

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.4213/2019
M/s Pakistan Mobile Communications Limited
Versus
Federation of Pakistan through Chairman, Federal Board of Revenue and
others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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05.12.2019	Mr. Muhammad Usman Shaukat and Malik Sardar Khan, Advocates for the petitioner.
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Through the instant writ petition, the petitioner, M/s Pakistan Mobile Communication Limited, seeks issuance of a writ declaring the impugned order dated 24.06.2019 passed by respondent No.3 (Inland Revenue Officer) and recovery notice dated 25.11.2019 passed by respondent No.6 (Assistant Commissioner Inland Revenue), to be illegal, without lawful authority and of no legal effect. Furthermore, the petitioner seeks a restraint against respondent No.6 from recovering the impugned tax liability until the decision on the petitioner's appeal, which is pending adjudication before respondent No.4 (Commissioner Inland Revenue (Appeals-I)). The petitioner also seeks a direction to respondent No.6 not to adopt coercive measures for seven days after the decision on the petitioner's appeal by respondent No.4.

2. The record shows that vide Order dated 24.06.2019, a demand for an amount of Rs.192,539,522/- was raised against the petitioner by respondent No.3 under Section 124 of the Income Tax Ordinance, 2001 ("the 2001 Ordinance") for the Tax Year 2011. The petitioner challenged the said order dated 24.06.2019 in an

appeal before respondent No.4 on 09.08.2019. Along with the said appeal, the petitioner also filed an application for grant of stay. Respondent No.4, vide its order dated 21.08.2019, rejected the stay application, whereas the main appeal is still pending adjudication before the said respondent. Subsequently, the petitioner filed an appeal along with stay application before respondent No.5 (Appellate Tribunal Inland Revenue). Respondent No.5, vide its order dated 03.09.2019, disposed of the said appeal and stay application with the direction to the respondent department that *“prior to initiation of any recovery/coercive measures the department will issue show cause notice under section 138 of the Income Tax Ordinance, 2001 and allow 15-days prior opportunity to the appellant/taxpayer. During such period the department shall not press for recovery of impugned dues through coercive measures.”*

3. Learned counsel for the petitioner submits that even though the petitioner's appeal is still pending adjudication before respondent No.4, the petitioner has an apprehension that the respondent department may initiate recovery proceedings on the basis of the impugned recovery notice dated 25.11.2019; that fearing the adoption of coercive measures during the pendency of the petitioner's appeal before respondent No.4, the petitioner has invoked the Constitutional jurisdiction of this Court to obtain a reprieve, as a stopgap measure, against the recovery of the disputed tax liability; and that if the interim reprieve is not granted, the petitioner shall be subjected to coercive measures.

4. Consistent with the order dated 18.04.2016, passed by this Court in W.P. No.1367/2016 and by following the law laid down in the cases of M/s Pak

Saudi Fertilizers Ltd Vs. Federation of Pakistan & 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 Mehram Ali Vs. Federation of Pakistan etc (PLD 1988 SC 1445), I am inclined to dispose of this petition with the observation that until the decision of the petitioner's appeal, the respondent department is directed to restrain from adopting coercive measures for the recovery of the disputed tax liability for seven days after the decision of the petitioner's said appeal by respondent No.4 in the event the same is dismissed. The petitioner is directed to appear and argue its case before respondent No.4 without seeking any adjournment as and when its appeal is fixed for hearing.

5. Disposed of in the above terms.

(MIANGUL HASSAN`AURANGZEB)
JUDGE

Ahtesham*