

IN THE HIGH COURT OF SINDH AT KARACHI
(Extraordinary Constitutional Jurisdiction)

C. P. No. D – 6069 of 2020

Date	Order with signature of Judge
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Present:

Mr. Justice Aqeel Ahmed Abbasi
Justice Mrs. Rashida Asad

Fresh Case

1. For orders on Misc. No. 26100/2020.
2. For orders on office objection No. 10.
3. For orders on Misc. No. 26101/2020.
4. For hearing of Main Case.
5. For orders on Misc. No. 26102/2020.

30.11.2020:

Mr. Anwar Kashif Mumtaz, advocate for the petitioner
a/w. Mr. Usman Alam, advocate.

ORDER

1. Through instant petition, petitioner has expressed its grievance against an order dated 23.10.2020 passed by the Appellate Tribunal Inland Revenue of Pakistan, Karachi Bench Karachi in MA (Stay) No. 671/KB/2020 in ITA No. 1509/KB/2018 [Tax Year 2012], whereby, the request of the petitioner for granting stay against recovery of the disputed amount, has been declined. It has been contended by the learned counsel for the petitioner that the appeal of the petitioner is pending since 2018, whereas, an application for grant of stay was filed subsequently by the petitioner in order to avoid recovery proceedings by the respondents through coercive process, however, such application has been dismissed by the Appellate Tribunal Inland Revenue, while holding that the petitioner has no prima facie arguable case. According to learned

counsel, respondents have issued recovery Notice to the petitioner while giving appeal effect to the order of the Commissioner (Appeals) and there is an apprehension that respondents will adopt coercive measures against the petitioner for the recovery of the disputed amount. It has been prayed that respondents may be directed not to take any coercive adverse action against the petitioner for the recovery of the disputed amount till final decision by the Appellate Tribunal Inland Revenue in the instant case.

2. It may be observed that the constitutional jurisdiction under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 in cases, where the statutory forum for seeking redressal of grievance have been provided and an aggrieved party has already availed such remedy, cannot be invoked to such circumvent such proceedings pending before such statutory forum, whereas, an aggrieved party is required to continue and not to abandon such remedy till final disposal of the case in accordance with law. Since the Appellate Tribunal Inland Revenue in the instant case has exercised its discretion to grant or reject a stay application filed by any party, which prima facie, does not suffer from any patent illegality, therefore, does not require any interference by this Court under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973. Learned counsel for the petitioner has not been able to point out any jurisdictional defect or patent illegality in the impugned order passed by the Appellate Tribunal in the instant case, however, has expressed his grievance to the extent that it is a case of hardship, as according to learned counsel, an illegal demand has been created against the petitioner.

3. We are not inclined to examine the merits of the case or to replace our finding with regard to discretion exercised by the Appellate Tribunal while rejecting the application for grant of stay,

whereas, it appears that while passing the impugned order, the three ingredients required to be considered, while deciding an injunction application, have been taken into consideration by the Appellate Tribunal.

4. In view of hereinabove facts and circumstances of the case, we are of the opinion that no exceptional grounds exist to exercise constitutional jurisdiction and to set aside the order of the Tribunal, which prima facie, does not suffer from any jurisdictional defect or patent illegality. Accordingly, instant Petition is dismissed in limini alongwith listed applications. However, petitioner will be at liberty to file an urgent application for early disposal of the main appeal before the concerned Bench of the Appellate Tribunal, who may consider the request of the petitioner and may decide the main appeal at an early date, preferably, within a period of four weeks from the date of receipt of this order, which shall be communicated to the concerned Bench of the Appellate Tribunal by the petitioner alongwith urgent application within seven days from the date of this order. However, till then, respondents may not take any coercive action against the petitioner for the recovery of the disputed amount, which is subject matter of appeal before the Appellate Tribunal in the instant case.

Petition stands disposed of in the above terms.

JUDGE

JUDGE

A.S.