

Form No: HCJD/C-121

**ORDER SHEET.**

**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**JUDICIAL DEPARTMENT.**

**Writ Petition No.3235 of 2019**

***M/s Kitchen Cuisine (Pvt.) Limited***

***Vs.***

***The Commissioner Inland Revenue, Islamabad and 4 others***

<b>S. No. of order/ proceedings</b>	<b>Date of order/ proceedings</b>	<b>Order with signature of Judge and that of parties or counsel where necessary.</b>
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**26.09.2019. Syed Ali Murtaza, Advocate for the  
petitioner.**

Through the instant writ petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner has assailed an order dated 23.11.2018 passed by respondent No.2/ department and seeks direction to respondent No.4 for expeditious disposal of its appeal.

2. The facts leading to filing of the present writ petition are that respondent No.2 passed an order dated 23.11.2018 and created demand of Rs.7,453,259/- alongwith default surcharge of Rs.2,513,984/ and penalty of Rs.372,662/- in respect of tax year from July 2017 to

April 2018. The said order of respondent No.2 was challenged by the petitioner in appeal and also filed a stay application alongwith it, before respondent No.4. The referred respondent was pleased to grant stay for 180 days through different orders. The said 180 days have lapsed and the petitioner has filed the instant writ petition apprehending proceedings for recovery by the respondent department in pursuance of order dated 23.11.2018 despite the fact that its appeal is still pending adjudication before respondent No.4.

3. The 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 are against 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 "Z.N.

Exporters Pvt. Ltd. V. Collector of Sales Tax" (2003 PTD 1746 Lahore), "*Sun-Rise Bottling Company Pvt. Ltd. V. Federation of Pakistan and 4 others*" (2006 PTD 535 Lahore), "*Dawood Textile Printing Industries Pvt. Ltd. Vs Federation of Pakistan and 4 others*" (2009 Tax 344 Lahore). Learned counsel further contended that delay in decision of the appeal is not on part of the petitioner, therefore, recovery proceedings be stopped till the final decision of the petitioner's appeal by respondent No.4.

4. The submissions made by the learned counsel for the petitioner have substance. In this behalf 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 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.

5. In view of above, the instant petition is disposed off with direction to respondent No.4 to decide the appeal of the petitioner within 90 days and till then no coercive measures shall be adopted against it for recovery of disputed tax liability. The petitioner is directed to appear and argue its case before respondent No.4 without seeking any adjournment as and when the appeal is fixed.

**(AAMER FAROOQ)**  
**JUDGE**

\*Niqab M \*