

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P No. 1852/2020

NISAR HASSAN.

Vs

THE COMMISSIONER INLAND REVENUE, SIALKOT, 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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01. 13.07.2020 Mr. Rahat Shaheen Khokhar, Advocate for the
Petitioner.

Through this petition, the petitioner seeks interim relief of staying the recovery proceedings of disputed tax demand of Rs. 1,927,939/- for the Tax Year 2011, in pursuance of notice u/s 138 of Income Tax Ordinance, 2001 [*hereinafter referred to as the Ordinance*] dated 12.09.2019, whereby, the immoveable properties of petitioner were attached, vide order.

2. Facts, in brief, are that Respondent No. 1 passed order dated 31.05.2016, under section 122C of the Income Tax Ordinance, 2001 [*hereinafter referred to as the Ordinance*], for the tax year 2011, whereby Income Tax of Rs. 1,465, 426/- was levied on the petitioner on the allegation that he had made an investment of Rs. 56,16,000/- in purchase of property during the Tax Year in question. Against said provisional assessment order revision application u/s 122(A) of the Ordinance was filed which was declined, vide order dated 15.02.2018. Being aggrieved, petitioner filed appeal before Respondent No.2 /CIR (A) on 13.03.2018, who vide order dated 27.02.2019

dismissed the appeal on the ground that the order passed u/s 122(A) of the Ordinance is not entertain-able u/s 127 of the Ordinance. Petitioner challenged said order before Respondent No.3/ATIR through appeal along with a stay application, who vide order dated 03.03.2020, rejected the stay application. Hence, this petition for stay of recovery proceedings.

3. Learned Counsel, *inter-alia*, contended that issuance of recovery notice dated 12.09.2019, during the pendency of appeal before Respondent No.3, is not only violation of relevant provisions of the Ordinance and Income Tax Rules, 2002 but also against the Articles 4, 8, 10A, 18, 23, 25 & 77 of the Constitution of Islamic Republic of Pakistan, 1973. The Petitioner, under the circumstances, apprehends recovery of the disputed tax demand through coercive measures as immoveable properties are already attached by the Respondent No.2, vide order dated 12.09.2019. The learned counsel has argued that Respondent No. 3 is not justified in dismissing his stay application as it would provide opportunity to Respondent No. 1 to recover the disputed tax demand through coercive means during the pendency of appeal before Respondent No. 3. It was further contended that it is a settled principle of 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 law reported as "Z.N. Exporters Pvt. Ltd. Vs. Collector of Sales Tax"[2003 PTD 1746

Lahore], "Sun-Rise Bottling Company Pvt. Ltd Vs. 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 argued 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.3.

4. The submissions made by the learned counsel for the petitioner have substance. In this behalf the Hon'ble Supreme Court in the case titled "Mehram Ali and others Vs. Federation of Pakistan and others" [PLD 1998 Sc 1445] has specifically held that there should be adjudication of grievance by an independent forum outside hierarchy of the respondent department.

5. In view of the above, instant petition is disposed of with direction to Respondent No. 3 to decide the appeal of the petitioner within (ninety) days, from the date of receiving of a certified copy of this order. Till then no coercive measures shall be adopted against the Petitioner for recovery of disputed tax liability. The petitioner is directed to appear and argue its case before Respondent No. 3 without seeking any adjournment as and when the appeal is fixed.

(LUBNA SALEEM PERVEZ)
Judge

Adnan.