

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Agha Faisal
Mr. Justice Dr. Shah Nawaz Memon

Income Tax Reference Application Nos. 393 & 394 of 2024

Mr. Farooq E Azam Cheema Applicant

Versus

The Commissioner Inland Revenue, LTO, Karachi & another ... Respondent

Date of hearing: 16.10.2026

Date of decision: 19.10.2026

Applicant: Through Messrs. Abdul Rahim Lakhani & Atta Muhammad Qureshi,
Advocates.

Respondent: Through Mr. Asad Aftab Solangi, Advocate.

JUDGMENT

DR. SHAH NAWAZ MEMON, J.: — These two reference applications under section 133 of the Income Tax Ordinance, 2001 (“the Ordinance”) arise from penalties imposed upon the same individual, for tax years 2021 and 2022, for failure to furnish the foreign income and assets statement required by section 116A. The applicant contends that the penalty could not be levied without the department establishing *mens rea*. The department answers that, after the Explanation added to section 182 by the Finance Act, 2021, establishing *mens rea* is not necessary. The rejoinder is that the Explanation operates prospectively and does not reach these years. The question and the parties being common, both references are decided by this judgment.

I. FACTS OF THE CASE

2. The applicant is a resident individual. His wealth statements for tax years 2021 and 2022 declared foreign assets valued at Rs. 153,194,266/-. The foreign income and assets statement which section 116A¹ requires, and which by section 114(2)(f)² must accompany the return, was not furnished with the return for tax year 2021, filed on 29.09.2021, or with the return for tax year 2022, filed on 02.03.2023. The penalty orders record that notices to furnish the statement were issued under section 116A and were not complied with.

¹**Section 116A:** “(1) Every resident taxpayer being an individual having foreign income of not less than ten thousand United States dollars or having foreign assets with a value of not less than one hundred thousand United States dollars shall furnish a statement, hereinafter referred to as the foreign income and assets statement, in the prescribed form and verified in the prescribed manner giving particulars of— (a) the person’s total foreign assets and liabilities as on the last day of the tax year; (b) any foreign assets transferred by the person to any other person during the tax year and the consideration for the said transfer; and (c) complete particulars of foreign income, the expenditure derived during the tax year and the expenditure wholly and necessarily for the purposes of deriving the said income. (2) The Commissioner may by a notice in writing require any person being an individual who, in the opinion of the Commissioner on the basis of reasons to be recorded in writing, was required to furnish a foreign income and assets statement under sub-section (1) but who has failed to do so to furnish the foreign income and assets statement on the date specified in the notice.”

²**Section 114(2)(f):** a return of income “shall be accompanied with a foreign income and assets statement as required under section 116A.”

3. By notices dated 04.04.2024 under section 182(2), the applicant was asked to show cause why penalty under serial No. 1AAA of the Table in section 182(1) should not be imposed. His reply dated 19.04.2024 stated that the foreign assets had been disclosed in the wealth statements, that the omission was inadvertent and caused no loss of revenue, and that a Division Bench of this Court had set aside similar notices. The statements under section 116A were enclosed with the reply. By orders dated 25.04.2024 the Deputy Commissioner Inland Revenue, Unit-AEOI-1, Zone-AEOI, Karachi rejected the explanation and imposed a penalty of Rs. 3,063,885/- for each year, being two per cent of the value of the foreign assets.
4. The learned Commissioner Inland Revenue (Appeals-I), Large Taxpayers Office, Karachi dismissed both appeals by orders dated 31.07.2024. He held that penalty provisions are enacted to secure compliance and are to be applied when the course of conduct made obligatory by law is not followed. He distinguished the decision of this Court relied upon by the applicant on the ground that it concerned tax year 2019, when no form had been prescribed for the statement, whereas the form stood notified for the years in question. The applicant then filed these references directly against the orders of the learned Commissioner (Appeals).³

II. THE QUESTION PROPOSED

5. The same question is proposed in both references:

“Whether on the facts and in circumstances of the case, the learned Commissioner (Appeals-I) Inland Revenue, Large Taxpayer Office has erred in confirming the levy of penalty as per Sr. No. 1AAA of section 182(1) of the Income Tax Ordinance, 2001, in absence of *mens rea*?”

6. The question is one of law and we answer it as framed.

III. SUBMISSIONS

7. Mr. Abdul Rahim Lakhani, learned counsel for the applicant, submitted that the learned Commissioner (Appeals) erred in law and on facts. The core of his case was that the applicant had disclosed all his foreign assets in the wealth statements filed under section 116, so that nothing was suppressed, and that this plea was not dealt with by the forums below. It is mandatory, he submitted, to establish *mens rea* before a penalty is imposed, and the learned Commissioner ignored the settled position of law that establishing *mens rea* is a prerequisite for imposing penalty. He relied upon *Khadim Hussain*⁴ and upon *Aameer Mustaaly Karachiwala*.⁵

³Under section 133(1) as substituted by the Tax Laws (Amendment) Act, 2024, which then provided for a reference against the order of “the Appellate Tribunal or, as the case may be, the Commissioner (Appeals)”.

⁴*CIR v. Khadim Hussain* [(2026) 134 TAX 221 (S.C. Pak.)], Civil Appeal No. 2480 of 2016, Larger Bench.

⁵*Aameer Mustaaly Karachiwala v. DCIR* [2021 PTD 335].

8. Mr. Solangi, learned counsel for the respondent department, submitted that after the insertion of the Explanation in section 182 it is not necessary to establish *mens rea* for the levy of penalty.
9. In rebuttal, Mr. Lakhani submitted that the Explanation was inserted in 2021 and operates prospectively, and relied again upon *Khadim Hussain*. Mr. Solangi responded that one of the references pertains to tax year 2022, and is therefore not touched by the ratio of that judgment in any event.
10. We have heard learned counsel and considered the record, the authorities cited at the bar and such further material as our own research has yielded.

IV. THE EXPLANATION TO SECTION 182

11. Section 182(1) provides that any person who commits any offence specified in column (2) of the Table shall be liable to the penalty mentioned against it in column (3). Serial No. 1AAA, inserted by the Finance Act, 2018, reads:

“Where any person fails to furnish a foreign assets and income statement within the due date.” — “Such persons shall pay a penalty of 2 percent of the foreign income or value of the foreign assets for each year of default.”
12. Sub-section (2) requires the penalty to be imposed by an order in writing after an opportunity of being heard. The Finance Act, 2021 added the following Explanation to it:

“*Explanation.*—For the removal of doubt, it is clarified that establishing *mens rea* is not necessary for levying of penalty under this section.”
13. The words are plain. They extend to every penalty “under this section”, and therefore to serial No. 1AAA. Where the Legislature has intended a want of fault to be an answer, it has said so in terms. The section 182 in force before 2010 penalised a person who failed to furnish a return or statement “without reasonable excuse”,⁶ and section 195A makes it an offence to fail, “without reasonable excuse”, to comply with a notice under section 116A(2).⁷ Serial No. 1AAA contains no such words. For a default to which the Explanation applies, therefore, the absence of a guilty mind is no answer to the penalty.⁸ Learned counsel for the applicant did not contend otherwise. His case was that the Explanation does not reach these two years, and that is the real question.

⁶Section 182(1) as it stood before its substitution by the Finance Act, 2010: “Any person who, without reasonable excuse, fails to furnish ...”.

⁷**Section 195A:** “Any person who, without reasonable excuse, fails to comply with a notice under sub-section (2) of section 116A; shall commit an offence punishable on conviction with imprisonment up to one year or with a fine up to fifty thousand Rupees or both.”

⁸Compare *CIR v. Byco Petroleum*, order dated 05.07.2024 in C.P. Nos. 1221-K to 1257-K and 1290-K to 1299-K of 2022 (not approved for reporting), holding that section 34 of the Sales Tax Act, 1990, after the words “whether willfully or otherwise” were added to it, is “a strict liability clause and is attracted on the occurrence of default whether it be deliberate or unintentional or inadvertent”.

V. PROSPECTIVE OPERATION

14. In *Khadim Hussain* a Larger Bench of the Hon'ble Supreme Court was asked whether penalties under sections 182, 184 and 186 of the Ordinance were lawful in view of section 239(3). The penalties had been imposed in assessments for assessment years 2000-01 to 2002-03, which were governed by the repealed Income Tax Ordinance, 1979. Reaffirming *Eli Lilly*⁹, their Lordships held that, upon the repeal and re-enactment of a taxing statute, a provision which adds to the liability of a taxpayer is not merely procedural and cannot be given retrospective effect, and that the penalty provisions of the Ordinance could not therefore be applied to assessments governed by the repealed law. Their Lordships observed:

“It is a 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, it applies prospectively for the tax year in which such amendment has been introduced and cannot be given retrospective effect, unless such retrospective effect is given through the amending law itself in express language.”

Their Lordships also adopted the view of the Constitution Bench of the Supreme Court of India in *Vatika Township*,¹⁰ that “legislations which modified accrued rights or which impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect”.

15. The judgment does not consider whether *mens rea* is an ingredient of a penalty under section 182, and it does not assist the first submission of learned counsel. It does, however, bind us on the question of prospective operation.¹¹ The Explanation takes away a plea which was available to a person charged with a penalty, and to that extent it adds to his exposure. Nothing in the Finance Act, 2021 gives it retrospective effect. Where the Legislature has intended a provision of this Part to govern earlier years, it has said so, as in the Explanation to section 182A, which applies that section “from tax year 2018 and onwards”.¹² We therefore proceed on the footing urged by the applicant: the Explanation operates prospectively from 01.07.2021, when the Finance Act, 2021 took effect. It is unnecessary to decide whether the words “for the removal of doubt” make it declaratory of the earlier law.
16. The further question is what “prospective” means for a penalty of this kind. The applicant’s submission assumes that the tax year to which the statement relates decides which law governs the penalty. That is not the test. Under

⁹*CIT v. Eli Lilly Pakistan* [2009 PTD 1392]; and see *Molasses Trading & Export v. Federation of Pakistan* [1993 SCMR 1905], both relied upon in *Khadim Hussain*.

¹⁰*CIT v. Vatika Township* [(2015) 1 SCC 15], para 29, as quoted in *Khadim Hussain*, para 15.

¹¹**Article 189 of the Constitution:** “Any decision of the Supreme Court shall, to the extent that it decides a question of law or is based upon or enunciates a principle of law, be binding on all other courts in Pakistan.”

¹²Explanation to section 182A(1)(a): “For the removal of doubt it is clarified that the provisions of this section shall apply from tax year 2018 and onwards ...”.

section 182(1) a penalty is attached to an “offence”, and the offence in serial No. 1AAA is the failure to furnish the statement “within the due date”. The liability arises upon the default, and not at the close of the tax year to which the statement relates. The tax year identifies which statement is required; it does not fix the date of the offence.¹³ The duty to furnish the statement has existed since the Finance Act, 2018. The Explanation created no new duty. It withdrew the plea of absence of a guilty mind in respect of defaults to which it applies, and on the footing just stated those are defaults committed after it came into force. As the Hon’ble Supreme Court has explained, “every person is presumed to know the law currently in force and is expected to arrange their affairs accordingly—current law governs current affairs. If a person acts today, he does so with the knowledge of today’s law, not with knowledge of future laws.”¹⁴ A person who failed to furnish the statement after 01.07.2021 did so with the Explanation already on the statute book.

17. Measured against that test, the Explanation has no retrospective operation here. The statement for tax year 2021 had to accompany the return, which was filed on 29.09.2021 without it. The default was committed then, at the earliest, and it continued through the non-compliance with the notice under section 116A(2) until the statement was furnished on 19.04.2024, after the show cause notice. The return for tax year 2022 was filed on 02.03.2023, also without the statement. Each of these events occurred after 01.07.2021. To apply the Explanation to them attaches no new consequence to anything done or omitted before it was enacted. Even read literally, the passage in *Khadim Hussain* leads to the same result: the default for tax year 2021 was committed on 29.09.2021, after the Explanation had taken effect, when the return was filed without the statement. It was committed in tax year 2022, the year in which the amendment was introduced, and not in any earlier year.
18. The contrary reading would allow a person who defaulted years after the Explanation came into force to claim the benefit of the earlier law merely because the statement concerned an earlier year. That would give the earlier law a life after its amendment which the Legislature did not give it. Nothing in *Khadim Hussain* supports that result. There, the assessments, and the defaults with which they were concerned, belonged entirely to the regime of the repealed Ordinance. Mr. Solangi’s distinction for tax year 2022 is therefore well founded, and the same reasoning applies equally to tax year 2021.

¹³Compare *Anwar Yahya v. Federation of Pakistan* [2017 PTD 1069], paras 7 and 10, where a Division Bench of this Court rejected the contention that the law governing capital gains on shares crystallised on the date of acquisition, and held that the Table “applies in relation to any given lot of shares as it stands (or stood) on the date of the disposal thereof”. The Bench also held that no right could vest under a proviso in respect of shares which had not met its condition before the proviso was omitted.

¹⁴*CIR v. Mekotex* [PLD 2024 SC 1168], para 9.

VI. WHAT MUST STILL BE ESTABLISHED

19. It does not follow that the penalty attaches upon a bare allegation, or that the hearing required by section 182(2) is a formality. The Explanation removes one enquiry, into the state of mind of the defaulter. It does not remove the need to establish the offence. What section 182 penalises is the failure itself, and the failure must be shown. The approach of the Hon'ble Supreme Court to the analogous failure to collect or deduct tax under section 161 is instructive. In *MCB Bank*¹⁵ their Lordships held that “[i]t is the failure that is the triggering event”, and that “[t]here must, at least initially, be some reason or information available with the Commissioner for him to conclude that there was, or could have been, a failure to deduct. That reason or information must satisfy the test of objectiveness ... It is only if this threshold is successfully crossed that the notice can be issued, and it is only then that the burden may shift on the person allegedly in default to show that section 161 does not, or ought not to, apply.” In *Chawala Footwear*¹⁶ their Lordships reaffirmed that “the point that sets the machinery of section 161 going to determine the tax liability is the failure to either collect tax or deduct it”, and that “upon successfully crossing this threshold, the notice under section 161 can be issued, and it is only then that the taxpayer can be brought under a burden to show that it is not in default”.
20. Section 116A(2) builds the same threshold into the statute. The Commissioner may call for the statement from a person who, “in the opinion of the Commissioner on the basis of reasons to be recorded in writing”, was required to furnish it and failed to do so. Read with section 182(2) and the Explanation, the position is this. First, the department must have objective material showing that the person was required to furnish the statement, being a resident individual whose foreign income or foreign assets reach the thresholds in section 116A(1), and that it was not furnished by the due date. Secondly, once that is shown, the burden passes to the person, who may answer that he was not in default at all: that he was not required to furnish the statement, that he did furnish it in time, or that the obligation could not be enforced for want of a prescribed form. Thirdly, the officer must consider the answer and record a finding upon it in an order in writing, after an opportunity of being heard. What the person can no longer say, after the Explanation, is that his default was inadvertent or in good faith. Where the failure is established and no such answer is made, the penalty follows.
21. In the present case the threshold was crossed upon the applicant's own declaration. His wealth statements showed foreign assets of Rs. 153,194,266/- , and at no stage has he disputed that he was required to furnish the statement

¹⁵*CIR v. MCB Bank* [2021 SCMR 1325].

¹⁶*Chawala Footwear v. CIR* [2025 PTD 574]; and see *Bilz v. DCIT* [2002 PTD 1].

under section 116A for both years. His reply to the show cause notices enclosed the statements, and the question proposed assumes the default and turns only upon *mens rea*. The statements did not accompany the returns, and were furnished only on 19.04.2024, with the reply to the show cause notices. The failure is therefore established, and the applicant has not suggested that he was not in default in the sense just described. Show cause notices were issued, the reply was considered and reasoned orders were passed.

VII. THE DISCLOSURE IN THE WEALTH STATEMENT

22. That leaves the core submission, that the foreign assets were fully disclosed in the wealth statements, so that nothing was suppressed. The plea was taken before the officer, who addressed it in the orders dated 25.04.2024, holding that the statement under section 116A is independent of the wealth statement and calls for particulars which the wealth statement does not contain. The learned Commissioner (Appeals) did not deal with it separately. As it raises a question of law, we consider it.
23. The plea may be put in either of two ways. It may be said that disclosure in the wealth statement was itself compliance, so that there was no default. The Ordinance does not permit that reading. Section 114(2) requires the return to be accompanied both by the wealth statement under section 116 and by the statement under section 116A.¹⁷ Section 116A(1) calls for particulars which the wealth statement does not require: foreign liabilities, foreign assets transferred during the year and the consideration for them, and foreign income with the expenditure incurred in deriving it. Serial Nos. 1AA and 1AAA of the Table prescribe separate penalties for failure to furnish each statement.¹⁸ Furnishing the one is not furnishing the other. It was not suggested that the wealth statements contained the particulars required by section 116A.
24. Alternatively, the plea goes to the applicant's good faith: that nothing was concealed, that no revenue was lost, and that the omission was inadvertent. That is precisely the enquiry which the Explanation has removed. Disclosure of the same assets elsewhere may show an absence of any intention to conceal, but intention is no longer an ingredient of the penalty. The plea therefore did not call for any separate finding that could alter the result, and its omission from the appellate order is no ground for interference. Nor has any question been raised as to the quantum of the penalty, upon which we express no view.

¹⁷ **Section 114(2)(e)**: a return of income "shall be accompanied with a wealth statement as required under section 116".

¹⁸ **Serial No. 1AA**: "Where any person fails to furnish wealth statement or wealth reconciliation statement." — "Such person shall pay a penalty of 0.1% of the taxable income per week or Rs. 100,000 whichever is higher."

VIII. AAMEER MUSTAALY KARACHIWALA

25. In *Aameer Mustaaly Karachiwala* a Division Bench of this Court, in its constitutional jurisdiction, set aside show cause notices under section 182(2) issued for failure to furnish the statement for tax year 2019. The principal ground was that no form had been prescribed under section 116A for that year, so that the non-filing did not fall within the offence in section 182(1). It was in those circumstances, where nothing had been concealed and there was no consequence on income or tax liability, that the Bench observed that mere non-filing would not attract the penalty automatically without wilful default or *mens rea*. The petitions were decided on 22.12.2020, before the Finance Act, 2021 added the Explanation. The disclosure of the foreign assets in the wealth statements weighed with the Bench in that enquiry into wilful default. The decision construed section 182 as it then stood, for a year in which no form had been prescribed. It does not govern defaults committed after the Explanation came into force. The learned Commissioner (Appeals) found that the form had been prescribed for the years before us, and that finding has not been questioned.

IX. THE ANSWER TO THE QUESTION

26. The question proposed in both references is answered in the negative, against the applicant and in favour of the department. The learned Commissioner (Appeals) did not err in confirming the penalty under serial No. 1AAA of the Table in section 182(1) without *mens rea* being established. By the Explanation to section 182(2), establishing *mens rea* is not necessary for levying that penalty, and the defaults for tax years 2021 and 2022 were committed after the Explanation came into force on 01.07.2021. The department must still establish, upon objective material, that the person was required to furnish the statement and failed to do so by the due date; once that is established, the person may show that he was not in default, but not that his default was inadvertent or in good faith. Disclosure of foreign assets in the wealth statement under section 116 is not compliance with section 116A and is no answer to the penalty.

X. ORDER

27. Income Tax Reference Application Nos. 393 and 394 of 2024 are dismissed, with no order as to costs.
28. Let a copy of this judgment be sent under the seal of this Court and the signature of the Registrar to the learned Commissioner Inland Revenue

(Appeals-I), Large Taxpayers Office, Karachi in terms of section 133 of the Ordinance.¹⁹

J U D G E

J U D G E

Karachi,
Dated: 19th day of October 2026

Ayaz PS.

¹⁹Section 133(8), as it stood when the references were filed: “The High Court shall send a copy of the judgment under the seal of the High Court to the Appellate Tribunal or, as the case may be, the Commissioner (Appeals).”