IN THE HIGH COURT OF SINDH AT KARACHI

(Extraordinary Reference Jurisdiction)

I.T.R.A. No. 58 of 2018

Date	Order with signature of Judge

Present:

Mr. Justice Aqeel Ahmed Abbasi
Mr. Justice Zulfiqar Ahmed Khan

Fresh Case

1. For orders on office objection No.04
2. For orders on CMA No.67/2018 (Exemption)
3. For hearing of main case

05.08.2020

Mr. Shakeel Ahmed, Advocate for the applicant

O R D E R

1. Through instant reference application, the applicant has proposed following questions, which according to learned counsel for the applicant, are questions of law, arising from the impugned order dated 12.12.2017 passed by the Appellate Tribunal Inland Revenue of Pakistan at Karachi in ITA No.149KB/2016 (Tax Year 2016) under Section 182(1)(b) of the Income Tax ordinance, 2001:-

> **"1. Whether on facts and circumstances of the case, learned Appellate Tribunal Inland Revenue Karachi was justified to uphold the penalties amounting to Rs.5000/- and Rs.10,000/- on the ground that penalty had to be imposed according to law as it stood on the day the return of income was filed i.e. relevant tax year?**
>
> **2. Whether on facts and circumstances of the case, the penalty on account of procedural non-compliance of furnishing of books of accounts and documents during audit had to be imposed according to law as it stood on the date notice was issued by the department?"**

2. After having read out the impugned order passed by the Appellate Tribunal as well as the order of the two authorities below, learned counsel for the applicant submitted that the questions proposed are questions of

law, whereas the Appellate Tribunal Inland Revenue and the Commissioner (Appeals) have erred in reducing the penalty under Section 182(1) of the Income Tax Ordinance, 2001 for non-compliance of two notices issued to the taxpayer under Section 177 of the Income Tax Ordinance, 2001 for Tax Year 2012. It is prayed that the impugned order passed by the Appellate Tribunal may be *set-aside* and the questions may be answered in favour of the applicant.

3. We have heard the learned counsel for the applicant, perused the record and the relevant provisions of Section 182(1)(a) and (b) of the Income Tax Ordinance, 2001, which read as follows:-

> **"182. Offences and penalties.--** (1) Any person who commits any offence specified in column (2) of the Table below shall, in addition to and not in derogation of any punishment to which he may be liable under this Ordinance or any other law, be liable to the penalty mentioned against that offence in column (3) thereof:-

S.No.8. Where a taxpayer who, without any reasonable cause, in non-compliance with the provisions of section 177--	
(a) fails to produce the record or documents on receipt of first notice;	Such person shall pay a penalty of [2]{twenty five} thousand rupees;
(b) fails to produce the record or documents on receipt of second notice.	Such person shall pay a penalty of [3][fifty] thousand rupees.

2. Substituted for the word "five" by the Finance Act, 2013 (XXII of 2013), (Assented on: 29 June, 2013), reported as PTCL 2013 BS. 382.

3. Substituted for the word "ten" by the Finance Act, 2013 (XXII of 2013), (Assented on: 29 June, 2013), reported as PTCL 2013 BS. 382.

4. It is pertinent to note that the penalty for non-compliance of first notice for the tax year 2012 was Rs.5000/-, whereas, penalty for non-compliance of second notice, the impugned penalty was Rs.10,000/-, however, through amendment in Finance Act, 2013 the said amount of penalty was increased from Rs.5000/- to Rs.25,000/- and Rs.10,000/- to Rs.50,000/- respectively. The Commissioner (Appeals) and the Appellate Tribunal Inland Revenue, having taken note of the aforesaid factual and legal position, have reduced the amount of penalty from Rs.25,000/- to

Rs.5000/- and Rs.50,000/- to Rs.10,000/- by holding that the amendment made through Finance Act, 2013, could not apply retrospectively for the tax year 2012, in which the alleged default and non-compliance was made by the respondent.

5. Learned counsel for the applicant was confronted as to whether the amendment made in Finance Act, 2013, which is penal in nature, as it enhanced the amount of penalty, would apply prospectively or it could be given retrospective effect to the disadvantage of the taxpayer. In response to such query, learned counsel for the applicant could not submit any response, however submitted that in view of default to submit response by the taxpayer, imposition of penalty was justified.

6. Since no reference has been filed by the respondents against the orders of the Appellate Tribunal Inland Revenue relating to imposition of penalty for non-compliance of two notices, therefore we would not examine the merits relating to imposition of penalty, and would examine the reduction of the amount of penalty on the touch stone of interpretation of amendment in law through Finance Act, 2013. It is well settled legal position that in a taxing Statute, if an amendment is introduced, which is penal in nature, or increases the tax liability of a taxpayer, the same would apply prospectively for the tax year in which such amendment has been introduced and cannot be given retrospective effect, particularly, if such retrospective effect is not given through amending law itself, as in the instant case. Reliance in this regard can be made in the cases of (i) *Army Welfare Sugar Mills and others v. Federation of Pakistan and others* **(1992 SCMR 1652)**, (ii) *Messrs Elahi Cotton Mills Ltd. and others v. Federation of Pakistan through Secretary M/o Finance, Islamabad and 6 others* **(PLD 1997 SC 582)** and (iii) *Messrs Polyron Ltd. v. Government of Pakistan and others* **(PLD 1999 Karachi 238)**.

7. Accordingly, we do not find any factual or legal error in the impugned order passed by the Appellate Tribunal in the instant case, therefore it does not require any interference by this Court while exercising its reference jurisdiction under Section 133(1) of the Income Tax Ordinance, 2001. The question No.1 as proposed hereinabove is answered in **Affirmative,** whereas, question No.2 is answered in **Negative,** both against the applicant and in favour of the respondent.

Reference application stands disposed of in the above terms along with listed application.

Judge

Judge

Barkat Ali, PA