

**Judgment Sheet**  
**IN THE LAHORE HIGH COURT**  
**RAWALPINDI BENCH, RAWALPINDI**  
**JUDICIAL DEPARTMENT**

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**WRIT PETITION NO.1369 of 2019**

THE COMMISSIONER INLAND REVENUE, City Zone, R.T.O,  
Rawalpindi and another

**Versus**

THE APPELLATE TRIBUNAL INLAND REVENUE, Headquarters  
Bench, Islamabad and another

**JUDGMENT**

Date of hearing: 10.05.2019  
Petitioners by: Mr. Muhammad Irshad Ch,  
Advocate.  
Respondent No.2 by: Sh. Istadamat Ali, Advocate.

MIRZA VIOAS RAUF, J. This petition in terms of Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 assails the *vires* of order dated 16<sup>th</sup> April, 2019, whereby the Appellate Tribunal Inland Revenue Bench, Islamabad proceeded to grant an interim relief, pending appeal.

2. Precisely the facts necessary for adjudication of instant petition are that on account of information that respondent No.2 (hereinafter referred as "respondent") is maintaining undeclared bank accounts and immovable properties, a show cause notice was issued to him. The show cause notice was responded by the "respondent" and in view thereof certain amount was found assessable under the head "income from other sources" thus an order

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Rawalpindi Bench



under Section 122(1) of the Income Tax Ordinance, 2001 was served upon the "respondent". The "respondent" preferred an appeal before the Commissioner, Inland Revenue (Appeals-III), 12-Mayo Road, Rawalpindi. After adjudication the appeal was rejected. The "respondent" then filed appeals in terms of Section 131 of the Income Tax Ordinance, 2001 before the Appellate Tribunal. The "respondent" moved two miscellaneous applications seeking injunctive order against the recovery of tax demand till the decision of the main appeals. By way of order dated 16<sup>th</sup> April, 2019, Appellate Tribunal granted the interim relief in favour of the "respondent".

3. Learned counsel for department submitted that impugned order offends the mandate of Section 131 of the Income Tax Ordinance, 2001. It is submitted that Appellate Tribunal proceeded to grant an ad-interim injunction in the mandatory form, which is not permissible. Learned counsel emphasized that even otherwise impugned order is non-speaking and not tenable under the law.

4. Conversely, learned counsel for "respondent" defended the impugned order with hilt.

5. Heard. Record perused.

6. The matter in issue relates to the validity of order dated 16<sup>th</sup> April, 2019 passed by the Appellate Tribunal during the pendency of the appeal. In order to adjudge the validity of impugned order in its true perspective, it would be advantageous to have a glimpse of the same. The relevant extract is thus reproduced below :-

"3. Arguments have been heard. Main Appeals are pending before this Tribunal for adjudication, so there is no fault on the part of applicant. Merits of the case are to be thrashed out in detail in main appeals. In these circumstances, without commenting upon the merits of the case we deem it appropriate to grant stay against the recovery of tax demand for the period

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of fifty (50) days or till the disposal of main appeals whichever is earlier. With the direction to department to detach the Properties and Vehicle of the taxpayer. During such period the department shall not press for recovery of impugned dues through coercive measures."

It is manifestly clear from the above that the injunction was granted against the recovery of tax demand without assigning any reasoning. It is also evident that a direction to the department for detachment of the properties and vehicle of the taxpayer has also been passed.

7. There is no cavil that the Appellate Tribunal is vested with the power to stay the recovery of tax during the pendency of appeal but sub-section (5) of Section 131 of the Income Tax Ordinance, 2001 lays down certain pre-conditions for the same, which reads as under:-

"131. Appeal to the Appellate Tribunal.--(1)-----

(2)-----

(a)-----

(b)-----

(c)-----

(d)-----

(3)-----

(4)-----

(5) Notwithstanding that an appeal has been filed under this section, tax shall, unless recovery thereof has been stayed by the Appellate Tribunal, be payable in accordance with the assessment made in the case:  
Provided that if on filing of application in a particular case, the Appellate Tribunal is of the opinion that the recovery of tax levied under this Ordinance and upheld by the Commissioner (Appeals), shall cause undue hardship to the taxpayer, the Tribunal, after affording opportunity of being heard to the

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Commissioner, may stay the recovery of such tax for a period not exceeding one hundred and eighty days in aggregate

Provided further that where recovery of tax has been stayed under this section, such stay order shall cease to have effect on expiration of the said period of one hundred and eighty days following the date on which the stay order was made and the

Commissioner shall proceed to recover the said tax:

Provided further that in computing the aforesaid period of one hundred and eighty days, the period, if any, for which the recovery of tax was stayed by a High Court, shall be excluded."

(Underlining is supplied for emphasizes)

(Bare perusal of the above referred provision of law clearly postulates that an application for stay of the recovery of tax is not to be entertained in each and every case. Such an application confines to a particular case having special facts and circumstances and before proceedings with the application for the purpose of grant of injunction, the Appellate Tribunal is obliged to form an opinion that recovery of tax shall cause undue hardship to the tax payer.) The impugned order is clearly missing such pre-requisites. The Appellate Tribunal was not supposed to pass the injunctive order in an omnibus fashion and in vacuum. Even otherwise the Tribunal was not vested with any power to grant an injunction in the mandatory form directing the department to detach the properties and vehicle of the taxpayer. It appears that while dealing with an application for the grant of temporary injunction, the Appellate Tribunal has failed to apply its conscious mind to the facts of the case. The impugned order is even non-speaking and offends the mandate of Section 24-A of the General Clauses Act, 1897. The impugned order is though interlocutory but it is not in conformity with law and is illegal at the face of it so no bar can be pleaded in exercise of constitutional jurisdiction.

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8. The nutshell of above discussion is that since illegality and perversity is floating on the surface of record, as such instant petition is allowed, (consequently impugned order is set aside, as a result thereof, applications filed by the "respondent" shall be deemed to be pending before the Appellate Tribunal, who shall decide the same afresh keeping in view the observations recorded hereinabove within ten days from the date of receipt of instant order) with no order as to costs. Office to transmit the copy of this judgment to concerned quarter for its compliance.

*Shahbaz Ali\**

*MIRZA VIQAS RAUF*  
(MIRZA VIQAS RAUF)  
JUDGE

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Authorised Under Article-87  
Qanun-Shahadat Order 1984

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