

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

Writ Petition No.621 of 2021

Afnan Ullah Khan
VS

Assistant/Deputy Commission Inland Revenue, Islamabad, etc.

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	16.02.2021.	Ch. Naeem Ul Haq, Advocate for the petitioner.

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.2, to decide its pending appeal and in the meanwhile restraining respondent No.1 from initiating the recovery proceedings in pursuance of impugned notice u/s 138 (1) of the Income Tax Ordinance, 2001, dated 28.02.2020, for payment of Income Tax Liability for tax year 2016.

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 notice dated 28.02.2020, for payment of Income Tax liability, may be suspended and recovery proceedings be stopped till the final decision of the appeal by respondent No.2.

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 view of the above, the instant Writ Petition is disposed of with direction to respondent No.2 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.1.

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(AAMER FAROOQ)
JUDGE