

HCJD/C-121
ORDER SHEET

ISLAMABAD HIGH COURT
ISLAMABAD

WRIT PETITION NO.3869/2014

M/S ARSLAN POULTRY (PVT) LIMITED
VERSUS
OFFICER INLAND REVENUE, ETC.

S.No. of order/ Proceeding	Date of hearing	Order with signature of Judge, and that of parties or counsel, where necessary.
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01-09-2014 Mr Hafiz Muhammad Idrees Advocate for the
petitioner.

Briefly stated, the facts of the case are that an order was passed by an appropriate officer of Inland Revenue, Audit Unit-IV, Large Tax Payers Unit, Islamabad dated 30-06-2014. The order was passed in exercise of powers vested under Section 122(1) read with Section 122(5) of the Income Tax Ordinance, 2001. The petitioner preferred statutory appeal under Section 127 of the Income Tax Ordinance, 2001 (hereinafter referred to as the 'Ordinance'). An application dated 03-07-2014 was also filed along with memo of appeal seeking interim relief. The said application was dismissed by the respondent No.2 vide order dated 07-07-2014. Against the said order, the petitioner preferred an appeal under Section

131 of the Ordinance and the same was decided vide order dated 10-07-2014 passed by the Appellate Tribunal, Inland Revenue, Islamabad. The learned Tribunal disposed-off the appeal of the petitioner. The petitioner has sought to invoke the jurisdiction of this Court by impugning the order dated 10-07-2014 passed by the learned Tribunal.

2. The jurisdiction of this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (hereinafter referred to as 'Constitution') is limited to the extent as provided there under. Where there is an alternate remedy available, it is the mandate of the Constitution that this Court shall not exercise its jurisdiction. Moreover, it is the duty of this Court to give effect to the legislative intent of the Statute which in this case is the Ordinance. Under Section 133 of the Ordinance, any person aggrieved by the order of the Appellate Tribunal passed under sub-Section 7 of Section 132 may file a 'Reference' before this Court within the time stipulated therein. The Reference can raise question(s) of law arising out of the order of the Appellate Tribunal. Furthermore, the

Reference is to be heard by a Bench of not less than two Judges of this Court.

3. The learned counsel contends that the learned Tribunal has not passed an order under sub-Section 7 of Section 132 of the Ordinance, so as to bring the case of the petitioner within the purview of Section 133 *ibid*. The learned counsel has stressed that the impugned order has been passed under sub-Section 5 of Section 131 and, therefore, it is outside the scope of Section 133 of the Ordinance. The learned counsel has cited the judgments reported as '*Messers Zarghoon Zarai Corporation Vs. Collector of Customs*' (2006 P.T.D. 534), '*Z. N. Exports (Pvt.) Ltd. Vs. Collector of Sales Tax*' (2003 P.T.D. 1746), '*Messers Aidy Vee & Co. (Pvt.) Ltd. through Director Vs. Taxation Officer of Income Tax, Lahore & 02 others*' (2009 P.T.D. 1715), and '*Dawood Textile Printing Industries (Pvt) Ltd Vs. Federation of Pakistan through Secretary, Revenue Division, etc.*' [(2009) 100 TAX 344 (H.C. Lah.)], in support of his contention that the impugned order is amenable to the jurisdiction of this Court under Article 199 of the Constitution.

4. The contention raised by the learned counsel that the Tribunal has passed the order under Section 5 of Section 131 of the Ordinance is misconceived. The sub-Section relied upon by the learned counsel starts with a non-obstante clause and specifically provides that mere filing of an appeal before the Tribunal cannot be construed as suspension of the recovery proceedings, unless the recovery has been stayed by the Tribunal while the appeal is pending. It further makes it mandatory that if the Tribunal refuses to stay the recovery proceedings, the Tax shall be payable in accordance with the assessment made in the case. The sub-section contains two provisos. The first proviso empowers the Tribunal to grant a stay of the recovery of Tax for a period not exceeding 180 days in aggregate. However, conditions for exercising this power are also enumerated in the proviso. The second proviso relates to computing the period of 180 days. There is no ambiguity in the language of sub-Section 5 of Section 131 of the Ordinance and it merely relates to the power of the Tribunal to grant or refuse stay of the recovery of Tax, while the main appeal is pending.

5. In the present case, the main appeal of the petitioner has also been disposed-off by the learned Tribunal. The only statutory course available to the petitioner in the circumstances was to file a Reference against the said order under Section 133 of the Ordinance.

6. The Judgements relied upon by the learned counsel have been examined and the same have been found as to be distinguishable on the facts relating to the present petition. In the case reported as '*Z. N. Exports (Pvt.) Ltd. Vs. Collector of Sales Tax*' (2003 P.T.D. 1746), the appeal was pending before the Tribunal and an injunctive order was also passed. The jurisdiction of the High Court was invoked on the grounds that the injunctive order had lost its efficacy due to the lapse of the statutory period of six (06) months as contemplated in proviso to sub-section 4 of Section 46 of the Sales Tax Act, 1990. It was not the case that the main appeal was decided by the Tribunal. The case of '*Messers Zarghoon Zarai Corporation Vs. Collector of Customs*' (2006 P.T.D. 534), also relates to the recovery proceedings initiated while the main appeal was pending before the Commissioner Income Tax Appeals. The case cited as '*Dawood Textile Printing Industries (Pvt) Ltd Vs. Federation of*

Pakistan through Secretary, Revenue Division, etc. [(2009) 100 TAX 344 (H.C. Lah.)], also relates to Section 46(4) of the Sales Tax Act, 1990, while the appeal was pending before the Tribunal.

7. This Court is not persuaded to accept the argument of the learned counsel for the petitioner that despite the statutory provisions of Section 133 of the Ordinance, this Court can exercise its extra ordinary jurisdiction under Article 199 of the Constitution. Firstly, alternate remedy by way of filing a Reference against the impugned order is available to the petitioner and, therefore, the order is not amenable to the writ jurisdiction; secondly, it is the duty of this Court to enforce the provisions of the Ordinance and give effect to the legislative intent, and thirdly, it is a settled law that "when law requires an act to be done in a particular manner, it had to be done in that manner alone and such dictate of law would not be termed technical", as held in the case of *"Muhammad Anwar & others Vs. Mst. Ilyas Begum & others"* (P.L.D. 2013 S.C. 255). This Court, therefore, by exercising its jurisdiction under Article 199 of the Constitution would defeat the legislative intent as provided under Section 133 of the Ordinance. It would also

give rise to an anomaly that when the Statute provides for a Reference to be filed against the order passed by the Tribunal, restricting it to a question of law arising out of the order and to be heard by a Bench of at least two Judges of the High Court, the exercise of jurisdiction by this Court under Article 199 would defeat the legislative intent and thereby render the statutory provisions as redundant.

8. In the light of the above, the petition is not maintainable under Article 199 of the Constitution and, therefore, the same is dismissed in limine.

9. However, the petitioner has a statutory remedy of filing a reference under Section 133 of the Ordinance against the impugned judgement of the Tribunal, provided a question of law arises out of the judgment of the Tribunal or was raised in the pleadings or before the Tribunal but not adverted to.

(ATHAR MINALLAH)
JUDGE

Announced in open Court on 05th September, 2014.

JUDGE

Approved for reporting.

JUDGE

*Luqman/