

ORDER SHEET
HIGH COURT OF SINDH, KARACHI

Suit Nos.2317, 2318 & 2319 of 2017

Date	Order with signature of Judge
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Before:
Mr.Justice Muhammad Ali Mazhar

**International Power Global Development
Limited.....Plaintiff**

Versus

**Federation of Pakistan &
others.....Defendants**

Suit No.2317/2017

For hearing of CMA No.15308/2017

Suit No.2318/2017

For hearing of CMA No.15310/2017

Suit No.2319/2017

For hearing of CMA No.15312/2017

10.11.2017

Mr. Jam Zeeshan Ali advocate for the plaintiffs.
Mr. Abdul Qadir Leghari, Assistant Attorney General.

Muhammad Ali Mazhar, J: All aforesaid suits have been filed by the same plaintiff. It is an admitted position that three separate appeals filed by the plaintiff for financial year 2013, 2014 and 2015 are pending before learned Appellate Tribunal Inland Revenue. The plaintiff claims that their stay applications are pending before the learned Tribunal but neither the main appeal is being fixed nor stay application is being decided but defendant No.4 and 5 are pressing hard for the recovery of demand impugned in the appeals.

2. The plaintiff in all suits has made common prayer that failure to fix and decide the plaintiffs' appeal by the defendant No.3 is illegal and also prayed for mandatory injunction directing the defendant No.3 (Appellate Tribunal) to decide the appeal and stay application in accordance with law. The plaintiff has also attached three separate orders passed by Commissioner Inland Revenue (Appeals-I), Karachi for the tax year 2013, 2014 and 2015. The plaint of Suit No. 2319 of 2017 reflects that when the appeal was pending before the Commissioner Appeals, the same plaintiff filed suit No. 1793/2017 which was disposed of vide order dated 24.08.2017 with the directions that no coercive action shall be taken against the plaintiff by the department during pendency of the appeal and in case appeal is decided against the plaintiff, they may be allowed to seek remedy within seven days without taking any coercive action against them by the department. Whereas in Suit No. 2317 of 2017 the plaintiff has attached copy of order passed by the learned Division Bench of this court on 13.09.2017 in C.P. No.D-5839 of 2017 whereby directions were issued to decide the appeal by the Commissioner Inland Revenue (Appeals-I) within a period of one month till then no coercive action shall be taken. Whereas, in Suit No. 2318 of 2017 the plaintiff has attached copy of order passed by the learned Division Bench on 25.08.2017 in C.P. No.D-5382 of 2017 in which also directions were issued not to effect recovery of the impugned demand till appeal is decided by the Commissioner (Appeals-I), Karachi. What actually reflects that the plaintiff earlier also filed similar proceedings that during pendency of their appeals before the Commissioner Appeals, no action shall be taken against them for the recovery and after deciding their appeals by the Commissioner Appeals they have approached to the learned Appellate Tribunal Inland Revenue and during pendency of their appeal before the Tribunal they apprehend some drastic actions for recovery, therefore, they have moved this court and filed these suits for restraining the department.

3. In all three suits as an interim measure, I passed the order on 06.11.2017 that till next date of hearing the defendant No. 4 and 5 shall not take any coercive action against the plaintiff.

4. Today, Mr. Muhammad Aqeel Qureshi advocate has filed vakalatnama in all three suits and he admits that appeals are pending before the learned Appellate Tribunal Inland Revenue but he invited my attention to crucial point that the plaintiff is foreign company and they have filed these suits through their Attorney Saifullah Sachwani with their office address "Abraham & Sarwana Advocates, Solicitors, PIDC House, Mezzanine Floor, Dr. Ziauddin Road, Karachi, therefore, learned counsel for the Tax Department argued that in order to protect the right of the Tax Department for making recovery of tax demand from the plaintiff in case their appeals are dismissed by the learned Appellate Tribunal, they may be directed to furnish bank guarantee equivalent to the demand to the satisfaction of Nazir of this Court otherwise it would be very difficult for the department at later stage to effect the recovery of demand as earlier also while the matter was pending before the Commissioner Appeals, the stay orders were in field, so no recovery could be made.

5. Learned counsel for the plaintiff could not controvert the arguments that the plaintiff is not a foreign company. However, he argued that instead of issuing directions for furnishing surety, some directions may be issued to the learned Tribunal to decide the appeal within some specified time.

6. Keeping in view the peculiar circumstances of the case, the requests of the tax department lawyer seems to be reasonable and logical, therefore, I direct the plaintiff to furnish bank guarantee equivalent to the demand of tax

within seven (07) days to the satisfaction of Nazir of this Court and Nazir shall issue certificate to the Tax Department if the bank guarantee is furnished in terms of this order. On furnishing bank guarantee, the Tax Department shall not take any coercive action against the plaintiff during pendency of appeals before the learned Tribunal with further order that in case the appeals are dismissed, seven (07) days' time will also be available to the plaintiff to seek appropriate remedy in accordance with law. After laps of this period and if the Tribunal order goes against the plaintiff, the defendant No. 4 and 5 may apply to this court for the encashment of bank guarantee. The learned Tribunal Inland Revenue shall decide the appeals preferably within one month. Since the purpose of the above suits is to seek remedy only during the pendency of the appeals before the learned Appellate Tribunal and no further questions are to be decided, hence the aforesaid suits are disposed of in the above terms along with pending applications.

JUDGE

Aadil Arab