

Writ Petition No.34736 of 2024

M/s Radiant Medical (Private) Limited

The Federal Board of Revenue and others

03.06.2024

Mr. Naveed Zafar Khan, Advocate for the petitioner.
Mr. Muhammad Mansoor Ali, Assistant Attorney General for Pakistan (On Court's call).
Ch. Muhammad Ashfaq Bhullar, Advocate/Legal Advisor for the respondent-FBR.

In this petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 ('Constitution'), the petitioner has assailed the recovery made by the Inland Revenue Officer-respondent No.5 from the Bank Accounts maintained by the petitioner at National Bank of Pakistan, Model Town Branch, Lahore and Bank Al-Falah, Shadman Branch, Lahore pursuant to the notice dated 31.05.2024 (erroneously mentioned as 31.05.2023 on account of typographical therein) in purported exercise of authority under Section 140 of the Income Tax Ordinance, 2001 ('Ordinance').

2. Learned counsel for the petitioner contends that the impugned recovery made under Section 140 of the Ordinance is manifestly in violation of the proviso to sub-section (1) of Section 140 of the Ordinance thus without lawful authority and of no legal effect. He maintains that even otherwise recovery could not be effected by the revenue authorities from the petitioner during pendency of its appeal under Section 12 of the Ordinance till adjudication of liability of the petitioner by at least one outside departmental form i.e. Appellate Tribunal Inland Revenue. In support of his

contentions, learned counsel for the petitioner has relied upon the judgment of this Court in the case of China Machinery Engineering Corporation, Pakistan Branch Vs. Federation of Pakistan and others (2024 PTD 242).

3. Conversely, learned Legal Advisor for the revenue authorities, who has appeared on watching brief, has opposed this petition on the ground that the stay order granted in favour of the petitioner by the Commissioner (Appeals) has lapsed after expiry thereof despite granting extension therein and the appeal was adjourned on request of learned counsel for the petitioner on the last date of hearing, which is now transferred to the Appellate Tribunal Inland Revenue in view of the Tax Laws (Amendment) Act, 2024 dated 09.05.2024. He adds that in the absence of any stay order, respondent-department was well within its right to effect recovery of tax due against the petitioner, as determined in the amended assessment order, while invoking Section 140 of the Ordinance. He maintains that the deposit of 10% tax was only meant for the extension of stay order before the Commissioner (Appeals) where a taxpayer volunteered, which is not the case here. He further contends that the pay orders have been deposited in the treasury account and the amount has been realized.

4. Heard. Record perused.

5. By now it is well settled that the tax allegedly due from a taxpayer cannot not be recovered before adjudication of liability in appeal preferred by a taxpayer before at least one extra departmental forum i.e. Appellate Tribunal Inland Revenue. Reliance in this case is placed on the cases of Messrs Pak Saudi Fertilizers Vs. Federation of Pakistan and others (2002 PTD 679), Z.N. Exporters (Pvt.) Ltd Vs. Collector of Sales Tax (2003 PTD 1746), Brothers Engineering (Pvt.) Ltd. Vs. Appellate Tribunal Sales Tax (2003 PTD 1836) and Messrs Islamabad Electric Supply Company Limited Vs. Additional Commissioner Inland Revenue and others (2024 PTD 30).

6. Section 140 (1) of the Ordinance is reproduced as under:-

140. Recovery of tax from persons holding money on behalf of a taxpayer.—(1) For the purpose of recovering any tax due by a taxpayer, the Commissioner may, by notice, in writing, require any person—

- (a) owing or who may owe money to the taxpayer, or
- (b) holding or who may hold money for, or on account of the taxpayer;
- (c) holding or who may hold money on account of some other person for payment to the taxpayer; or
- (d) having authority of some other person to pay money to the taxpayer,

to pay to the Commissioner so much for the money as set out in the notice by the date set out in the notice:

[Provided that the Commissioner shall not issue notice under this sub-section for recovery of any tax due from a taxpayer if the said taxpayer has filed an appeal under section 127 in respect of the order under which the tax sought to be recovered has become payable and the appeal has not been decided by the Commissioner (Appeals), subject to the condition that [ten] per cent of the said amount of tax due has been paid by the taxpayer.]

It is manifest from perusal of the proviso to sub-section (1) of Section 140 of the Ordinance that the same creates exception to the recovery of tax from a person holding money on behalf of a taxpayer. Such exception expressly prohibits Commissioner from issuing notice under this sub-section for the recovery of any tax due from a taxpayer if said taxpayer had filed an appeal under Section 127 of the Ordinance in respect of the order under which the tax sought to be recovered has become payable and the appeal has not been decided. The above prohibition indeed recognizes the principle of law enunciated in Paragraph No.5 of this order. The said prohibition, however, is subject to the condition that 10% of the said amount of tax is paid by the taxpayer. This clearly means that as long as the taxpayer is ready and willing to satisfy the condition specified in the aforementioned provision to Section 140(1) of the Ordinance, coercive measure visualized under the aforementioned Section cannot be pressed into service.

7. On Court query, it is apprised by learned counsel for the petitioner that 10% amount of the tax allegedly due has never been demanded, however, the petitioner is ready to satisfy the condition forthwith.

8. It is an undisputed position that the appeal preferred by the petitioner under Section 127 of the Ordinance against amended assessment is still pending. It is equally uncontroverted by the respondent-department that the petitioner has never been asked to pay 10% of the amount of tax due from it against which an appeal under Section 127 of the Ordinance has been preferred by the petitioner.

9. In view of the unequivocal provision of the sub-section (1) of Section 140 of the Ordinance, recovery proposed to be effected by the department beyond 10% of the tax liability of the petitioner as determined in the amended assessment order, is without lawful authority.

10. For the foregoing reasons, this writ petition is partially allowed and the respondents are directed to ensure that the amount recovered from the Bank accounts of the petitioner pursuant to the impugned notice under Section 140 of the Ordinance is reimbursed to the petitioner or credited to the same Bank accounts within a period of **20-days** after deducting 10% of the tax liability therefrom. There shall be no order as to costs.

(**RAHEEL KAMRAN**)
JUDGE

Approved for Reporting

JUDGE

Z.A. Manzoor*