

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.2264 of 2018
Allama Iqbal Open University
Versus
Federation of Pakistan and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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06.04.2022

**Mr. Muhammad Usman Shaukat, Advocate along with Fazal-e-Rabbi, Deputy Director (Legal) for the petitioner / A.I.O.U.,
Syed Ishfaq Hussain Naqvi, Advocate for F.B.R.**

Through the instant writ petition, the petitioner, Allama Iqbal Open University seeks a direction to the respondent Department to refund Rs.53.702 million which was held by the Appellate Tribunal Inland Revenue, Islamabad (“A.T.I.R.”) to have been wrongfully deducted from the petitioner’s bank account during the pendency of the petitioner’s appeal against the order-in-original dated 24.04.2015.

2. The record shows that respondent No.2 (Officer Inland Revenue) issued show cause notice dated 30.12.2014 to the petitioner under Section 11(4) of the Sales Tax Act, 1990 (“the 1990 Act”), wherein it was alleged that the petitioner had made taxable purchases from unregistered suppliers during the period from July, 2012 to June, 2013 and had failed to withhold sales tax at the rate of 1/5th on the said purchases. The proceedings pursuant to the said show cause notice culminated in order-in-original dated 24.04.2015, whereby sales tax liability amounting to Rs.104,847,089/- under Section 11(4) of the 1990 Act was created against the petitioner along with default surcharge under Section 34 and penalty under Section 33(5) of the said Act. Aggrieved by the said order, the petitioner filed an

appeal before respondent No.3 (Commissioner Inland Revenue) who, vide order dated 30.11.2015, dismissed the appeal and confirmed the order-in-original dated 24.04.2015. The petitioner assailed the said order dated 30.11.2015 in an appeal before respondent No.4 (A.T.I.R.). During the pendency of the said appeal, respondent No.2 recovered Rs.53,702,159/- from the petitioner's bank accounts.

3. The petitioner's appeal before the A.T.I.R. was allowed vide order dated 23.12.2015 and the orders passed by respondents No.2 and 3 were annulled. The said order dated 23.12.2015 has been assailed by the respondent Department in sales tax reference before this Court, which is still pending adjudication.

4. Vide letters dated 01.12.2016, 27.12.2016, 27.01.2017 and 21.02.2017, the petitioner requested the Chief Commissioner, Regional Tax Office, Islamabad to refund Rs.53,702,159/- that had been recovered from the petitioner's bank accounts during the pendency of the petitioner's appeal before the A.T.I.R. No response was given to the said letters.

5. On 06.07.2017, the petitioner filed a complaint against the respondent Department before the Federal Tax Ombudsman, which did not intervene in the matter on account of the pendency of sales tax reference before this Court. The petitioner's review application dated 15.09.2017 was also turned down by the Federal Tax Ombudsman, vide order dated 15.11.2017. On 06.06.2018, the petitioner filed the instant writ petition praying for a direction to the respondents to refund the amount recovered from the petitioner's bank accounts during the pendency of its appeal before the A.T.I.R.

6. Vide order dated 14.02.2022, this Court issued the following direction to respondent No.5 (Chief Commissioner Inland Revenue):-

“Learned counsel for the petitioner has protested that this matter has been pending ever since 2018. He drew the attention of the Court to the admitting note dated 07.06.2018 and submitted that pursuant to an order-in-original dated 24.04.2015, an amount of Rs.53.702 million was deducted from the petitioner’s bank account. He further submitted that although the said order-in-original was maintained by the Commissioner Inland Revenue (Appeals-II) but the order-in-original as well as the first appellate order was set aside by the Appellate Tribunal Inland Revenue (“A.T.I.R.”) vide order dated 23.12.2015. After the said order dated 23.12.2015 was passed by the A.T.I.R., the petitioner submitted applications for the refund of the said amount which was deducted from its bank account, but the said applications have been left undecided for more than six years. These applications are annexed at pages-37 to 41 of this petition. The mere pendency of an Income Tax Reference against A.T.I.R.’s order dated 23.12.2015 does not absolve respondent No.5 from deciding the petitioner’s applications for refund. There is no injunctive order that has been issued by this Court in the said Income Tax Reference. The pendency of the said Reference is also not a valid ground for denying the petitioner’s applications for refund. Therefore, respondent No.5 is directed to decide the petitioner’s said applications for refund prior to the next date of hearing, after affording its representative an opportunity of a hearing.”
(Emphasis added)

7. On 30.03.2022, Syed Ishfaq Hussain Naqvi, learned counsel for the F.B.R. brought on record documents showing that in order to process the petitioner’s claim for refund, a query was raised by the Assistant Commissioner Inland Revenue (Sales Tax Refund Unit), Islamabad as to whether there was any outstanding recoverable demand against the petitioner. The Assistant Commissioner Inland Revenue informed the Assistant Commissioner Inland Revenue (Sales Tax Refund Unit) that a demand of Rs.119,243,383/- against the petitioner with respect to the tax year 2020 was outstanding.

8. Vide order dated 25.03.2022, the Assistant Commissioner Inland Revenue (Refund Division, South Zone), Islamabad sanctioned the refund of Rs.53.702 million in favour of the petitioner under Section 66 of the 1990 Act and the Refund Rules in Chapter-V of the Sales Tax Rules, 2006. However, this amount of Rs.53.702 million was adjusted against the outstanding recoverable demand of Rs.119,243,383/-.

9. On 30.03.2022, learned counsel for the F.B.R. submitted that the petitioner was well aware as to its liability to pay Rs.119,243,383/- for which a demand had been issued to the petitioner. He sought some time to bring on record the said demand notice.

10. Learned counsel for the F.B.R. has brought on record order dated 15.02.2022 passed by the Assistant/Deputy Commissioner (Withholding Tax) Inland Revenue, Unit-III, Range-I Zone, RTU, Islamabad under Section 161(1) of the Income Tax Ordinance, 2001 ("the 2001 Ordinance"), whereby an amount of Rs.119,243,383/- was held to be payable by the petitioner. This order was assailed by the petitioner in an appeal under Section 129 of the 2001 Ordinance. Vide order dated 05.04.2022, the Commissioner (Appeal-II) Inland Revenue, Islamabad allowed the said appeal; the order dated 15.02.2022 was set-aside and the matter was remanded to the Assistant/Deputy Commissioner (Withholding Tax) Inland Revenue with the direction to examine the record and to pass a speaking order after taking into account the petitioner's reply. For the purposes of clarity, paragraph 4 of the said order is reproduced herein below:-

"4. After going the record, evidence, written and verbal submissions of the AR of the

appellant, and examination of provided details/documents during the hearing proceedings I found that the stance of the AR regarding the impugned heads are correct and assessing officer has arbitrarily applied the tax rates of 35% on Rent and 7.5% on contracts without pointing out any specific transactions and also ignored the rebate on Salaries head. The contention of the AR is valid as evident from the face of the order and as the order needs to be speaking and judicious to meet the end of justice. Therefore, the impugned order is remanded back to the department in exercise of the power granted to the undersigned under section 129(1)(b) of the Ordinance with the directions to examine record and pass a speaking order after taking into account reply of the appellant. The appellant is also directed to explain his position and submit records/documents during the re-assessment proceedings.”

11. The respondent Department admits that the petitioner was entitled to a refund of Rs.53,702,159/-. That is why the sales tax refund sanctioned order No.2/2022 dated 25.03.2022 was issued for an amount of Rs.53.702 million by the office of the Assistant Commissioner Inland Revenue (Refund Division, South Zone), Regional Tax Office, Islamabad. In this way, the petitioner’s prayer for a direction to the respondent Department to refund the said amount has borne fruit.

12. The said order shows that the amount for which the refund had been sanctioned (i.e. Rs.53.702 million) had been adjusted against the outstanding income tax demand of Rs.119,243,383/- for the tax year 2020 against the petitioner. Now that the said demand of Rs.119,243,383/- (which was on the basis of the order dated 15.02.2022 passed by the Assistant/Deputy Commissioner (Withholding Tax) Inland Revenue) has been set-aside by the Commissioner (Appeal-II) Inland Revenue vide order dated 05.04.2022, the respondent

Department is under an obligation to refund the said amount of Rs.53,702,159/- to the petitioner without any further delay.

13. Mere pendency of a sales tax reference against the order dated 23.12.2015 passed by the A.T.I.R. or the pendency of the proceedings pursuant to the remand order dated 05.04.2022 passed by the Commissioner (Appeal-II) Inland Revenue cannot serve as a valid ground for the inaction on the respondent Department's part to give the benefit of the already sanctioned refund to the petitioner.

14. The petitioner has been clamoring for the refund ever since order dated 23.12.2015 passed by the A.T.I.R. in its favour. The delay of more than six years on the part of the respondent Department to sanction the petitioner's claim for refund negatives the concept, 'the Government is the best taxpayer.' Hence, for this delay of more than six years, the respondent Department is also under an obligation to pay interest in accordance with the provisions of the 1990 Act.

15. The petition stands allowed in the above terms with no order as to costs.

(MIANGUL HASSAN AURANGZEB)
JUDGE