

10

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.110/2019
Oil and Gas Development Company Limited
Versus.
The Appellate Tribunal Inland 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.
-------------------------------	----------------------------	---

14.01.2019 **Barrister Qadir Buksh, for the petitioner.**

Through the instant writ petition, the petitioner, Oil and Gas Development Company Limited, seeks a restraint against respondent No.2 (Commissioner of Income Tax) from recovering disputed tax liability until the decision on the petitioner's appeal, which is pending adjudication before respondent No.1 (Appellate Tribunal Inland Revenue).

2. The record shows that vide Order dated 17.04.2014, a demand for an amount of Rs.2,124,100,000/- was raised against the petitioner by Additional Commissioner Inland Revenue (Audit-II) in terms of Section 122(5A) of the Income Tax Ordinance, 2001 ("the 2001 Ordinance") pertaining to the Tax Year 2013. The petitioner challenged the said Order by filing an appeal before respondent No.2. Respondent No.2, vide its order dated 20.05.2014, rejected the said appeal, and as a result the order passed by the Additional Commissioner Inland Revenue was confirmed. Against the said order dated 20.05.2014, the petitioner preferred an appeal before respondent No.1. Respondent No.1, vide its consolidated order dated 14.04.2015, rejected the said appeal. The petitioner challenged the said Order before this Court by filing an Income Tax Reference. Vide order dated 17.02.2016, passed in I.T.R. Nos.132, 133 and 134/2015, the learned Division Bench of this Court, set-aside the said consolidated order dated 14.04.2015 and remanded the matter to respondent No.1 with a direction to pass a speaking order within a period of thirty days.

3. Learned counsel for the petitioner submits that the arguments in the petitioner's appeal before respondent No.1 have been concluded on 03.12.2018; that even though the petitioner's appeal is still reserved by respondent No.1, but the petitioner has an apprehension that the respondent department may initiate recovery proceedings; that fearing the adoption of coercive measures during the pendency of the petitioner's appeal before respondent No.1, 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, without the necessity of issuing notice to the respondents, with the direction to respondent No.1 to decide the petitioner's appeal expeditiously. Until seven days after the decision on the petitioner's appeal, the respondent department is restrained from adopting coercive measures for the recovery of the disputed tax liability in the event the appeal is dismissed.

5. Disposed of in the above terms.

(MIANGUL HASSAN AURANGZEB)
JUDGE