

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P.No.3740/2019

Fauji Fertilizer Bin Qasim Limited

Versus

Learned 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.
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19.11.2019	Syed Hasnain Ibrahim Kazmi, Advocate for the petitioner Mr. Riaz Hussain Azam Bopara, Advocate for the respondents
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Through the instant writ petition, the petitioner, Fauji Fertilizer Bin Qasim Limited, impugns the order dated 22.10.2019 passed by respondent No.1 (Appellate Tribunal Inland Revenue), whereby the application for extension in stay filed along with its appeal against the appellate order dated 11.10.2017 was dismissed. Furthermore, the petitioner seeks a restraint against the respondents from recovering the impugned tax liability until the decision on the petitioner's appeal, which is pending adjudication before respondent No.1.

2. The record shows that vide Order dated 07.06.2017, a demand for an amount of Rs.3,36,768,878/- was raised against the petitioner by respondent No.3 (Additional Commissioner Inland Revenue) in terms of Section 122(5) of the 2001 Ordinance pertaining to the Tax Year 2016. The petitioner challenged the said Order by filing an appeal before respondent No.2 (Commissioner Inland Revenue (Appeals-I)). Respondent No.2, vide its order dated 11.10.2017, disposed of the said appeal. Against the said order, the petitioner preferred an appeal along with stay application before respondent No.1. Respondent No.1, vide its different orders, granted

stay for a period of 180 days in aggregate. The petitioner filed an application for extension in stay (Ext No.1920/IB/2019) before respondent No.1. Respondent No.1, vide its order dated 22.10.2019, directed the petitioner to pay the tax liability to the extent of super tax on the basis of declared income tax forthwith and the recovery of the remaining tax liability assessed on account of different issues are stayed subject to payment of super tax whereas the main appeal is still pending adjudication before the said respondent.

3. Learned counsel for the petitioner submits that the petitioner's appeal is still pending adjudication before respondent No.1: 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 and preferably within a period of 60 days from today. Until the decision on the petitioner's appeal, the respondent department is directed to restrain from adopting coercive measures for the

recovery of the disputed tax liability. The petitioner is also directed to appear and argue its case before respondent No.1 without seeking any adjournment as and when its appeal is fixed for hearing.

5. Disposed of in the above terms.

Qamar Khan*

(MIANGUL HASSAN ~~AURANGZEB~~)
JUDGE