

Form No: HCJD/C-121.

ORDER SHEET.**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**
JUDICIAL DEPARTMENT.**Writ Petition No.602 of 2021*****M/s OPI Gas Private limited******VS******Federation of Pakistan etc.***

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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15.02.2021.**Ch. Naeem Ul Haq, Advocate for the
petitioner.****Syed Ishfaq Hussain Naqvi, Advocate for
FBR with Masood Akhtar, Chief (Legal),
FBR (HQs) and Faisal Naeem, System
Analyst, PRAL****Raja Khalid Mahmood Khan, Deputy
Attorney General.**

Through the instant Writ Petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has sought *inter alia* direction to respondent No.7, to decide its pending appeal and in the meanwhile restraining respondent No.10 from initiating the recovery proceedings in pursuance of impugned Order dated 08.02.2021, for payment of Income Tax liability for the Tax Year, 2021.

2. Learned counsel for the petitioner submitted that the impugned notice is illegal, arbitrary and against the law. It was further contended that initiation of recovery

proceedings during the pendency of petitioner's appeal is against his fundamental rights guaranteed under the Constitution. It was further contended 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 learned counsel placed reliance on the case titled "*M/s Pak Saudi Fertilizers Ltd. Vs. Federation of Pakistan and 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). Learned counsel further contended that delay in decision of the appeal is not on part of the petitioner, therefore, impugned Order dated 08.02.2021, for payment of Income Tax liability, may be suspended and recovery proceedings be stopped till the final decision of the appeal by respondent No.7.

3. The submissions made by the learned counsel for the petitioner have substance. In this behalf the Hon'ble Supreme Court of Pakistan in case titled "*Mehram Ali Vs. Federation of Pakistan etc.*" (PLD 1998 SC 1445)

has specifically held that there should be adjudication of grievance by an independent Tribunal and even Lahore High Court in numerous judgments 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.

4. In so far as grievance of petitioner qua electronic filing is concerned, Masood Akhtar, Chief (Legal), FBR appeared in person and assured that glitches in the system shall be removed and for the said purpose, even a focal person has been nominated. It was further stated that all orders shall now bear a barcode and where the same is missing, it shall be treated as misconduct. It was also stated that if any appeal becomes time barred due to system error; the condonation of delay shall be decided in accordance with law. Learned counsel for the petitioner feels satisfied and does not press any argument regarding filing of appeals through electronic mode.

5. In view of the above, the instant Writ Petition is disposed of with direction to respondent No.7 to hear and decide the appeal

alongwith stay application of the petitioner within a period of sixty (60) days and till then no coercive measures shall be adopted against the petitioner for recovery of disputed tax liability by respondent No.10.

(AAMER FAROOQ)
JUDGE

Zawar