IN THE HIGH COURT OF SINDH AT KARACHI

(Extraordinary Reference Jurisdiction)

I.T.R.A. No. 385 of 2016

Date	*Order with signature of Judge*

Present:

Mr. Justice Aqeel Ahmed Abbasi
Justice Mrs. Rashida Asad

Fresh Case

For hearing of Main Case.

11.12.2020:

Mr. Muhammad Aqeel Qureshi, advocate for the applicant.

ORDER

1. Through instant Income Tax Reference Application, the applicant proposed four questions, however, after having read out the proposed questions and the impugned order passed by the Appellate Tribunal Inland Revenue in the instant case, the learned counsel for the applicant submits that the applicant will press "***Question No.1 only***", which according to learned counsel for the applicant, is a question of law, arising from the impugned order dated 03.09.2016 passed by the Appellate Tribunal Inland Revenue (Pakistan) Karachi in ITA No.338/KB of 2015 [Tax Year 2014] and requires an opinion of this Court under its reference jurisdiction. Proposed question reads as follows:-

> *"1. Whether on the facts and circumstances of the case, the learned Appellate Tribunal Inland Revenue (ATIR), was justified in upholding the order of the learned CIR (A) to impose minimum penalty of Rs. 10,000/- even in case of persistent and deliberate default as against the normal rate of penalty i.e. @ Rs. 2,500/- per day of default?"*

2. Learned counsel for the applicant submits that both the appellate forums below were not justified to reduce the amount of penalty imposed by the Taxation Officer under Section 182(1A) of

the Income Tax Ordinance, 2001, in view of default on the part of taxpayer in filing monthly statements under Section 165 of the Income Tax Ordinance, 2001. It is prayed by the learned counsel that the impugned order may be set-aside and the question proposed hereinabove may be answered in "NEGATIVE" in favour of the applicant and against the respondent.

3. We have heard the learned counsel for the applicant, perused the proposed question and the impugned order passed by the Appellate Tribunal Inland Revenue, as well the orders of the two authorities below in the instant case, with his assistance. From perusal of the order passed by the Deputy Commissioner under Section 182(1A) of the Income Tax Ordinance, 2001, it appears that without recording any finding to the effect that non-filing of the statement under Section 165 of the Income Tax Ordinance, 2001 by the taxpayer was deliberate, and constituted a willful default, an amount of Rs.500,000/- has been imposed as penalty. However, the taxpayer assailed such order by filing appeal before Commissioner (Appeals), who has been pleased to reduce such amount of penalty to Rs.10,000/- in view of SRO 978(I)/2013 dated 13.11.2013 issued by the Federal Government, whereby, the amount of penalty was reduced to Rs. 10,000/-. It will be advantageous to reproduce the relevant provision of the aforesaid SRO, which reads as under:-

> *"(i) in Part III, after clause (15), the following new clause shall be added, namely:-*
>
> *(16) The minimum penalty for failure to furnish statement under section 115, 165 or 165A as mentioned in column (3) against serial No. (1A) in the Table given in sub-section (1) of section 182 shall be reduced to ten thousand."*

4. The above treatment has been upheld by the Appellate Tribunal Inland Revenue in the impugned order, whereas, learned counsel for the applicant has not been able to point out any error or illegality in exercise of discretion vested in the appellate authority with regard to imposition or reduction of the amount of penalty under Section 182(1A) of the Income Tax Ordinance, 2001. More particularly, in view of amendment in Part III in the Second Schedule to the Income Tax Ordinance, 2001, whereby, there has been reduction of the amount of penalty to Rs.10,000/-. It is settled legal position that any subsequent amendment in law or relief granted to a taxpayer through SRO would apply retrospectively, if it is a beneficial in nature.

5. Accordingly, we do not find any error in the impugned order passed by the Appellate Tribunal Inland Revenue, whereby, while exercising discretion vested in the Appellate Authority, the reduced rate of penalty pursuant to SRO No.978(1)/2013 dated 13.11.2013, has been applied. Accordingly, instant reference application is hereby dismissed. The question proposed hereinabove is answered in "AFFIRMATIVE" against the applicant and in favour of the respondent.

JUDGE

JUDGE

A.S.