

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Income Tax Reference Application Nos. 270 to 273 of 2019.

DATE	ORDER WITH SIGNATURE OF JUDGE
------	-------------------------------

- 1. For orders on office objection Nos. 05 & 24.
- 2. For order on CMA No. 410/19. (Exemption)
- 3. For hearing of main case.

15.12.2025

Mr. Irfan Mir Holepota, advocate for applicant.

Learned counsel places on record judgment in the case of *M/s. Arfat Oil Industries* reported as 2020 PTD 1908, which reads as follows:-

“Through this reference under Section 133 of the Income Tax Ordinance, 2001 ("Ordinance), the order dated 21.07.2014 passed by the Appellate Tribunal, Inland Revenue, Lahore bench Lahore has been challenged and the following question of law has been proposed through this reference to be answered:

"Whether under the facts and circumstances of the case, penalty for late filing of return was attracted as per the provisions of Sr.No.1 of subsection (1) of Section 182 of the Income Tax Ordinance, 2001?"

2. The brief facts of the case are that the respondent company e-filed its income tax return for the tax year 2010 on 07.02.2011 and revised the same on 28.03.2011 declaring income of Rs.5,811,76/- tax @ 35% at R. 2,034,192/- turnover declared Rs.670 538,923/- Tax under Section 113 @ 0.5% worked out at Rs.3,352,695/- which is higher than NTI tax. A show-cause notice under section 182(2) of the Ordinance for late filing of income tax return was issued to the company by DCIR on 26.05.2012. The Deputy Commissioner Inland Revenue imposed a penalty under Section 182(1) of the Ordinance equal to 0.1% of the tax payable for each day of default (i.e. 36 days) equal to Rs.1,20,708/-, The respondent challenged the said order in appeal before the Commissioner Inland Revenue (Appeals) who annulled the order dated 26.05.2012 passed by DCIR. The department filed an appeal before the Appellate Tribunal Inland Revenue which was also dismissed on 21.07.2014. The department has challenged the said order through this reference.

3. The learned counsel for the petitioner has argued that the Commissioner Inland Revenue (Appeal) and the Appellate Tribunal were not justified to annul the order passed by the DCIT as the respondent had failed to furnish income tax return within time as prescribed by law. The relevant portion of section 182(2) of the Ordinance is reproduced below:--

"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 (a) thereof---

"Where any person fails to furnish a return of income or a statement as required under Section 115 or wealth statement or wealth reconciliation statement or statement under Section 165 within the due date."

"Such person shall pay a penalty equal to 0.1% of the tax payable for each day of default subject to a minimum penalty of Rs.5000/- and maximum penalty of 25% of the tax payable in respect of that tax year."

(2) The penalties specified under subsection (1) shall be applied in a consistent manner and no penalty shall be payable unless an order in writing is passed by the Commissioner, Commissioner (Appeals) or the Appellate Tribunal after providing an opportunity of being heard to the person concerned.

."

4. It is seen that penalty for late filing of the return was to be charged on the basis of tax payable. In the return the respondent had claimed refund of the amount of tax already paid by him. Therefore, while imposing penalty it is to be

presumed that no tax was payable, hence, the taxation officer was not justified to impose penalty under section (182(2) of the Ordinance. The said section provides that a penalty is not payable and only the Commissioner Inland Revenue (Appeals) or the Appellate Tribunal could have passed an order imposing penalty. The afore-referred authorities and Tribunal did not find it appropriate to impose penalty and set-aside the order of the DCIT. Keeping in view the legal position discussed above, we hold that penalty for late filing of return was not attracted as per provisions of Sr. No.1 of subsection (1) of Section 182 of the Ordinance in given circumstances of the case. Therefore, we answer the question referred to us for determination in negative.

5. For what has been discussed above, this reference is hereby dismissed.

6. A copy of this order shall be sent to the Appellate Tribunal under the seal of this Court."

In view hereof, learned counsel states that no question of law arises, therefore, these references may be dismissed. Order accordingly.

A copy of this decision may be sent under the seal of this Court and the signature of the Registrar to the learned Appellate Tribunal, as required per section 133(8) of the Income Tax Ordinance, 2001. Office is instructed to place copy of this order in the connected files.

Judge

Judge