

Form No: HCJD/C-121

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P No. 2471/2020

EXCEL LABS (PVT) LTD., ISLAMABAD.

Vs

**ASSISTANT / DEPUTY COMMISSIONER INLAND REVENUE UNIT-III,
ISLAMABAD, 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. 10.09.2020 Hafiz Muhammad Idrees and Mr. Muhammad
Mohsin Nazir, Advocates for the Petitioner.

Through this petition, the petitioner seeks interim relief of stay of recovery of disputed tax demand of Rs. 27,178,846/- dated 29.06.2020, created u/s 122(1) of the Income Tax Ordinance, 2001 (hereinafter referred to as the "**Ordinance of 2001**"), for the tax year 2014, against which appeal is pending before Respondent No. 2.

2. Learned counsel for the petitioner submitted that appeal against order passed u/s 122(1) dated 29.06.2020, is pending before Respondent No. 2 along with stay application, who vide three various orders dated 13.07.2020, 06.08.2020 & 21.08.2020, granted accumulated stay of 50 days. The Petitioner, filed application dated 02.09.2020 for further stay which has not been fixed for hearing. As previously granted stay has already lapsed on 05.09.2020, therefore, instant petition has been filed for restraining Respondent No.1 from issuing any recovery notice u/s 138 of the Ordinance, 2001.

3. Learned Counsel, *inter-alia*, contended that initiation of recovery proceedings during the pendency of appeal before Respondent No.2, is not only violation of relevant provisions of Ordinance of 2001 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 under the provisions of 138(2) of the Ordinance of 2001 by Respondent No. 1, in pursuance of order dated 29.06.2020. The learned counsel has argued that since, there is no restraining order in field, therefore, there is strong apprehension of recovery of disputed tax demand by Respondent No. 1 through coercive means during the pendency of appeal before Respondent No. 2. 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.2.

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. 2 to decide the appeal of the petitioner within 90 (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. 2 without seeking any adjournment as and when the appeal is fixed.

(LUBNA SALEEM PERVEZ)
Judge

Adnan.