

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

No. 350 /writ

Dated 07/01/12

72-

From

The Deputy Registrar (Judl),
Islamabad High Court,
Islamabad.

To

1. Federal Board of Revenue, Islamabad through its Chairman.
2. Chief Commissioner Inland Revenue, Large Taxpayers Unit, Mauve Area, G-9/1, Islamabad.
3. Commissioner Inland Revenue, Large Taxpayers Unit, Mauve Area, G-9/1, Islamabad.
4. Deputy Commissioner Inland Revenue, Audit-IV, Large Taxpayers Unit, Mauve Area, G-9/1, Islamabad.

Subject:- WRIT PETITION NO 3446-2011

WI-Tribe Limited V/S Federal Board of Revenue etc

Dear Sir,

In continuation of this Court's Letter No. 24797-

800/Writ, Dated 27-12-2011, I am directed to forward for

information and immediate compliance a copy of this

Court's order dated 30-12-2011 passed in the above noted

case.

Yours Faithfully

ASSISTANT REGISTRAR (JUDL)
FOR DEPUTY REGISTRAR (JUDL)

M (Legal)

Circular and also placed in the file

FBR e-Dox No. 7505-R
Received in M(L) Office on 17-01-12
on 22 JAN 2012

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FBR e-dox No. 7505-R
Received in SS 18/1/2012
(Lia-II) Office on 21/1/12

21/1/12

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

171

W.P. NO. 3446 /2011

Wi-Tribe Limited, 14-N, Sector F-8 Markaz, Near office of
the Excise & Taxation Officer, Islamabad.

PETITIONER

VERSUS

1. Federal Board of Revenue, Islamabad through its
Chairman.
2. Chief Commissioner Inland Revenue, Large
Taxpayers' Unit, Mauve Area, G-9/I, Islamabad.
3. Commissioner Inland Revenue, Large Taxpayers'
Unit, Mauve Area, G-9/I, Islamabad.
4. Deputy Commissioner Inland Revenue, Audit-IV,
Large Taxpayers' Unit, Mauve Area, G-9/I,
Islamabad.

RESPONDENTS

PETITION: UNDER ARTICLE 199 OF THE CONSTITUTION
OF ISLAMIC REPUBLIC OF PAKISTAN, 1973

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Respectfully Sheweth

That the petitioner is an enlisted Public Limited Company,
incorporated in Pakistan and having its registered office at

Examined
Copy Supply Section
Islamabad High Court
Islamabad

Filed to-Dry-Jail 11:00 A.M.
D. No. 4259

22/12/11

ORDER SHEET**ISLAMABAD HIGH COURT
ISLAMABAD**

W.P No.3446/2011.

Wi-Tribe Limited,

Versus

Federal Board of Revenue, Islamabad, etc.

S No. of order / Proceeding	Date of order/ proceeding	Order with signature of Judge. and that of parties or counsel where necessary.
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**30.12.2011 Raja Nowsherwan Akhtar, Advocate for the petitioner.
Hafiz Munawar Iqbal, Advocate for respondent Nos.2,3
and 4.**

Both the learned counsel showed the willingness to argue the main petition, instead of making submission on C.M only.

2. Petitioner Wi-Tribe Limited invoked the constitutional jurisdiction of this court by filing the writ petition with following prayer:-

- a. *The Selection Criteria specified by the respondents may kindly be declared illegal, void ab-initio, without lawful authority and of no legal effect, consequently, the same may graciously be set aside.*
- b. *Selection of the petitioner for audit by the respondents No.3 & 4 in pursuance of said criteria may be set aside by declaring it to be illegal.*
- c. *The letter dated 19.10.2011 (Annex-B) and 27.10.2011 (Annex-C) may kindly be set aside as original return of income stood merged in the amended order.*

Any other relief, which this Honourable Court deems fit and appropriate, may also be granted to the petitioner, in the interest of justice, fairness and equity.

3. In support of above prayer, the learned counsel for the petitioner contended that the respondent No.1 has no

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Islamabad

power to lay down any criteria for selection of persons for an audit under section 177 of the Ordinance and thus exceeded its legal authority by interfering in quasi-judicial functions of respondents 3 & 4; respondent No.4 being a subordinate officer cannot sit on the order of supervising Officer/Additional Commissioner Inland Revenue and that the Selection Criteria specified by the respondent No.1 is illegal, unwarranted, uncalled for and without lawful authority, hence the same is liable to be set-aside.

4. The learned counsel adds that case of the petitioner is of double jeopardy as detailed audit for the year 2010 has already been conducted in pursuance of which show cause notice, dated.13.5.2011 was issued, and an appeal against the same is pending.

5. On the other hand, the learned counsel for the respondent submits that proceedings u/s 120(1) 122(5-A) of Income Tax, Ordinance 2001 are independent from the proceedings u/s 177(1) of the Ord. ibid. The learned counsel further submits that petitioner in order to save himself from detailed audit in requirement of section 177(1), tried to confuse the issue. The learned counsel for respondent placed reliance on case of NOBEL (PVT.) LTD., KARACHI VS. FEDERAL BOARD OF REVENUE through CHAIRMAN {(2009), 99 TAX 239 (H.C.Karachi)}.

I have heard the learned counsel for the parties, gone through the record annexed with the petition and provisions of Income Tax, Ordinance 2001. I feel it appropriate to reproduce the provisions u/s 122(5-A) and Section 177 of Income Tax, Ordinance, 2001 which may be helpful to understand, the controversy and resolve the same:-

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122 (5-A):- Subject to sub-section (9), the Commissioner may amend, or further amend, an assessment order, if he considers that the assessment order is erroneous in so far it is prejudicial to the interest of revenue.

177. Audit. The Commissioner may call for any record or documents including books of accounts maintained under this Ordinance or any other law for the time being in force for conducting audit of the income tax affairs of the person and where such record or documents have been kept on electronic data, the person shall allow access to the Commissioner or the officer authorized by the Commissioner for use of machine and software on which such data is kept and the Commissioner or the officer may have access to the required information and data and duly attested hard copies of such information or data for the purpose of investigation and proceedings under this Ordinance in respect of such person or any other person:

Provided that—

- (a) The Commissioner may, after recording reasons in writing call for record or documents including books of accounts of the taxpayer; and
- (b) The reasons shall be communicated to the taxpayer while calling record or documents including books of accounts of the taxpayer.

Provided further that the Commissioner shall not call for record or documents of the taxpayer after expiry of six years from the end of the tax year to which they relate.

6. Perusal of latter provision suggests that, the Commissioner is vested with power to call for any record or documents including books of accounts maintained under the ordinance, for conducting audit of the *Income Tax affairs* of the person, whereas former vests power on the Commissioner to amend an assessment order, therefore,

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this argument of the learned counsel that it is a case of double jeopardy is totally misconceived. Case law relied by the learned counsel for the respondent in which same proposition has been discussed, also negates the stance of the petitioner. Petitioner by feeling aggrieved of Show Cause Notice dated.13.05.2011 with regard to amendment in assessment filed an appeal u/s 127 of the Ordinance, ibid, which is pending. Bare perusal of above mentioned Notice makes it clear that petitioner was informed that, original assessment of the company (petitioner) for the tax year 2010 stood completed on 9.3.2011 by friction of law as envisaged in subsection (1) of Section 120 of the Ordinance, ibid. However, petitioner was cautioned that, return of total income and audited accounts, pertaining to the year 2010, transpired that against seventeen (17) items erroneous claims of expenses amounting to Rs.44,145,486.95/- made by petitioner, under no stretch of imagination it can be termed as full fledged audit as required under section 177 (1) of the Ordinance, ibid. Prima facie, there is sufficient material on the basis of was impugned Order/Notice has been issued.

In this view of the matter, writ petition in hand is dismissed with no order as to cost.



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(SHAUKAT AZIZ SIDDIQUI)
JUDGE

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