

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

Present

Mr. Justice Syed Mansoor Ali Shah
Mr. Justice Jamal Khan Mandokhail
Mr. Justice Shahid Waheed

Civil Petition No. 3739 of 2019

(Against the order of Islamabad High Court, Islamabad dated 26.07.2019 passed in WP No. 1228/2016)

*Federal Board of Revenue thr. its Chairman, Islamabad ... Petitioners
& others*

Versus

M/s Hub Power Company Ltd & others ... Respondents

For the Petitioners:
(Through V.L. Karachi Registry)

Ms. Shazia Bilal, ASC
Syed Salauddin Gillani,
Addl. Commissioner

For Respondent No.1:

Mr. Jahanzeb Awan, ASC

Date of Hearing:

20.01.2023

ORDER

Syed Mansoor Ali Shah, J.- The learned counsel for the respondent, at the very outset, raised an objection that the petitioners have filed the instant petition without exhausting the available remedy of filing an Intra Court Appeal ("**ICA**") under section 3 of the Law Reforms Ordinance, 1972 ("**Ordinance**") before the High Court, therefore, the instant petition is not maintainable. In support of this contention, the learned counsel has placed reliance on *Col. (Retd.) M.R. Hassan*¹, *Mst. Karim Bibi*², *Samina Masood*³, *Zia Mohy-ud-Din*⁴, *Ilyas Gujjar*⁵ and *Abdul Ghani*⁶.

¹ Col. (Retd.) M.R. Hassan v. SHO Margalla, Islamabad, 1998 SCMR 2738.

² Mst. Karim Bibi v. Hussain Bakhsh, PLD 1984 SC 344.

³ PIAC v. Samina Masood, PLD 2005 SC 831.

⁴ Accountant General for Pakistan v. Zia Mohy-ud-Din, PLD 2008 SC 164.

⁵ Ch. Muhammad Ilyas Gujjar v. Chief Election Commissioner, PLD 2011 SC 961.

⁶ FBR v. Abdul Ghani, 2021 SCMR 1154.

2. On the other hand, the learned counsel for the petitioners has also relied on *Media Network*⁷ to contend that the instant petition is maintainable.

3. We have heard the learned counsel for the parties and have gone through the case law with their able assistance. It is settled law that where the right to file an ICA before the High Court under section 3 of the Ordinance exists, then a petition before this Court without exhausting the said remedy, and thereby circumventing the forum below, is ordinarily not maintainable.⁸ The requirement of filing an ICA is a rule of practice for regulating the procedure of the Court and does not oust or abridge the constitutional jurisdiction of this Court.⁹ Such petitions, however, have been entertained by this Court only when certain exceptional circumstances exist, such as, where the matter involves important questions of law of great public importance having far-reaching consequences¹⁰, questions of law as to the interpretation of the Constitution¹¹ and validity of provincial statutes¹², and substantial questions of law involving fundamental rights¹³, coupled with the fact that the objection with regards to maintainability is taken at a belated stage before the Court.¹⁴ We note that no such exceptional circumstances exist in the matter at hand and the objection regarding maintainability of the petition was also duly raised at the first instance. Reliance on *Media Network* (supra) by the learned counsel for the petitioners is misconceived as in the said judgment, this Court had noted that the objection as to maintainability was taken at a belated stage and important questions of law of great public importance having far-reaching

⁷ Commissioner of Income Tax v. Media Network, PLD 2006 SC 787; 2006 PTD 2502.

⁸ Imtiaz Ali Malik v. Mst. Surrya Begum, 1979 SCMR 22; Ch. Muhammad Ilyas Gujjar v. Chief Election Commissioner, PLD 2011 SC 961; Government of Punjab v. Metropole Cinema, 2014 SCMR 649; Accountant General v. Zia Mohy-ud-Din, PLD 2008 SC 164; PIAC v. Samina Masood, PLD 2005 SC 831.

⁹ PTCL v. Iqbal Nasir, PLD 2011 SC 132; Commissioner of Income Tax v. Messrs Media Network, PLD 2006 SC 787.

¹⁰ Commissioner of Income Tax v. Messrs Media Network, PLD 2006 SC 787.

¹¹ The Constitution of the Islamic Republic of Pakistan, 1973.

¹² Province of Punjab v. Sargodha Textile Mills, PLD 2005 SC 988.

¹³ PESSI v. Manzoor Hussain, 1992 SCMR 441.

¹⁴ PTCL v. Iqbal Nasir, PLD 2011 SC 132; Commissioner of Income Tax v. Messrs Media Network, PLD 2006 SC 787.

consequences were involved in terms of selection of cases for audit under a Self-Assessment Scheme and policy guidelines issued by the Central Board of Revenue. Whereas, the present matter relates simply to adjustment of input tax with respect to services received by the respondent against the sales tax on services. Consequently, we find that the instant petition, having been filed without availing the remedy of an ICA before the High Court, is not maintainable.

4. In the light of the above, the preliminary objection raised by the learned counsel for the respondents is upheld and the instant petition is accordingly dismissed being not maintainable.

Judge

Islamabad,
20th January, 2023.
Approved for reporting
Iqbal

Judge

Judge