

**APPELLATE TRIBUNAL INLAND REVENUE (PAKISTAN)**  
**KARACHI BENCH, KARACHI**

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

**MA (Stay) No.286/KB/2016**  
**(Tax Year 2014)**  
**U/s. 131(5)**  
**In: ITA No. 1020/KB/2016**

**M/s. Awan Trading Co. (Private) Limited,**  
Karachi.....Applicant

*V E R S U S*

**The Commissioner Inland Revenue,**  
Zone-II, LTU, Karachi.....Respondent

**Represented by :**

Applicant : **Mr. Shahid Hussain, FCA.**  
Respondent : **Mr. Mirza Nasir Ali, DR.**

Date of Hearing : **25.08.2016**  
Date of Order : **27.08.2016**

**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. 1020/KB/ 2016**, which is pending adjudication before this Tribunal.

2. The learned counsel submitted that the learned CIR(A) has erred while confirming the disallowance of the status of Large Import House ("LIH") to the appellant despite the fact that Commissioner Enforcement and Collection, RTO, Karachi, certified that appellant fulfills all conditions under clause (d) of subsection (7) of section 148 of Ordinance, 2001. The learned counsel contended that the learned CIR(A) grossly erred while levying tax at 5% on the import of coal amounting to Rs. 444,348,664/- under section 148 of ITO, despite the fact that the import of "coal" falling under H.S code 27 is exempt under sub clause (i) of clause (56) of the Part IV of the Second Schedule, during subject period. The learned CIR (A) wrongly confirmed the additions on account of commission income without confronting the issue in the show cause notice. It was further contended that he learned CIR(A) erred while treating discount on import of coal as the commission income. He further submitted that the learned CIR(A) erred while charging increased tax of Rs. 2,885,358/- as compared to taxes levied by learned Deputy Commissioner Inland Revenue ("DCIR") in the original assessment order amounting to Rs. 1,442,679/-. That the learned CIR(A) went wrong in holding that the taxpayer is an "Industrial Establishment" under the "Sindh Worker Welfare Fund Act, 2013" (SWWFA). That the learned CIR(A) was not justified in setting aside

addition made by learned DCIR amounting to Rs. 10,000,000/- on account of disposal of Gypsum Mine, instead of disposing of the matter on its merits and in light of available entry wise information submitted to DCIR as well as before CIR(A). That the learned CIR(A) has gravely erred in setting aside addition made by learned DCIR amounting to Rs. 50,000,000/- on account of disposal Coal Mine, instead of disposing of the matter on its merit and in the light of available entry wise information submitted to DCIR and also before CIR(A). That the learned CIR(A) illegally set aside addition made by learned DCIR amounting to Rs. 106,380,000/- on account of alleged concealment of bank account, instead of disposing of the matter on its merit and in the light of available entry wise information submitted to the authorities below.

3. On the basis of the above factual and legal grounds, 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 above additions have been made without applying conscious judicious mind. 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.

4. 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.

5. In his counter argument the AR further submitted that DR. had ignored the huge amount of Rs.15.00 Million relating to tax year 2014 had been deposited after, order

in original, towards government treasury by the taxpayer which is more than 4% (approx 5%) of the total tax demand. He also produced copy of CPR receipt No. IT 20160601-1027-1005516 dated 1<sup>st</sup> June, 2016.

6. 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. As the taxpayer had already deposited an amount of Rs.15.00 Million in government treasury 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 days from today or till the decision of main appeal pending before this tribunal whichever is earlier. The applicant may submit out of turn

application before Hon'ble Chairman HQ at Islamabad, for early fixation of main appeal before any available bench.

7. The application stand disposed of in the manner indicated above.

S/d  
**(MUHAMMAD JAWED ZAKARIA)**  
**JUDICIAL MEMBER**

S/d  
**(FAHEEMUL HAQ KHAN)**  
**ACCOUNTANT MEMBER**

Arsalan Pathan \*APS

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