

**ORDER SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

W.P.No.1341 of 2021  
Abdullah Khan  
**Versus**  
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.
	<b>09.04.2021</b>	<b>Malik Nasir Abbas Awan, Advocate for the petitioner</b>

Through the instant writ petition, the petitioner seeks the issuance of a writ declaring the impugned recovery notice dated 02.02.2021 issued by respondent No.3 (Assistant/Deputy Commissioner (Withholding Tax) Inland Revenue) to be illegal and without lawful authority. Furthermore, the petitioner seeks a direction to respondent No.1 (Commissioner Inland Revenue) to condone the limitation period for filing of appeal enabling the petitioner to file appeal against the impugned *ex-parte* order dated 31.12.2020.

2. It is *inter alia* contended that the petitioner is an individual and engaged in the services of transpiration at Islamabad; that respondent No.3 vide its notice dated 07.10.2019 issued in terms of Section 161(1A) of the Income Tax Ordinance, 2001 ("**the 2001 Ordinance**") observed that the transactions alleged to have been made by the petitioner were without deducting the withholding tax as a result of which a loss has been occurred to the government exchequer; that respondent No.3 vide its assessment order dated 31.12.2020 issued in terms of Section 161(1) of the 2001 Ordinance directed the petitioner to pay an amount of Rs.5,907,830/- on account of default surcharge for failure to collect/deduct tax at source; and that pursuant to the said assessment order, the respondent department initiated coercive measures for the recovery of the disputed tax liability and as a result notice dated 02.02.2021 was issued to the petitioner.

3. It is further contended that the petitioner challenged the impugned order together with notices issued for the recovery of the disputed tax liability in an appeal on Iris/web portal before

respondent No.1, however, same could not be filed within time; that along with the appeal the petitioner filed an application for condonation of delay, which is still pending adjudication before respondent No.1; that the petitioner has an apprehension that the respondent department may initiate recovery proceedings on the basis of the impugned order as well as notices; that respondent department did not serve any notice prior to initiation of recovery proceedings; and that it is trite law that unless there is adjudication by one independent forum, no recovery proceedings can be initiated against the assessee. Learned counsel has prayed for the petition to be allowed in terms of the relief sought therein.

4. I have heard the arguments advanced by the learned counsel for the petitioner, and perused the record.

5. It evinces from the record that vide impugned notice dated 07.10.2019 issued in terms of Section 161(1A) of the 2001 Ordinance by respondent No.3, it had been observed that the transactions alleged to have been made by the petitioner were without deducting the withholding tax which resulted in the issuance of the assessment order dated 31.12.2020 in terms of Section 161(1) of the 2001 Ordinance and the petitioner was directed to pay an amount of Rs.5,907,830/- on account of default surcharge for failure to collect/deduct tax at source. In order to recover the above-said tax /amount, on 02.02.2021, recovery notice in terms of Section 138(1) of the 2001 Ordinance was issued to the petitioner.

6. Indeed the petitioner challenged the assessment order as well as the recovery notice before respondent No.1 after lapse of limitation period and sought condonation of delay for filing of appeal. The said appeal along application for condonation of delay is said to have been filed on Iris/web portal.

7. Section 127 of the 2001 Ordinance deals with the filing of an appeal to the Commissioner (Appeals) against an order passed under Section 161(1) of the Ordinance *ibid* by the Officer Inland Revenue. Under Section 127(5) of the 2001 Ordinance, an appeal before the Commissioner shall be

preferred within thirty days. In the case at hand, the petitioner challenged the impugned order dated 31.12.2020 in an appeal before respondent No.1 on 31.03.2021 with the delay of almost 89 days. As regards the petitioner's request to direct respondent No.1 to condone limitation period for filing the appeal, suffice it to say that this Court, in exercise of its Constitutional jurisdiction, cannot condone the delay occurred in filing the appeal under Section 5 of the Limitation Act, 1908. Even otherwise, cause apparently taken by the petitioner in filing the appeal with delay was due to restriction of system on Iris/web portal before respondent No.1, is not sufficient to condone the delay of time-barred appeal.

8. Since the petitioner's application for condonation of delay in filing the appeal is pending with respondent No.1, it is for respondent No.1 to effectively decide the same after determining the causes with respect to delay in filing the same. Indeed the petitioner has an apprehension that the respondent department may initiate recovery proceedings on the basis of the impugned order as well as recovery notices, thus, without issuing notices to the respondents, it would be in the interests of justice to restrain the respondent department for the recovery of the disputed tax liability until the decision of the petitioner's application for condonation of delay by respondent No.1. Order accordingly. Respondent No.1 is directed to decide the petitioner's application for condonation of delay in filing the appeal expeditiously and preferably within a period of one month from the date of receipt of this Order.

9. Disposed of in the above terms.

**(MIANGUL HASSAN AURANGZEB)**  
**JUDGE**

Qamar Khan\*