

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

W.P. No. 1291 of 2020

M/s Mobilink Microfinance Bank Limited

VS

Commissioner Appeals II, etc

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
(2)	14.05.2020.	Mr. Bilal Ahmed, Advocate for the Petitioner. Syed Ashfaq Hussain, Advocate for respondent. Mr. Farrukh Shahzad Dall, Assistant Attorney General.

The Petitioner, in the instant Petition, has impugned notice u/s 138(1) read with section 137 (2) of the Income Tax Ordinance, 2001, for recovery of demand of Rs. 6,695,656/- created vide order passed under section 221 of the Income Tax Ordinance, 2001, dated 16.03.2020, for the tax year 2018. Learned counsel for the petitioner submitted that the appeal against the said order along with stay application is pending before the Commissioner Inland Revenue Appeals-II, RTO, Islamabad, thus the recovery of impugned demand is not justified.

2. Learned counsel for the respondent submitted that the petitioner has approached the Court at premature stage as the stay application is pending before learned CIT Appeals who has the power to grant the stay. Perusal of the record

reveals that the stay application dated 30.04.2020, is pending hearing and decision till date before the learned CIT Appeals II, Islamabad, which have been filed by the petitioner after receipt of notice u/s 138(1) of the Ordinance, 2001. The learned counsel for the petitioner contended that there is serious apprehension of initiation of proceedings for recovery of disputed tax demand u/s 137 through coercive measures during the pendency of appeal before CIR Appeals-II, hence, prayed for interim relief while relying on the case law reported as M/s Pak Saudi Fertilizers Ltd. Vs. Federation of Pakistan 7 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), Brothers Textile Mills Ltd. Vs. Federation of Pakistan through Secretary & 3 others (2003 PTD 2834), M/s Pearl Continental Hotel, Lahore through Director Finance & another Vs. Customs Excise and Sales Tax Appellate Tribunal, Lahore and another (2005 PTD 1368) and Sunrise Bottling Company (Pvt.) Ltd. through Chief Executive Vs. Federation of Pakistan and 4 others (2006 PTD 535).

3. Keeping in view of the law laid down by superior Court in the cases cited supra, I am inclined to dispose of this petition with the directions to Commissioner Inland Revenue (Appeals-II), RTO, Islamabad, to decide the appeal of the Petitioner expeditiously and preferably within a period of four weeks from the date of this order. Till the decision in the petitioner's appeal, the Respondent Department is directed to refrain from adopting the coercive measures for the recovery of the disputed tax demand created, vide order passed u/s 221(1) of the Income Tax Ordinance, 2001, dated 16.03.2020, for tax year 2018. The Petitioner is also directed to appear and argue the case before CIR Appeals-II, Islamabad, without seeking any adjournment as and when the appeal is fixed for hearing.

5. The Petition is disposed of in above terms.

(LUBNA SALEEM PERVEZ)
JUDGE