

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.1395 of 2021
Shehbaz Saleem Khan

Versus

Assistant/Deputy Commissioner 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. |
|-------------------------------|----------------------------|---|
| | 14.04.2021 | Mr. Muhammad Mohsin Nazir, Advocate for the petitioner. |

Through the instant writ petition, the petitioner, Shehbaz Saleem Khan, seeks issuance of a writ restraining respondent No.1 (Assistant / Deputy Commissioner Inland Revenue) from recovering the disputed tax liability on the basis of impugned Assessment Order dated 20.10.2020 and demand notice dated 19.02.2021, until the decision on the petitioner's appeal, which is pending adjudication before respondent No.2 (Commissioner Inland Revenue (Appeals-II)).

2. The record shows that vide Assessment Order dated 20.10.2020, a demand for an amount of Rs.3,102,822/- was raised against the petitioner by respondent No.1 in terms of Section 122(1) of the Income Tax Ordinance, 2001 ("the 2001 Ordinance") pertaining to the Tax Period 01.07.2014 to 30.06.2015. The petitioner challenged the said order dated 20.10.2020 in an appeal before respondent No.2 on 19.11.2020. Along with the said appeal, the petitioner also filed an application for grant of stay. Respondent No.2, vide its order dated 03.03.2021, granted stay under Section 128(1A) of the 2001 Ordinance for a period of 30 days. On 09.04.2021, the petitioner filed an application for extension in grant of stay before respondent No.2. The appeal along with the application for extension in stay is still pending adjudication before the said respondent.

3. Learned counsel for the petitioner submits that even though the petitioner's appeal along with

application for extension in stay is still pending adjudication before respondent No.2, the petitioner has an apprehension that the respondent department may initiate recovery proceedings on the basis of demand notice dated 19.02.2021; 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 with the observation that until the decision of the petitioner's appeal / application for extension of stay, the respondent department is directed to restrain from adopting coercive measures for the recovery of the disputed tax liability. The petitioner is directed to appear and argue his 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.

(MIANGUL HASSAN AURANGZEB)
JUDGE