

ORDER

[Islamabad High Court]

Before Miangul Hassan Aurangzeb, J

WI-TRIBE PAKISTAN LTD.

Versus

DEPUTY COMMISSIONER INLAND REVENUE and others

W.P. No.930 of 2016, decided on 30th January, 2018.

MIANGUL HASSAN AURANGZEB, J.---Through the instant writ petition, the petitioner, Wi-tribe Pakistan Limited, impugns the order dated 03.02.2016, passed by respondent No.1 (The Deputy Commissioner, Inland Revenue, Islamabad), whereby the petitioner's application for the issuance of refunds under section 170 of the Income Tax Ordinance, 2001 ("the 2001 Ordinance") for the tax years 2011 and 2013, was rejected.

2. Learned counsel for the petitioner submitted that the petitioner is providing long distance international and wireless local loop internet services in Pakistan, and has been issued a license by the Pakistan Telecommunication Authority; that the petitioner has regularly been filing income tax returns; that the petitioner had claimed refund of various amounts for the tax years 2011 to 2013, and in this regard, on 06.07.2015, applications were submitted under section 170 of the 2001 Ordinance; that instead of processing the petitioner's refund applications, the respondents department started verification of the tax deductions; that even after the verification was completed, a refund order was not passed within a period of sixty days; that respondent No.3 started proceedings for the amendment of the assessment against the petitioner just to deprive him of the benefit of the refunds; that the refunds claimed by the petitioner were wiped out due to the tax demands created against the petitioner; that the appeals filed by the petitioner against the amendment orders are pending before the Commissioner (Appeals); that tax credits were allowed to the petitioner after rectification applications were filed; that after adjusting the demand created against the petitioner, the refund amount for the tax years 2011 and 2013 was determined; that since the refund was not genuinely determined, the petitioner filed Writ Petition No.231/2015; that during the pendency of the said writ petition, the petitioner's refund applications were turned down, vide impugned order dated 03.02.2016; that thereafter, respondent No.1 called upon the petitioner, vide notice dated 24.02.2016, to pay the arrears of tax by 01.03.2016; and that the said impugned order dated 03.02.2016 is wholly unlawful, and liable to be struck down under the constitutional jurisdiction of this Court.

3. On the other hand, learned counsel for respondents Nos.1 to 3 raised a preliminary objection to the maintainability of this petition. Learned counsel for the said respondents submitted that the impugned order dated 03.02.2016 was passed under section 170(4) of the 2001 Ordinance; that against the rejection of the application for refund, an alternative remedy of an appeal is provided under section 127(1) of the 2001 Ordinance; that in view of the said alternative remedy, the instant petition is not maintainable; and that the petitioner has raised disputes which required a factual inquiry. Learned counsel for respondents Nos.1 to 3 prayed for the writ petition to be

dismissed.

4. I have heard the contentions of the learned counsel for the contesting parties.

5. I propose first to decide the objection to the maintainability of this petition raised by the learned counsel for respondents Nos. 1 to 3.

6. Perusal of the impugned order dated 03.02.2016 shows that the same has been passed under section 170 of the 2001 Ordinance. Vide the said order, the petitioner's applications for refunds for the tax years 2011 and 2013 have been rejected. Section 127 of the 2001 Ordinance provides that any person dissatisfied with any order passed by the Commissioner or an officer of Inland Revenue under section 170 may prefer an appeal to the Commissioner (Appeals) against the order. Since the alternative remedy of filing an appeal was available to the petitioner against the impugned order dated 03.02.2016, I find the instant petition not to be maintainable.

7. The petitioner's entire case is that after determining the refund amount of Rs.6,874,109/- for the tax year 2011 and Rs.24,859,966/- for the tax year 2013, the petitioner's applications for refund could not have been rejected on the basis of recommendations made by the Federal Tax Ombudsman. I am of the view that this is a matter that the petitioner could have agitated before the appellate forum. This is not a case of absence or excessive jurisdiction so as to warrant the filing of a writ petition.

8. In view of the above, this petition is dismissed as not maintainable.

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