

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present:

Mr. Justice Yahya Afridi, CJ
Mr. Justice Muhammad Shafi Siddiqui
Mr. Justice Shakeel Ahmad

Civil Petition No. 4177 of 2024

(Against the judgment dated 20.06.2024 of the Islamabad High Court, Islamabad passed in Writ Petition No.1670/2021)

M/s Payoneer Inc., through its authorized officer. ... Petitioner

Versus

*Federation of Pakistan through Secretary, Revenue Division,
M/o Finance, Govt. of Pakistan, Islamabad and others. ... Respondents*

For the Petitioner: Mr. Jahanzeb Awan, ASC.

For the Respondents: Mr. Imtiaz Ahmed, ASC.
Syed Rifaqat Hussain Shah, AOR.

Date of Hearing: 09.04.2025.

ORDER

Muhammad Shafi Siddiqui, J. This petition for leave to appeal arises out of a judgment dated 20.06.2024 passed in Writ Petition No.1670 of 2021.

Case brief

2. The petitioner being a non-resident entity engaged in transaction(s) based on the Home Remittance Agreement signed with the Mobilink Microfinance Bank Limited involving transfer of money from customers located outside Pakistan to the beneficiaries in Pakistan. On 11.11.2020 in terms of section 176 of the Income Tax Ordinance, 2001¹ (hereinafter referred

¹ **176. Notice to obtain information or evidence.** (1) The Commissioner may, by notice in writing, require any person, whether or not liable for tax under this Ordinance –

(a) to furnish to the Commissioner or an authorised officer, any information relevant to any tax leviable under this Ordinance or to fulfill any obligation under any agreement with foreign government or governments or tax jurisdiction, as specified in the notice; or]

(b) to attend at the time and place designated in the notice for the purpose of being examined on oath by the Commissioner or an authorised officer concerning the tax affairs of that person or any other person and, for that purpose, the Commissioner or authorised officer may require the person examined to produce any accounts, documents, or computer-stored information in the control of the person [; or]

(c) the firm of chartered accountants or a firm of cost and management accountants as defined under the Cost and Management Accountants Act, 1966 (XIV of 1966)], as appointed by the [Board or the Commissioner], to conduct audit under section 177, for any tax year, may with the prior approval of the Commissioner concerned, enter the business premises of a taxpayer, to obtain any information, require production of any record, on which the required information is stored and examine it within such premises; and such firm may if specifically delegated by the Commissioner, also exercise the powers as provided in sub-section (4).]

to as 'ITO'), the respondent-department required the petitioner to furnish information regarding compliance with tax laws applicable in Pakistan for offshore digital services/digital presence in Pakistan.

The petitioner responded on 18.12.2020 claiming therein the transactions of Home Remittance Agreement signed with the Mobilink Microfinance Bank Limited involving transfer of money from customers located outside Pakistan to the beneficiaries in Pakistan. The petitioner, however, denied any physical and digital services/digital presence in Pakistan. Followed by this response on 26.03.2021 the petitioner claimed to have been registered with the Federal Board of Revenue. On 28.04.2021 notices for tax years 2019-20 under section 114(4) of the ITO were served upon the petitioner for furnishing return of the income tax under sub-section (1) of section 114 of the ITO. The petitioner took the rescue of its being non-resident entity incorporated in the USA with a permanent establishment in Pakistan and claimed to have been protected by the double taxation treaty between Pakistan and USA (Convention between the Government of the United States of America and the Government of Pakistan for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income). The petitioner thought of invoking the jurisdiction of the

[(1A) A special audit panel appointed under sub-section (11) of section 177, for any tax year, may, with the prior approval of the Commissioner concerned, enter the business premises of a taxpayer, to obtain any information, require production of any record, on which the required information is stored and examine it within such premises and such panel may if specifically delegated by the Commissioner, also exercise the powers as provided in subsection(4).]

(2) ...

(3) ...

(4) For the purposes of this section, the Commissioner shall have the same powers as are vested in a Court under the Code of Civil Procedure, 1908 (Act V of 1908), in respect of the following matters, namely: --

(a) enforcing the attendance of any person and examining the person on oath or affirmation;

(b) compelling the production of any accounts, records, computer stored information, or computer;

(c) receiving evidence on affidavit; or

(d) issuing commissions for the examination of witnesses.

(5) ...

Islamabad High Court instead making compliance of the above and filed Writ Petition No.1670 of 2021, which was dismissed on 20.06.2021, hence this petition for leave to appeal.

3. The High Court dealt with the issue of the impugned notice/show-cause notice very aptly. The registration alone under the ITO or the issuance of National Tax Number does not qualify as a coercive action against any entity, hence the contention of the petitioner that there should have been a prior notice before registration would not make any difference. The primary grievance of the petitioner, however, remained that the notice under section 114 of the ITO was issued, which may affect petitioner's right, as the laws in respect of non-resident entity is well settled. The questions however remain if a better and statutory recourse is not available to avail the alternate writ jurisdiction. The simple answer is that such statutory recourse is available under ITO which has provided forums to resolve the raised questions. Mr. Awan has not been able to show if those forums are not efficacious.

4. Mr. Jahanzeb Awan, the learned counsel for the petitioner ultimately relied upon the *Geofizyka*². Notwithstanding the fact that the case of foreign entrepreneur was discussed keeping in consideration the effect of double taxation treaty for the avoidance of double taxation yet the significant aspect of the referred case was that it arises out of the forums provided under the revenue hierarchy. This Court in *Geofizyka* dealt with those issues once the tax reference was decided by the Islamabad High Court in Tax Reference No.16 of 2005. Thus issuance of a show-cause notice cannot be equated to be one without jurisdiction hence the High Court was right in not exercising

² *Commissioner Inland Revenue (Legal Division), LTU, Islamabad v. Messrs Geofizyka Krakow Pakistan Limited* (2017 PTD 1526).

writ jurisdiction and left it to the petitioner to exhaust its remedy under the hierarchy of ITO.

5. We have also noticed that the impugned judgment of the learned single Judge of the High Court in Writ Petition No.1670 of 2021 is directly assailed before this Court in the aforesaid petition without exhausting the remedy of an Intra Court Appeal. Only under exceptional circumstances, to be adjudged by this Court, such indulgence could be extended which does not exist in the case. Reliance is placed upon *Metropole Cinema*³ and *Hub Power Company Limited*⁴.

6. In view of the foregoing, leave to appeal is declined and consequently this petition is dismissed.

Chief Justice

Judge

Judge

Islamabad:
09.04.2025
[**]

Approved for Reporting

³ (2014 SCMR 649).

⁴ (PLD 2023 Supreme Court 207).