

APPELLATE TRIBUNAL INLAND REVENUE (PAKISTAN)
KARACHI BENCH, KARACHI

Present: MR. MUHAMMAD JAWED ZAKARIA, J.M.
MR. FAHEEMUL HAQ KHAN, A.M

MA (Stay) No.325/KB/2016
(Tax Year 2013)
U/s. 131(5)
In: ITA No. 1082/KB/2016

M/s. Al-Moazzin Hajj & Umrah Services (Pvt) Ltd,
Karachi.....Applicant

V E R S U S

The Commissioner Inland Revenue,
Zone-III, RTO, Karachi.....Respondent

Represented by :

Applicant : **Mr. M. Waseem Sheikh, Advocate**
Respondent : **Mr. Naib Ali Pathan, DR.**

Date of Hearing : **21.09.2016**
Date of Order : **21.09.2016**

O R D E R

Muhammad Jawed Zakaria, Judicial Member:-

Captioned miscellaneous application for stay has been filed by applicant /taxpayer in the appeal bearing **ITA No. 1082/KB/ 2016**, which is pending adjudication before this Tribunal.

2. The learned counsel submitted that the Applicant is engaged in the business of Travel Agency and deals as Hajj and Umrah Services / Travel Agents and Tour operators. He submitted that the DCIR had made

various additions to the income of the Taxpayer and the same were confirmed by the learned CIR (A) without applying judicious mind and no worth mentioning relief was granted by him. The learned counsel further contended that against the order of the learned CIR (A), the taxpayer had filed appeal before this Tribunal on 10-09-2016 which is pending adjudication. The Learned A.R contended that in the present case department has raised unjustified demand from the taxpayer intentionally ignoring the admitted facts. The impugned order is based upon surmises and conjectures having no legal sanctity. The learned A.R further contended that order passed by taxation authorities below are unjust and improper and therefore, any coercive action for effecting recovery of assessed amount of tax against the applicant/taxpayer would be equally unjust and improper. The applicant has good prima facie case and balance of probability also tilts in favour of the applicant. Further, the additions and disallowances have been made without applying conscious judicious mind. The learned counsel categorically stated at bar that the Department has already attached bank account of the applicant and withdrawn an amount of Rs.20,45,823/= which comes to 24.45% of the total tax demand, behind the back of the taxpayer even without issuing any show cause notice or intimation. The department has attached the bank

account of the taxpayer just to harass the taxpayer. The issues involved in these appeals are debatable and balance of convince is in favour of the taxpayer. Further, if the stay is not granted the Taxpayer would have suffered irreparable loss. In these circumstances, the AR submitted that the applicant is entitled for stay against the forcible recovery till decision of its main appeal which is pending adjudication before Tribunal.

3. Learned D.R on the other hand, strongly opposed the stay application. He contended that the taxpayer has been assessed in accordance with law and therefore, liable to pay the amount determined as outstanding against the taxpayer. The learned DR prayed for dismissal of stay application or alternatively, he submitted that he would have no objection if conditional stay is granted.

4. We have considered contentions of both the parties. We have also observed that the Tribunal is seized of matter of taxpayer's appeal and is empowered to hear the same u/s. 131 of the Income Tax Ordinance, 2001 and decide the appeal of the applicant / taxpayer, therefore, it has powers to grant interim relief to save the applicant from imminent coercive measures to be initiated by the department for effecting recovery from

the taxpayer. Further, considering the fact that the issues involved in this appeal are debatable and requires interpretation of law and scrutiny of facts. Considering the statement made by the learned counsel for the Applicant that the department had already withdrawn an amount of Rs.20,45,823/= which comes to 24.45% of the total tax demand of Rs.8,366,849/=, behind the back of the taxpayer and apart from having a prima facie case and the balance of probability, the taxpayer may also be exposed to face hardship in the circumstances. Accordingly, at this stage without touching the merits of case, **we deem it appropriate to grant stay against recovery of balance amount for 30 (Thirty) days from today or till the decision of main appeal pending before this tribunal whichever is earlier. The department is hereby ordered to de-attach all the accounts of the taxpayer. The applicant / appellant may submit out of turn application before Hon'ble Chairman HQ at Islamabad, for early fixation of main appeal before any available Division Bench.**

5. This is ad-interim order and strictly protective relief/stay against recovery of balance demand without touching the merit of the case and the observations thereon will not affect merit of the case in any manner.

6. The application stands disposed of in the manner indicated above.

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**(MUHAMMAD JAWED ZAKARIA)
JUDICIAL MEMBER**

_____sd_____

**(FAHEEMUL HAQ KHAN)
ACCOUNTANT MEMBER**

Arsalan Pathan *APS

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