

ORDER SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Writ Petition No.848 of 2020

Shahid Ahmad Khan
VS

Federation of Pakistan through Secretary Finance, Islamabad and another

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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12.03.2020.	Ms. Kashifa Niaz Awan, Advocate for the petitioner.
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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 comply with directions of Appellate Tribunal Inland Revenue and appoint another Commissioner (Appeals), Inland Revenue for decision on appeal of the petitioner and meanwhile restraining respondent No.2 from initiating the recovery proceedings in pursuance of impugned Order dated 26.03.2019 for payment of Income Tax liability for the tax year from 01.07.2014 to 30.06.2015.

2. Learned counsel for the petitioner submitted that the impugned notice 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 cases titled "*M/s Pak Saudi Fertilizers Ltd. 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). Learned counsel further contended that delay in decision of the appeal is not on part of the petitioner, therefore, impugned Order dated 26.03.2019, for payment of Income Tax liability, may be suspended and recovery proceedings be stopped till the final decision of the appeal by learned Commissioner (Appeals), Islamabad. The submissions made by the learned counsel for the petitioner have substance. In this behalf, the Hon'ble Supreme Court of Pakistan in case titled "*Mehram Ali Vs. Federation of Pakistan etc.*" (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 hierarchy of the respondent department.

3. In view of the above, the instant Writ Petition is **disposed of** with direction to Respondent No.2 to comply with remand order of Appellate Tribunal Inland Revenue, Islamabad and ensure decision of the matter within a period of sixty (60) days and till then no coercive measures shall be adopted against the petitioner for recovery of disputed tax liability.

(AAMER FAROOQ)
JUDGE