

Judgment Sheet
IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT

W.P. No.50303 of 2024

Muhammad Zubair

Versus

Federation of Pakistan, etc.

J U D G M E N T

Date of Hearing	26.09.2024
For the petitioner in this petition	M/s Arslan Saleem Chaudhry Advocate and Barrister Asfandyar Khan Tareen
For the petitioners in W.P.No.50600 of 2024 & W.P.No. 50310 of 2024	M/s Muhammad Ajmal Khan, Muhammad Nadeem Sheikh, Rana Usman Habib Khan and Azeem Ullah Virk, Advocates
For the petitioner in W.P.No.49857 of 2024	Malik Asif Rafique Rajwana, Advocate
For the Federation of Pakistan	Mr. Muhammad Hamza Sheikh, Assistant Attorney General
For the respondents /Inland Revenue	Barrister Shahjahan Khan, Advocate

Raheel Kamran J:- By this single judgment, I intend to decide the titled petition, Writ Petition No.49857 of 2024, Writ Petition No.50600 of 2024 and Writ Petition No.50310 of 2024 as common question of law, that is, imposition of condition on grant of stay, is involved therein.

2. Learned counsel for the petitioner contends that the Appellate Tribunal Inland Revenue ('Appellate Tribunal') is the first independent forum and any injunctive order passed by it must state reasons for imposing any condition or else the object and purpose of appeal will stand negated. He maintains that section 131(5) of the Income Tax Ordinance, 2001 ('Ordinance') does not visualize any

condition for grant of stay and the discretion exercised by the Appellate Tribunal by imposing conditions in these matters is unlawful. He further contends that power to grant stay is unhindered and the same cannot be evaded by imposing the impugned condition.

3. Conversely, learned counsel for the respondents-department contends that the Appellate Tribunal is possessed of discretionary power to stay recovery of any tax due by virtue of any order being assailed, subject to restrictions or limitations and that the impugned conditions in the instant cases depict only reasonable exercise of judicial discretion.

4. Heard.

5. Record reflects that in the titled petition, stay against recovery of impugned tax demand has been granted for a period of 30 days subject to payment of 10% out of total tax demand within five days; in W.P.No.49857 of 2024, stay for a period of 60 days has been granted subject to payment of Rupees 50 million out of total tax demand within five days; in W.P.No.50600 of 2024, stay for a period of 30 days has been granted subject to payment of 5% of the disputed tax demand; and in W.P.No.50310 of 2024 stay for a period of 15 days has been granted subject to deposit of 25% of total tax demand.

6. Appellate Tribunal is the first extra-departmental/independent forum for deciding the disputes *vis-à-vis* tax liability under the Ordinance. Historically, in acknowledgment of the principle of unrestricted access to justice, this Court as well as other High Courts have been granting stay against recovery of any tax demanded by the concerned revenue authorities till decision of appeal before at least one extra-departmental forum¹. The federal legislature has by and

¹ 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**), Messrs Fauji Oil Terminal and Distribution Company Ltd vs. Pakistan through Secretary Revenue Division and 2 others (**2012 PTD 1762**) and Messrs Islamabad Electric Supply Company Limited vs. Additional Commissioner Inland Revenue and others (**2024 PTD 30**)

large manifestly adhered to the same principle while enacting sub-section (5) of section 131 of the Ordinance, which reads as follows: -

"131. Appeal to the Appellate Tribunal.- (1) Subject to section 126A, any person, other than an SOE, aggrieved by any order passed by an officer of Inland Revenue or Commissioner or Chief Commissioner or the Board under this Ordinance or the rules made thereunder may, within thirty days of the receipt of such order, prefer an appeal to the Appellate Tribunal or, as the case may be, a reference to the High Court:

Provided that where sub-section (11) of section 134A apply, an SOE may prefer an appeal under this sub-section.

- (2)
- (3)
- (4)

(5) Notwithstanding that an appeal has been filed under this section, tax shall, unless recovery thereof has been stayed by the Appellate Tribunal, be payable in accordance with the assessment made in the case:

Provided that on filing of application in a particular case, the Appellate Tribunal may after affording an opportunity of being heard to the Commissioner having jurisdiction, for reasons to be recorded, stay the recovery of tax for ninety days:

Provided further that the stay order shall cease to have effect, and the Commissioner shall be entitled to recover tax, if the taxpayer does not adhere to the hearing schedule for the appeal, as determined by the Appellate Tribunal in accordance with the rules made under sub-section (2) of section 130:

Provided also that where an appeal is not decided within the statutory period by the Appellate Tribunal, the stay order under the second proviso shall not cease to have effect till finalization of the appeal by the Appellate Tribunal."

It is clearly noted that in the above provisions, authority of the Appellate Tribunal to grant stay during pendency of appeal before it is not conditioned by the requirement of deposit or payment of certain amount of tax determined by the forum below. In that way, the above provisions are quite distinct and distinguishable from sub-section (10) of section 133 of the Ordinance which restricts or limits authority of this Court to stay recovery of tax, while a Tax Reference is pending, subject to deposit with the assessing authority of not less than 30% of the tax determined by the Appellate Tribunal.

7. No doubt, in the scheme of section 131 of the Ordinance, authority of the Appellate Tribunal to stay recovery of tax during

pendency of an appeal is discretionary, however, to ensure unrestricted access to justice and fair determination of tax liability before the first extra-departmental/independent forum, such discretion ordinarily should be exercised to stay recovery of the tax impugned except for the tax liability admitted or not challenged by the appellant or the one determined on the basis of binding precedent of this Court or the Supreme Court on any issue raised in the appeal.

8. It is noted that the impugned conditions in the orders assailed in these petitions have been imposed by the Appellate Tribunal in a slipshod manner that hardly shows application of mind on part of the Appellate Tribunal, therefore, the same are manifestly arbitrary and of no legal effect.

9. In view of above, all four constitutional petitions are ***allowed*** and the impugned conditions qua deposit of certain amounts of tax, as mentioned above, are set aside. The Appellate Tribunal is directed to decide appeals of the petitioners within 30 days from the receipt of certified copy of this judgment. There shall be no order as to costs. Office shall send certified copy of this judgment to the concerned Appellate Tribunal.

(RAHEEL KAMRAN)
JUDGE

Announced in open Court on _____.

JUDGE

APPROVED FOR REPORTING

JUDGE

Saeed Akhtar