by the Federal Tax Ombudsman and in response to the query made by this Court learned counsel for respondents submitted that the sole basis for demand in respect of the above tax years is the decision/order dated 31.03.2015 passed by the Commissioner Inland Revenue (LTU), Islamabad.

Since Federal Tax Ombudsman has observed that order dated 31.03.2015 is in violation of section 124-A of the Ordinance and respondent No.2 has been recommended to direct the concerned Commissioner to revisit the same, therefore, the impugned notice is not sustainable.

07. In view of above, the instant petition is allowed and notice dated 18.05.2015 is set aside.

(AAMER FAROOQ)
JUDGE

Altaf Malik

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