2013 SLD 944 Equiv. Citation: **2013 PTD 387** = = =

SINDH HIGH COURT

I.T.R.A. No. 80 of 2012, decision date: 04-12-2012

PRESENT:
AQEEL AHMED ABBASI, JUSTICE
SADIQ HUSSAIN BHATTI, JUSTICE

PETITIONERS:
COMMISSIONER INLAND REVENUE, ZONE-III, KARACHI
Vs
RESPONDENTS:
M/S. GENERAL TYRE AND RUBBER CO. OF PAKISTAN LTD., KARACHI

Muhammad Siddiq Mirza for Applicant
Nemo for Respondent

SINDH HIGH COURT

I.T.R.A. No. 80 of 2012, decided on 4th December, 2012

PRESENT:
AQEEL AHMED ABBASI, JUSTICE
SADIQ HUSSAIN BHATTI, JUSTICE

PETITIONERS:
COMMISSIONER INLAND REVENUE, ZONE-III, KARACHI
Vs
RESPONDENTS:
M/S. GENERAL TYRE AND RUBBER CO. OF PAKISTAN LTD., KARACHI

Muhammad Siddiq Mirza for Applicant
Nemo for Respondent

THIS ORDER PASSED BY: AQEEL AHMED ABBASI, JUSTICE:---.---

Through instant reference application following question has been proposed by the applicant, which according to learned counsel for the applicant arises from the impugned order dated 15th March 2012 passed by the learned Appellate Tribunal Inland Revenue (Pakistan) Karachi, in I.T.A. No. 951/KB of 2011 (Tax year 2008):--

"Whether on the facts and circumstances of the case the learned Appellate Tribunal Inland Revenue was justified in holding that tax payable as referred in section 182(1) means `tax payable' with return despite the fact that the said section clearly states the tax payable in respect of that tax year?"

2. Learned counsel for the applicant states that since the respondent company did not file the return within due date, therefore, penalty in terms of section 182 subsection (1) of the Income Tax Ordinance, 2001 was imposed by the Taxation Officer, which was deleted by the Commissioner (Appeals) vide order dated 27-4-2011, whereas the learned Appellate Tribunal Inland Revenue (Pakistan), Karachi vide impugned order dated 15-3-2012, has upheld the decision of the Commissioner (Appeals) without appreciating that the term 'tax payable' as referred in section 182(1) of the Income Tax Ordinance, 2001, means the tax payable in respect of that tax year and not the tax payable with the return.

3. We have heard the learned counsel, perused the impugned order and the relevant record. We have also examined the provisions of section 182(1) of the Income Tax

Ordinance, 2001, prior to substitution by Finance Act, 2010, which reads as follows:

"182. Penalty for failure to furnish a return or statement.---(1) Any person who, without reasonable excuse, fails to furnish, within the time allowed under this Ordinance, return of income or a statement as required under subsection (4) of section 115 or wealth statement for any tax year as required under this Ordinance shall be liable to a penalty equal to one-tenth of one per cent of the tax payable for each day of default subject to a minimum penalty of five hundred rupees and a maximum penalty of twenty-five per cent of the tax payable in respect of that tax year."

4. From perusal of hereinabove provisions, it appears that the penalty has been provided by the legislature in cases where any person who, without reasonable excuse, fails to furnish return of income or wealth statement for any tax year within the time allowed under the Ordinance, 2001, whereas the amount of penalty is required to be calculated on the basis of tax payable in respect of that tax year, whereas there is no reference to chargeability of tax. The learned Commissioner Inland Revenue (Appeals-III), Karachi, after having taken cognizance of the above mentioned legal provision and on examination of the facts held as follows:--

"The arguments advanced by the AR of the appellant have been considered. Impugned penalty order has been perused. I am inclined to agree with the submissions that the Officer Inland Revenue was not justified to levy penalty amounting to Rs.139,506 on the pretext that return of income was filed late by (6) days particularly when the appellant had applied for extension of time. In this context, the department was under legal obligation to intimate the appellant regarding fate of the application and without addressing the same in time, the penalty imposed is illegal. It is also evident from the fact that the appellant's application for extension in time for filing the return of income was pending and by the time it was rejected, the appellant filed the return of income. Therefore the levy of penalty is against the settled position that where extension is filed and not refused, the applicant is entitled to assume that extension has been allowed. The impugned penalty order is not sustainable on this sole ground."

5. Similarly, the appellate tribunal, after having examined the entire facts of the case and by applying the relevant provision of law has held as under:--

"4. Sameer Khan, CA learned representative of the respondent/taxpayer has supported the order of the CIR(A) and contended that the DCIR erred in passing the order under section 182(1) of the Income Tax Ordinance, 2001 without considering the reply of the taxpayer which was filed within due time since proper opportunity of being heard was not given. He submitted that charging penalty amount to Rs.139,506 is not levyable and is bad in law and facts of the case requires to be annulled. He further submitted that the taxpayer applied extension of time for filing the return on December, 31, 2008 which was rejected. After rejection the appellant approached to Director General, LTU, Karachi vide letter dated 2nd January, 2009 for extension of time. He further submitted that the term "tax payable" means the tax payable with the return, since the tax year had already been discharged by way of taxes paid and there was no tax payable under Section 137, therefore, question of penalty does not raise, hence the order passed by the DCIR is illegal and without giving any opportunity to the taxpayer to submit its point of view which is the right envisaged under the Constitution of the Islamic Republic of Pakistan."

6. In view of hereinabove facts and on examination of the legal provision as referred to hereinabove, it has come on record that since there was no tax payable along with return thus the provision of section 182 was not applicable to the facts of this case. While confronted with such factual and legal position, the learned counsel for the applicant has candidly conceded to the legal position as stated hereinabove.

7. Accordingly, we are of the opinion that both the forums below have correctly decided the case against the applicant and in favour of the assessee, hence the impugned order passed by the appellate tribunal does not require any interference by this Court. Instant

reference application is devoid of any merits, which is hereby dismissed along with listed application and the question proposed is answered in affirmative against the applicant.

SD/-
AQEEL AHMED ABBASI
JUSTICE

SD/-
SADIQ HUSSAIN BHATTI
JUSTICE