

IN THE HIGH COURT OF SINDH AT KARACHI
(Extraordinary Reference Jurisdiction)

I.T.R.A. No. 369 of 2010

a/w.

I.T.R.As. No. 370 to 372 of 2010

Date	Order with signature of Judge
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Present:

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

10.04.2019:

Mr. S. Asif Ali, advocate for the applicant(s).

ORDER

1. Through instant Reference Applications, following common question has been proposed, which according to learned counsel for the applicant(s), is a question of law, arising from the combined impugned order dated 19.04.2010 passed by the Appellate Tribunal Inland Revenue Pakistan Karachi in ITAs No. 40 to 43/KB/2008 for Tax Year 1999 to 2003, for opinion of this Court:-

“Whether on facts and in the circumstances of the case the learned ATIR was justified in annulling the penalty imposed under section 111 of the (Repealed) Income Tax Ordinance, 1979?”

2. Learned counsel for the applicant, after having read out the proposed question and the impugned order passed by the Appellate Tribunal in the instant case, submits that impugned order passed by the Appellate Tribunal does not contain separate reasons on merits, therefore, the same may be set-aside and the question proposed through instant Reference Applications may be

answered in 'NEGATIVE' in favour of the applicant and against the respondent.

3. We have heard the learned counsel for the applicant(s), perused the record and the impugned order passed by the Appellate Tribunal in the instant case, which reflects that penalty imposed by the Taxation Officer has been deleted for the reason that original assessment orders giving rise to subsequent penalty orders, have been modified and annulled, therefore, the Appellate Tribunal has been pleased to hold that since the assessment orders creating original demand of tax have been set-aside and annulled, therefore, consequential imposition of penalty is not sustainable in law. It will be advantageous to reproduce the relevant finding of the Appellate Tribunal as contained in Para: 6 to 8 of the orders, which reads as follows:-

“6. We have given anxious consideration to the points raised by the contesting parties. The key arguments advanced by the learned AR of the appellant is that it is well established that where original assessment order giving rise to a subsequent order of penalty stands modified or annulled, the penalty is not sustainable in law. In support of his contention he relied upon the case of CIT V/s Begum Mumtaz Jamal reported as 1976 PTD 182. It was held in this case that:

“Penalty – Imposition of penalty for default of payment of tax in pursuance of original assessment order – Assessment order modified in appeal – Whether penalty sustainable in law – Held no”

7. He also relied upon an other case decided by the Income Tax Tribunal Lahore reported as 1970 PTD 44, wherein it was held that:

“Penalty – Assessment annulled being invalid – penalty for concealment of income on the basis of assessment – Whether sustainable in law – Held no – “

8. With due deference of the above stated principle of administration of justice with respect to matters of penalty, we find force in the contention of the learned AR,

particularly the citations referred above and direct to annul the penalty imposed for all the four impugned assessment years.”

4. While confronted with hereinabove factual and legal position, learned counsel for the applicant has not been able to submit any explanation nor could point out any error or illegality in the impugned order passed by the Appellate Tribunal. It is settled legal position that an order of penalty, which is based on the original assessment order, stands annulled or modified accordingly, if the original assessment order is set-aside, annulled or modified for the reason that the foundation upon which penalty order was based has been vanished.

5. Accordingly, we do not find any substance in the instant Reference Applications, which are dismissed in limine alongwith listed applications.

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A.S.