

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Writ Petition No.1507 /2020

M/s. Flash Security Services (Pvt.) Ltd.
Vs

Deputy Commissioner Inland Revenue and 3 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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08.06.2020 Mr. Muhammad Imran Ul Haq, Advocate for the
petitioner.

Through the instant 2nd writ petition filed under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (the “Constitution”), the petitioner has sought a direction restraining respondent No.1 from initiating recovery proceedings in respect of the disputed tax liability till the decision of the appeal as well as stay extension application pending before respondent No.2.

2. The facts leading to filing of the instant petition are respondent No.1 passed order dated 27.12.2019 against the petitioner and created demand of Rs.88,325,149/- for the tax year 2018. The said order was challenged in appeal by the petitioner before respondent No.2 alongwith stay application. Respondent No.2 was pleased to grant stay for 20 days vide order dated 24.02.2020 which was expired on 20.03.2020. The petitioner filed stay extension application before respondent No.2 on 20.03.2020 which is still pending. The main appeal and stay extension application of the petitioner are

still pending adjudication before respondent No.2.

3. Learned counsel for the petitioner submitted that despite the fact that the main appeal as well as stay extension application are pending, respondent No.1 intends to initiate recovery proceedings; 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 reliance was placed on case titled *M/s Dawood Textile Printing Industries (Pvt.) Limited Faisalabad V. Federation of Pakistan and 4 others* (PTCL 2010 CL 460), *Sun- Rise Bottling Company (Pvt.) Ltd. through Chief Executive v. Federation of Pakistan and 4 others* (2006 PTD 535) and *Z.N Exports (Pvt.) Limited v. Collector of Sales Tax* (2003 PTD 1746). It was further submitted that even 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 held that an essential feature of access to justice is that determination of any grievance or dispute should be by an independent Tribunal.

4. The Hon'ble Supreme Court of Pakistan in the case of Mehram Ali *ibid* has specifically held that there should be adjudication of grievance by an independent Tribunal and even Lahore High Court in numerous judgments, mentioned above, 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.

5. In view of above, the instant writ petition is disposed of with the direction to respondent No.2 namely, Commissioner Inland Revenue (Appeals-II) to decide the pending appeal as well as stay extension application of the petitioner within 45 days positively and till then no coercive measures shall be taken against the petitioner for the recovery of disputed tax liability. The petitioner is also directed to appear and argue its case without seeking any adjournment as and when the appeal and stay extension application are fixed. Copy *Dasti*.

(AAMER FAROOQ)
JUDGE

***Niqab ***