

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.913 of 2022
Muhammad Shafaqat Jan and others
Versus
Federal Board of Revenue through its Chairman 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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21.03.2022 Mr. Afnan Karim Kundi, Advocate for the petitioners

Through the instant writ petition, the petitioners, Muhammad Shafaqat Jan, Faisal Khan and Suleman Khan, Advocates, seek a restraint against the respondents from recovering the disputed tax liability of their partnership law firm (operating by the name of Khan & Muezzin - Barristers) until the decision on the petitioners' appeal, which is pending before respondent No.2 (Commissioner Inland Revenue (Appeal-II)).

2. The record shows that vide Order-in-Original dated 31.05.2021, a demand for an amount of Rs.24,53,430/- was raised against the petitioners by respondent No.3 (Assistant/Deputy Commissioner Inland Revenue) under Section 122(1) of the Income Tax Ordinance, 2001 ("the 2001 Ordinance") for the tax year 2015. On 01.06.2021, respondent No.3 issued a notice in terms of Section 137(2) of the 2001 Ordinance, directing the petitioners to pay the above-said amount within a period of thirty days and in case of failure, recovery/enforcement proceedings would be initiated against them. The said notice was followed by another notice dated 18.11.2021 issued in terms of Section 138(1) of the 2001 Ordinance. The petitioners, being aggrieved of the said Order-in-Original dated 31.05.2021, filed an appeal before respondent No.2. Along with the said appeal, the petitioner also filed an

application for grant of stay against the recovery of the disputed tax liability, which was allowed vide order dated 13.01.2022 and as a result stay was granted for a period of thirty days i.e. until 12.02.2022. Subsequently, the petitioner also filed an application for extension in stay, which too was allowed by respondent No.2 vide its order dated 15.02.2022 and stay was extended for further thirty days i.e. until 17.03.2022. On 14.03.2022, the petitioners filed an application for early hearing of the appeal before respondent No.2, however, same has not been fixed as yet. On 17.03.2022, the petitioners also filed an application for extension in stay, but the same is still pending and not yet decided by respondent No.2.

3. Learned counsel for the petitioners submits that even though the petitioners' appeal along with stay application is still pending adjudication before respondent No.2, the petitioners' have an apprehension that the respondent department may initiate recovery proceedings on the basis of the notices dated 01.06.2021 and 18.11.2021 as well as assessment order dated 31.05.2021; that it is trite law that unless there is adjudication by one independent forum, no recovery proceedings can be initiated against the assessee; and that the delay in decision of the appeal is not on part of the petitioner; that fearing the adoption of coercive measures during the pendency of the petitioner's appeal before respondent No.2, 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 notices to the respondents, with the direction to respondent No.2 to decide the petitioners' appeal expeditiously and preferably within a period of sixty days from today. Until the decision on the petitioner's appeal/stay application, the respondent department is restrained from adopting coercive measures for the recovery of the disputed tax liability in pursuance of impugned notices dated 01.06.2021 and 18.11.2021 as well as assessment order dated 31.05.2021. The petitioner is directed to appear and argue its case before respondent No.2 without seeking any adjournment as and when its appeal/stay application is fixed for hearing.

5. Disposed of in the above terms. ***(Copy Dasti)***

**(MIANGUL HASSAN AURANGZEB)
JUDGE**

Qamar Khan