

**ORDER SHEET**

**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**JUDICIAL DEPARTMENT.**

**W.P. No. 1094 of 2020**

Shahbaz Zaheer

**Versus**

Assistant Commissioner Inland Revenue, Unit-AEOI-1, AEOI-Zone, RTO, Islamabad and  
others

<b>S. No. of order/ proceedings</b>	<b>Date of order/ Proceedings</b>	<b>Order with signature of Judge and that of parties or counsel where necessary.</b>
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08.04.2020. Ch. Naeem ul Haq, Advocate for the petitioner.

Through the instant writ petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has sought *inter alia* direction to respondent No.2 to decide its pending appeal and in the meanwhile restraining the respondent department from initiating recovery proceedings for the payment of disputed Income Tax liability with respect to tax years 2014, 2015, 2016 & 2017.

2. The facts leading to filing of the present writ petition are that respondent No.1 passed order dated 08.11.2019 and created demand of Rs. 67,962,500/-, Rs.56,100,000/-, Rs. 22,027,500/- & Rs. 7,695,000/- to the petitioner for the payment of disputed Income Tax Liability for the tax years 2014, 2015, 2016 & 2017 respectively. The said order of the referred respondent was challenged by the petitioner in appeal before respondent No.2 alongwith stay applications, who rejected the same vide order dated 28.01.2020 and appeal is still pending which has not yet been decided. Feeling aggrieved, the petitioner filed stay application

before respondent No.4, which was pleased to grant stay for 60 days. The said 60 days have lapsed and the petitioner has filed the instant writ petition apprehending the proceedings for recovery by the respondent department in pursuance of order dated 08.11.2019 despite the fact that its appeal is still pending adjudication before respondent No.2.

3. The learned counsel for the petitioner submitted that the impugned Order is illegal, arbitrary and against the law. It was further contended that initiation of recovery proceedings during the pendency of petitioner's appeal is against his fundamental rights guaranteed under the Constitution. It was further contended that it is trite law that unless there is adjudication by one independent forum, no recovery proceedings can be initiated against the assessee. In this behalf learned counsel placed reliance on the cases titled "*M/s Pak Saudi Fertilizers Ltd. Vs. Federation of Pakistan and others*" (2002 PTD 679), "*Z.N. Exporters Pvt. Ltd. V. Collector of Sales Tax*" (2003 PTD 1746 Lahore), "*Brothers Engineering (Pvt) Ltd. Vs. Appellate Tribunal Sales Tax*" (2003 PTD 1836) & "*Dawood Textile Printing Industries Pvt. Ltd. Vs Federation of Pakistan and 4 others*" (2009 (100) Tax 344 Lahore).

4. The submissions made by the learned counsel for the petitioner have substance. In this behalf the Hon'ble Supreme Court of Pakistan in the case titled "*Mehram Ali and others V. Federation of Pakistan and others*" (PLD 1998 SC 1445) has specifically held that there should be adjudication of grievance by an

independent Tribunal and even Lahore High Court in numerous judgments has held that an assessee is entitled to adjudication in respect of his disputed tax liabilities by at least one independent forum outside the hierarchy of the respondent department.

5. In view of the above, the instant petition is **disposed of** with direction to respondent No.2 to decide the appeal of the petitioner within 60 days and till then no coercive measures shall be adopted against it for recovery of disputed tax liability. The petitioner is directed to appear and argue its case before respondent No.2 without seeking any adjournment as and when the appeal is fixed.

**(AAMER FAROOQ)**  
**JUDGE**

M. Shah.