

APPELLATE TRIBUNAL INLAND REVENUE
(PAKISTAN) KARACHI BENCH, KARACHI

Present: Mr. Muhammad Jawed Zakaria, J.M.
Mr. Faheemul Haq Khan, A.M.

M.A (Stay) No.289/KB/2016
(Tax Year 2013)
U/s.131(5)

M/s. Jawaid Bros label Industries (Pvt),
LimitedAppellant

V e r s u s

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

Represented by:

Appellant : **Syed Riazuddin, Advocate.**
Respondent : **Dr. Naveedul- Hassan, D.R.**

Date of hearing : **26.08.2016**
Date of order : **31.08.2016**

ORDER

MUHAMMAD JAWED ZAKARIA, JUDICIAL MEMBER:- In this very case, the taxpayer moved an application before the learned CIR (A) on 15-03-2016 for grant of stay which was rejected by the learned CIR (A). Being aggrieved from the rejection of the stay by the learned CIR (A) the taxpayer approached this forum for grant of stay. The applicant was granted 150 days stay from time to time. The last stay was granted

vide **M.A. (Stay) No. 234/KB/2016** dated **04.07.2016** for **60 days**, Which is going to be **expired on 2th September, 2016**, therefore, the applicant through this Miscellaneous Application has requested for grant of extension in stay against the recovery proceedings to be initiated by the Department.

2. On the date of hearing, **Syed Riazuddin, Advocate**, appeared on behalf of the applicant/ taxpayer while **Dr. Naveedul Hassan**, represented the Department.

3. During the course of hearing, learned representative for the taxpayer apprised that the main appeal bearing **ITA No.468/KB/2016** which is still pending adjudication/pending in writing judgment before the CIR(A) since April 21, 2016. He strongly contended that the Learned CIR(A) had finally conducted appeal hearing and judgment/ order reserved on 21.04.2016. since then the application has been awaiting. He further submitted that applicant has

got a good prima facie and balance of convenience is in favour of the taxpayer. He further submitted that the department has been issuing threatening letters to attach not only the accounts of the taxpayer but also partners individual accounts and associate concerns of M/s. T & S Buttons Pakistan Co. (Pvt) Ltd. He also produced two copies of the cheques both dated 26-05-2016 showing deposit of Two Million in aggregate towards government treasury. He further argued that the department is not complying the order passed by this Tribunal and bent upon to take coercive action against the taxpayer. He submitted that after expiry of stay the department may take coercive measure to recover the tax demand, therefore, the stay may be extended till the final decision of main appeal which is pending adjudication before the learned CIR (A). Although he has finally heard and reserved for order on 21.04.2016, almost five months elapsed but the applicant taxpayer has not yet received 1st appellate authority's order [CIR(A)'s order]. He further prayed that the department may be directed to allow applicant to operate its bank account without any hindrance during the period of stay.

4. The learned D.R. on the other hand, strongly opposed the grant of extension in stay.

5. We have heard the learned representatives from both the sides and have also perused the relevant record of case. From perusal of the records, it is transpired that the learned CIR (A) has concluded the hearing on April 21, 2016 but despite lapse of more than four months the learned CIR (A) has not passed the order. The concept of finalization of all issues up to the level of CIR(A) is obviously for the benefit of taxpayer and the department. This has also gear up the appellate machinery at rate of knots and speedy trial of the case and to avoid protracted litigation between the parties and to rescue the taxpayers as well as department from vexing twice for the same cause and quick dispensation of the justice. The CIR (A) is included in the Income tax Authority under section 207 of the Income Tax Ordinance, 2001, CIR (A) working under the hierarchy of FBR. The CIR (A) is working specially under FBR Member (Legal) and fully falls

under the dominance of FBR. AO/OIR/DCIR/ACIR and so also CIR (A) has been working under one umbrella of FBR. Hence, he has been given wider powers than those of an appellate court under the code of Civil Procedure. His competence is not to be restricted to dealing with subject matter of appeal. CIR(A) may examine all matters covered by the assessment order. Therefore, in our opinion, the CIR (A) is not enjoying powers of the appellate court as he is not an independent, impartial though he ought to be.

6. We with great concern would observe that the Government functionary including taxing officer/ CIR\CIR(A) henceforth is to work hand in hand with the judiciary to usher in an age of the speedy justice delivery systems in our beloved and beautiful country to remove the adage **"JUSTICE DELAYED IS JUSTICE DENIED"** from Pakistan Judicial system. Early and meaningful speedy disposal of pending appeals will bring some relief to the taxpayers and may also stop unnecessary deferment of revenue. In this way CIR (A) may protect and safeguard the interest of

both taxpayer as well as of revenue, Delay in dispensation of complete and meaningful justice dispensed with and at times makes it worthless. Facts and conduct of appeal shows deliberately contribute to the delay in passing the order while the appeal hearing was finally concluded on **April 21, 2016.**

7. We have also noted with great concern that the department is not complying with the order of the Tribunal passed from time to time. The Tribunal vide its judgment reported as **2010 PTD (Trib) 557** strongly deprecated the tendency of Ignoring or by-passing the direction of the superior authorities on the part of revenue:

"We have in so many cases deprecated the tendency of ignoring or bypassing the directions of the superior authorities on the part of the Revenue Officers. This tendency needs to be cured for better administration of justice, observance of discipline and maintaining rule of consistency and law. The Taxation Officer in this case having scanty knowledge of the dispensation of justice and interpretation of statute has tried to

demonstrate that he knows the law and the legal proceedings better than his superior officer and he may be right in thinking so but while acting as a judicial/ Quasi Judicial which have always been viewed very seriously and may entail into an appropriate action which however, we do not propose to take in this case.”

8. Further the ATIR (Tribunal) has ruled in **(1996) 73 Tax 132** that its judgments are binding on the appellate authorities subordinate to the Tribunal under hierarchy of judiciary. We are, therefore, of the opinion that it is not the taxpayer's fault or default The taxpayer is being penalized and punished for its obedience to law of the land. The taxpayer ought to file M.A. Stay Application once again before the CIR(A) just immediately on receipt of this order, it is common knowledge, that a statue normally does not provide for each and every conceivable eventuality and in respect of some unforeseen events arising in a case for which it has made no provision, the courts would be deemed to have inherent jurisdiction in the interest of orderly

dispensation of justice unless and until prohibited by the statutory provision of statute.

9. It is therefore, directed to the CIR(A) either release/ issue and served CIR(A)'s appellate order **within 7 days from receipt of this order** or grant stay till the disposed of decision of main appeal. The CIR(A) ought to **pass judicious speaking order after application of conscious mind, dispose of the appeal and issue/ serve the appellate order as observed supra.** Till then, as a protective measure Respondent/Department is strictly directed not to adopt any coercive measures for the recovery of the disputed demand.

CONCLUSION:

- **That the taxpayer can file Appeal against the refusal of stay order by the learned CIR(A).**
- **That the Tribunal may grant stay subject to provisions of Section 131(5) read with First Proviso of the Income Tax Ordinance, 2001.**

- **That the Order for refusal of stay passed by the learned CIR(A) dated 15-03-2016 is vacated.**
- **That the taxpayer may file fresh stay application before the learned CIR(A).**
- **That the learned CIR(A) shall Either decide the stay application within two days from the receipt of stay application and shall allow 30 days stay for recovery of tax against coercive measures or shall decide main appeal within clear 7 days from the date of receipt of this order and shall also issue and served appellate order to the taxpayer within 7 days of receipt of this order accordingly.**
- **Till then the Respondent / Department shall not adopt any coercive measures for the recovery of disputed tax amount.**
- **Finale, It may be noted that in case of non-compliance or disobeying of this court's order. This court's shall be**

constrained to take judicial notice and would pass stricture against lethargic CIR(Appeals-III), Karachi and would also write letters to the Chairman, FBR, as well Member (Legal) and other high ups of the FBR/ Finance Ministry. We may also write to Hon'ble Chief Justice of Sindh High Court for "**Contempt Proceedings**" against non compliance of this court order. and, utter violation of due process of law. However, as the facts and circumstances remain the same as were prevalent at the time of passing the last order bearing M.A. (Stay) No. 234/KB of 2016 dated 4.7.2016, we restrain the department and its officers and agents from taking any coercive measure to recover the tax demand and order to de-attach all the accounts of the taxpayer Company and its associates as well as individual accounts of the applicant, its directors and partners if so attached by the department.

10. The Copying Section is directed to send the copies of this Tribunal's order to:-

- **The learned Member (Legal), FBR,
Islamabad,**
- **Mr. Sajjad Akbar Khan, concerned
CIR (A-III), Karachi.**
- **Mrs Seema Shakeel Concerned Chief
Commissioner, RTO-1, now RTO
Corporate.**
- **Mr. Shamsuddin Qazi, Commissioner
Inland Revenue, RTO-1, Now
Corporate.**

11. The miscellaneous application is allowed to the above terms.

Order accordingly.

S/d
(MUHAMMAD JAWED ZAKARIA)
JUDICIAL MEMBER

S/d
(FAHEEMUL HAQ KHAN)
ACCOUNTANT MEMBER