

Form No: HCJD/C-121

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

ITR No.160/2010

Commissioner Inland Revenue
Versus
M/s Fauji Foundation

S. No. of order/ proceedings	Date of order/ proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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09-04-2019

Vide this Court detailed judgment of even date passed in ITR No.159/2010 titled '*Commissioner Inland Revenue v. Fauji Foundation*' the questions of law proposed for our consideration in the instant Reference are answered in the terms/discussion as mentioned therein.



(MIANGUL HASSAN AURANGZEB)
JUDGE



(CHIEF JUSTICE)

HCJD/C-121
ORDER SHEET

ISLAMABAD HIGH COURT
ISLAMABAD

ITR No.160/2010

Commissioner Inland Revenue (Legal)
Versus
M/s Fouji Foundation

S.No. of order/ Proceeding	Date of hearing	Order with signature of Judge, and that of parties or counsel, where necessary.
02	15-03-2016	Hafiz Munawar Iqbal Advocate for applicant.

While examining the record, when referred to by the learned counsel for the applicant, it appears that similar question of law has already been answered by this Court in several decisions. Therefore, direction is issued to the concerned Branch of this Court for placing all the connected References before the Court raising similar questions of law on same date. Adjourned.



(ATHAR MINALLAH)
JUDGE

(NOOR-UL-HAQ N. QURESHI)
JUDGE

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Income Tax Reference No.160/2010

Commissioner of Income Tax (Legal)

Versus

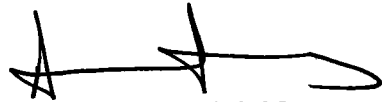
M/s Fouji Foundation

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
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16.11.2015

Hafiz Munawar Iqbal, Advocate

Hafiz Munawar Iqbal, Advocate requests for
time to submit power of attorney on behalf of
petitioner. Adjourned as per request.


(AAMER FAROOQ)
JUDGE


(NOOR-UL-HAQ N. QURESHI)
JUDGE

Imran

Jud-111

IN THE LAHOR HIGH COURT RAWALPINDI BENCH, RAWALPINDI

T.R. NO. _____/2010
(Tax Year 2005)

COMMISSIONER INLAND REVENUE (LEGAL)
LARGE TAXPAYERS UNIT, ISLAMABAD

PETITIONER

VERSUS

M/S FAUJI FOUNDATION,
68 TIPU ROAD, CHAKLALA, RAWALPINDI

RESPONDENT

REFERENCE APPLICATION U/S 133 OF THE INCOME TAX ORDINANCE, 2001, PRAYING THAT THE HONORABLE COURT MAY PLEASE TO DECIDE THIS REFERENCE ARISING OUT OF THE ORDER IN ITA NO. 919/IB/09 DATED 22.01.2010 TAX YEAR 2005

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PETITIONER,



(M. MAJID QURESHI)

Commissioner Inland Revenue (Legal)
Large Taxpayers Unit, Islamabad

Through:

M. Arshad Majeed Malik
Advocate High Court

IN THE LAHORE HIGH COURT RAWALPINDI BENCH, RAWALPINDI

T.R. NO. _____/2010
(Tax Year 2005)

COMMISSIONER INLAND REVENUE (LEGAL)
LARGE TAXPAYERS UNIT, ISLAMABAD.

PETITIONER

VERSUS

M/S FAUJI FOUNDATION,
68 TIPU ROAD, CHAKLALA, RAWALPINDI

RESPONDENT

REFERENCE APPLICATION U/S 133 OF THE INCOME TAX ORDINANCE, 2001, PRAYING THAT THE HONORABLE COURT MAY PLEASE TO DECIDE THIS REFERENCE ARISING OUT OF THE ORDER IN ITA NO. 919/IB/09 DATED 22.01.2010 TAX YEAR 2005

The appellant respectfully submits as under:-

1. That the appellant is Commissioner Inland Revenue (Legal), Large Taxpayers Unit, Islamabad exercising the powers and functions of the Commissioner Inland Revenue for the purpose of the proceedings against respondent under the provisions of Income Tax Ordinance, 2001.
2. That the respondent is an existing taxpayer under the jurisdiction of Commissioner Inland Revenue, Large Taxpayers Unit, Islamabad.
3. That the order of Tribunal bearing ITA No.919/IB/09 dated 22.01.2010 was received in this office on 09-02-2009 and limitation will expire on 10-05-2010.
4. The taxpayer is a trust. For tax year 2005, the taxpayer was required to file return electronically which was not filed by the due date. Show cause notice under Section 190 was issued for late filing of return. Penalty of Rs.270,628,802/- was imposed u/s 182(2) of the Income Tax Ordinance, 2001.
5. The taxpayer filed appeal before the Commissioner (Appeals) and contested the legality of penalty. The learned Commissioner (appeals) placing reliance on cases reported as (i) PLD 1967 (SC) 1, (ii) PLD 1991 (SC) 963, (iii) 1980 42 Tax 129 (Kar HC) and (iv) 60 Tax 13 (HC Lah) deleted the aforesaid penalty.
6. The Department being aggrieved against the order of the learned Commissioner (Appeals) filed second appeal before the Learned ATIR on the grounds that the Learned Commissioner (Appeals) was not justified in deleting penalty imposed under Section 182(2) as the same was charged for default of section 165(5) of the Income Tax Ordinance, 2001.

[illegible]

7. The Learned ITAT upheld the order of the Commissioner (Appeals) and rejected the departmental appeals holding that there is no willful default on the part of the taxpayer as e-filing, in teething phase, encountered technical problems during the processing of the returns.
8. The order of the Learned ITAT is bad in law and contrary to the facts of the case as it was mandatory for the taxpayer to file the statements electronically which was not done so. In a parallel case M/s Askari Commercial Bank Department has filed reference against the taxpayer.
9. The following question of law arises out of the Tribunal order:-
 - (i) **“Whether on the facts and in the circumstances of the case, the learned ITAT was justified in holding that the penalty u/s 182 of the Income Tax Ordinance, 2001 has to be calculated with reference to the tax payable as per demand notice after credit/adjustment of the tax paid/deducted.**
 - (ii) **“Whether on the facts and in the circumstances of the case, the learned ITAT was justified to delete the penalty u/s 182 of the Income Tax Ordinance, 2001 for default of late filing of return relying upon its judgment dated 16.03.2004 and ignoring its earlier judgment reported 2003 PTD 101 wherein the word “tax payable” has already been interpreted by the Tribunal.”**
 - (iii) **“Whether on the facts and in the circumstances of the case, the learned ITAT was justified to delete the penalty u/s 182 of the Income Tax Ordinance, 2001 for default of late filing of return without taking cognizance of the fact that if the Tribunal’s interpretation of the word “tax payable” be accepted, penalty u/s 182 cannot be determined in cases where full amount of tax or access amount of tax has been deposited and the said section become redundant?”**

- (iv) “Whether the judgment of the Tribunal dated 16.03.2004, given in ignorance of its earlier judgment of the similar issue reported as 2003 PTD 101 and relied upon by the Tribunal was not a judgment per incuriam?”

Prayer:

It is respectfully prayed that the question of law referred, herein above, may kindly be answered, by giving authoritative and enlightened view thereof.

It is further prayed that if any other question of law, arises out of the order of the Income Tax Appellate Tribunal as a necessary consequence may also be answered, after its formulation.

PETITIONER,



(M. MAJID QURESHI)

Commissioner Inland Revenue (Legal)
Large Taxpayers Unit, Islamabad

Dated:

Through:

M. Arshad Majeed Malik
Advocate High Court

CERTIFICATE:-

It is certified that no other appeal/petition has been filed in this case.



(M. MAJID QURESHI)

Commissioner Inland Revenue (Legal)
Large Taxpayers Unit, Islamabad

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IN THE LAHOR HIGH COURT RAWALPINDI BENCH, RAWALPINDI

T.R. NO. _____/2010
(Tax years 2005 & 2006)

COMMISSIONER INLAND REVENUE (LEGAL)
LARGE TAXPAYERS UNIT, ISLAMABAD

PETITIONER

VERSUS

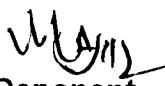
M/S FAUJI FOUNDATION,
68 TIPU ROAD, CHAKLALA, RAWALPINDI

RESPONDENT

REFERENCE APPLICATION U/S 133 OF THE INCOME TAX ORDINANCE, 2001, PRAYING THAT THE HONORABLE COURT MAY PLEASE TO DECIDE THIS REFERENCE ARISING OUT OF THE ORDER IN ITA NO. 919 & 920/IB/09 DATED 22.01.2010 TAX YEARS 2005 & 2006.

**Affidavit of
(M. Majid Qureshi)
Commissioner Inland Revenue (Legal)
Large Taxpayers Unit, Islamabad**

I, the above named deponent do hereby solemnly declare and affirm on oath that I have read the contents of the accompanying appeal. These are true and correct to the best of my knowledge and belief and nothing has been concealed or withheld. The impugned order of the Learned Income Tax Appellate Tribunal was received on 09-02-2010.


Deponent

Verification

It is verified on oath at Islamabad, on this day of May 4, 2010 that the contents of above Affidavit are correct and true to the best of my knowledge and belief.


Deponent

40 S 0-118
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APPELLATE TRIBUNAL INLAND REVENUE ISLAMABAD BENCH, ISLAMABAD

ITA No. 919/IB/09
(Assessment Year 2005)

ITA No. 920/IB/09
(Assessment Year 2006)

CIT, LTU Islamabad

Appellant

Versus

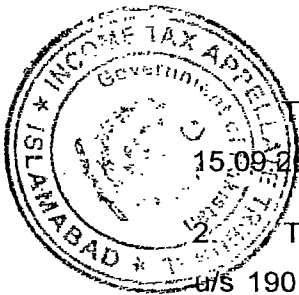
M/S Fauji Foundation
C/O A.F. Ferguson & Co

Respondent

Department by : Mr. Waseem Altaf DR
Taxpayer by : Mr. Aazar A. Hameed FCA
Date of Hearing : 22.01.2010
Date of Order : 22.01.2010



ORDER



These appeals have been filed by the department against order dated 15.09.2009 passed by CIT(A-I), Islamabad.

The taxpayer is a trust. Return was not filed by due date. Show cause notice u/s 190 was issued for late filing of return. For the reasons recorded in impugned penalty order dated 26.12.2007 for tax year, 2005 u/s 182(2) penalty was imposed in the following manner:-

(i)	Due date of filing of return	31.12.2005
(ii)	Extension allowed upto	31.01.2006
(iii)	Date of filing of return	08.09.2007
(iv)	Number of defaulted days	676
(v)	Tax payable on the declared income	Rs.110811212/-
(vi)	Penalty leviable for one day	Rs.110811/-
(vii)	Penalty leviable for 676 days	Rs.74908236/-
(viii)	25% of the tax payable	Rs.27062802/-

No. 1050
9-2-10

3. For tax year 2006 the return was again filed late. Proceedings for imposition of penalty were started through notice u/s 190. For the reasons recorded in the order u/s 182(1) penalty of Rs.25933650/- was imposed (Relevant calculations not made in the order). The assessee filed appeal contesting the legality of penalty. Learned CIT(A) placing reliance on cases reported as (i) PLD 1967 (SC) 1, (ii) PLD 1991 (SC) 963, (iii) 1980 42 Tax 129 (Kar HC) and (iv) 60 Tax 13 (HC Lah) deleted the aforesaid penalty. The department has filed second appeal on the following grounds (common for both the years):-

"That the Commissioner (Appeals) was not justified to delete the penalty u/s 182 of the Income Tax Ordinance, 2001 without understanding the fact that the taxpayer was legally obliged to file return within due time."

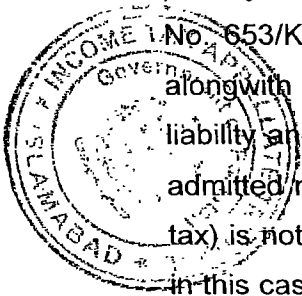
ATTEST

M. I. ZAHEDI
(M. I. ZAHEDI)
JOINT TAXATION OFFICER LEGAL-II
INLAND REVENUE DEPARTMENT ISLAMABAD

4. Learned AR stated that there was no intentional delay. In the light of ratio settled in cases reported as (i) 2004 PTD 1048 (Lahore H.C.), (ii) (2007) 95 TAX 336, 2007 PTD 901 (Sindh H.C.), (iii) (2002) 85 TAX 499 (H.C. Lah) 2002 PTD 381 (Lah H.C.), (iv) (2008) 98 TAX 98 (H.C. Kar), (v) 77 TAX 2; 1998 PTD 1, (vii) 1994 PTD 199; 100 ITR 18 (Andhra Pradesh High Court (India)), (viii) 11 TAX 39; 1966 PTD 27 (Trib), (ix) 34 TAX 71; 1976 PTD 206 (H.C.), imposition of penalty is totally unjustified. He contended that mitigating and extenuating circumstances in favour of the company were not duly appreciated by the taxation officer. In the light of facts and circumstances of the case imposition of impugned penalty was totally unjustified. Learned AR also stated that while calculating the amount of penalty, the taxation officer totally ignored the payment of advance tax as well as withholding tax and did not reduce these amounts from gross tax liability. In this manner the calculation of penalty is legally incorrect. He stated that in the light of decision of Tribunal in ITA No. 653/KB/2006 and ITA No. 1580/FLB/1997 the assessee is required to pay tax along with the return and the tax already paid by him has to be reduced from the tax liability and only balance amount of admitted tax liability has to be deposited. If the admitted net tax liability (after deduction of payment of advance tax and withholding tax) is not paid, the penalty is leviable only on the defaulted amount. He stated that in this case there was no tax payable. Rather refunds were due to the taxpayer. He emphasized that the taxation officer wrongly imposed the penalty on the entire amount of tax liability and he did not allow the margin of payment made in the shape of advance tax and withholding tax. Learned AR emphatically pressed that the amount of penalty has wrongly been calculated in the impugned order.

5. Learned DR stated that the taxpayer was under legal obligation to get the audit completed within reasonable time. He stated the company had admitted its default of late filing of return. He contended that imposition of penalty was justified in this case. He further stated that the amount of penalty was rightly calculated because penalty is leviable u/s 182(1) on the "tax payable in respect of the relevant tax year". He stated that before Finance Act 2002 the penalty was leviable on the basis of "return for the relevant tax year". He contended that letter as well as intention of law is very clear and taxation officer has correctly worked out the amount of penalty leviable in this case.

6. A question came up for consideration that how the penalty will be calculated if the taxpayer had not deposited a sum of Rs.100/- only out of the gross amount of liability for the tax year under consideration. Learned DR stated that in this situation as well. The same amount would be leviable as calculated in the impugned penalty order. Learned AR contended that in the abovementioned situation the amount of penalty will be far more than the tax payable. That is not the intention of law. He was of the opinion that all payments made by a taxpayer have to be accounted for while calculating the amount of penalty leviable in any case. In AR's opinion the assessing officer has made an error in imposing penalty on the basis of gross amount of tax liability. He had to calculate penalty on the basis of net liability of tax



ATTESTED

1-1-2010
 MUHAMMAD ZAFAR
 CHIEF ACCOUNTANT
 KARACHI

payable alongwith return. Another question came up for consideration that how penalty will be worked out in the case of a taxpayer who had deposited full amount of tax or excess amount of tax in the shape of advance tax and withholding tax but delayed filing of return of income. Learned DR explained that if AR's interpretation is accepted, then no penalty will be leviable because there is no further tax payable with the return. He asserted that the purpose of law will be defeated, if interpretation offered by learned AR is adopted. He emphatically pressed that taxation officer's calculation of penalty is fully according to law. We have considered arguments of both the sides in the light of relevant provisions of law. "Tax payable" has already been defined by this forum in their order dated 16.03.2004 in ITA NO. 664/IB/2003 as "tax communicated in the demand notice." It means that penalty has to be calculated with reference to tax payable as per demand notice, after credit/adjustment of tax paid/deducted." The taxation officer did not correctly appreciate this legal aspect of the matter.

Keeping in view facts and circumstances of the case we are of the opinion that there were refunds due to the taxpayer and there was no tax payable. Imposition of penalty was, therefore, unjustified. Learned CIT(A) has rightly deleted this penalty. There is no substance in departmental's appeal which is hereby rejected.

Sd/-

(RAJA LEHRASAB KHAN)
Judicial Member

Sd/-

(ISTATAAT ALI)
Accountant Member

**TRUE COPY**

COPY OF TRIBUNAL ORDER	
I. THE APPELLANT	
II. THE I.T.O./C.I.T.	
III. THE C.I.T.	LTU, IB2
IV. THE C.I.T. (A)	
V. THE AAC	

Assistant Registrar
Income Tax Appellate Tribunal
Islamabad

ATTESTED

17.2.2010
[Signature]

8

3

A.

OFFICE OF THE
COMMISSIONER OF INCOME TAX/WEALTH TAX
(APPEALS – I) ISLAMABAD

459 460
ORDER NO. 259, 260/ 2009.

Date of order: 15.09.2009

Name and address of appellant:

M/s Fauji Foundation
C/o A.F. Ferguson & Co

Zone:

National Tax No.

0710397

Name of Assessing Officer:

Mazhar Hussain Raja / Nazia Zaib

Assessing Officer's code:

Taxation Officer, Enforcement I/IV, Large
Taxpayers Unit, Islamabad

Name of Representative:

Mr Aazar A. Hameed, ACA from A.F.
Ferguson

Status of the Representative:

& Co., Chartered Accountants
[C.A. / C&MA / ADV. / ITP / A.R.]

Date of hearing of appeal:

16-9-2009

Appeal No.	Date of institution of appeal	Under section	Tax year	Penalty assessed	Revenue involved
253	1.02.2008	182(2)	2005	27,062,803	27,062,803
76	4.12.2008	182(1)	2006	25,933,650	25,933,650

APPELLATE ORDER

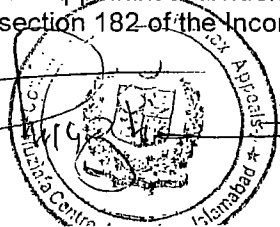
These appeals have been filed by a Welfare Trust which derives income from different sources.

The impugned penalty orders have been contested on the following grounds of appeal.

TAX YEAR 2005

1. The order of the Taxation Officer, Income Tax Enforcement – I, Companies Zone, Islamabad is bad in law, on facts and in circumstances of the case.
2. The Taxation Officer has erred in levying penalty under section 182 of the Income Tax Ordinance, 2001 (Ordinance) contrary to the related provisions of the said section.
3. The Taxation Officer has also erred in ignoring the fact that loss amounting to Rs 769,033,891 was returned by the Appellant and thereby the Appellant was not liable to pay any tax with its return of total income for the tax year 2005.
4. The Taxation Officer's action of invoking the provisions of section 182 of the Income Tax Ordinance 2001 is contrary to the provisions of said section in view of the fact that tax amounting to Rs 1,996,882 is refundable to the Appellant as per its return of total income filed for assessment year 2005 and thereby no tax was payable by the Appellant for the said tax year.
5. The Taxation Officer has further erred in considering final tax amounting to Rs 110,811,212 on the Appellant's dividend income for the purposes of levying penalty under section 182 of the Income Tax Ordinance, 2001.

ATTESTED



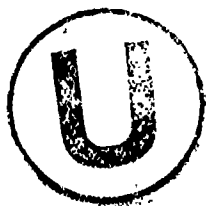
(MUHAMMAD ZAHEER QURESHI)
DCIT/ TAXATION OFFICER LEGAL-II
LARGE TAXPAYER UNIT ISLAMABAD

6. The Taxation Officer has erred in not considering tax amounting to Rs 112,808,034 paid by the Appellant during the tax year 2005 by way of the allowing/extension of time under the related provisions of the Income Tax Ordinance, 2001.
7. Without prejudice to above, the Taxation Officer has erred in considering January 31, 2006 as the date upto which your Appellant was allowed extension in time for filing its return of total income.

TAX YEAR 2006

1. The order of the Taxation Officer, Income Tax Enforcement – IV, Large Taxpayers Unit, Islamabad is bad in law, on facts and in circumstances of the case.
2. The Taxation Officer has erred in levying penalty under section 182(1) of the Income Tax Ordinance, 2001 (Ordinance) contrary to the related provisions of the said section.
3. The Taxation Officer's action of invoking the provisions of section 182 of the Income Tax Ordinance 2001 is contrary to the provisions of said section in view of the fact that tax amounting to Rs 106,862 is refundable to the Appellant as per its return of total income filed for tax year 2006 and thereby no tax was payable by the Appellant for the said tax year.
4. The Taxation Officer has erred in not considering tax amounting to Rs 168,442,252 paid by the Appellant during the tax year 2006 by way of the allowing/extension of time under the related provisions of the Income Tax Ordinance, 2001.
5. Without prejudice to above, the Taxation Officer has erred in considering March 22, 2008 as the date upto which your Appellant was allowed extension in time for filing its return of total income.

In response to call notice Mr. Aazar Hameed, ACA from A.F. Ferguson & Co attended the office and filed written arguments and copies of various judgements. In the light of my discussion with the A.R, copies of appellate order/judgments submitted and the departmental position as reflected in the assessment order, the instant appeals are disposed of as under:-

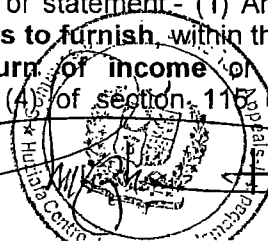


The AR has contended that penalty u/s 182 is leviable on the delay on filing of return to the extent of tax payable with return and not paid by the due date. He stated that as per taxpayers return there were refunds due to the taxpayer and thereby the TO's contention of levying penalty on the tax liability instead of tax payable was erroneous. He also stated that u/s 182 a minimum tax liability of Rs 500 could be levied if there was no tax payable with the return. I consider it appropriate to reproduce the provision of section 182 of the I.T. Ordinance, 2001 below:

"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 sub-section (4) of section 115 or

ATTESTED

M. J.
MUHAMMAD ZAHEER QURESHI
JOINT TAXATION OFFICER LEGAL-II
INCOME TAX ENFORCEMENT ISLAMABAD



wealth statement for any tax year as required under this Ordinance shall be liable for 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."

The AR has also contended that tax payable has not been defined in the I.T. Ordinance and its use is restricted to section 137 and the form of return of total income. The AR has also referred to the form of return of total income for the tax year 2005 wherein tax liability appears at line No 20 on page 2 "Total [(18)e)(iii) plus 19(f)]" code 9299 whereas the Balance tax "payable" appears at line No 22 (b) on page 2 "Balance Tax [20 minus 21] "(b) Payable".

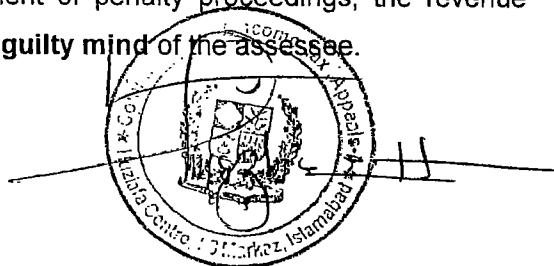
The AR has also referred to reported judgment of the Honourable Income Tax Appellate Tribunal, in the case 2004 PTD (Trib.) 474 on disposing off "Reference Applications" wherein the position has been accepted by the Department. The relevant extracts are reproduced below for ease of reference. Further, the AR has also contended that the TO has not considered the provisions of section 182 which have to be strictly construed by relying on the judgment reported at 84 Tax 15 (H.C) and also contended that use of any word or phrase incorporated in any provision of law by legislature cannot be treated redundant 95 TAX 367 (H.C). Accordingly, the use of the words "tax payable" in the section 182 of the Ordinance, clearly depicts legislature's intent to penalize taxpayers who through late filing cause loss of revenue/delay in collection of revenue.

The AR has also contended that the TO without proving mens rea has erred in levying penalty. He contended that there are various ingredients to invoke penal provisions which are:

- (a) Penalty proceedings being criminal or quasi-criminal, establishment of **mens rea** is an essential ingredient and as such the statutory obligation is on the revenue to prove that the assessee has acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest or acted in conscious disregard of his obligation.
- (b) **Mens rea** is an essential ingredient of penalty proceedings; the revenue should establish **mens rea or the guilty mind of the assessee**.

ATTESTED

[Signature]
 AD ZAHED
 ATTORNEY AT LAW
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- (c) In the Supreme Court of Pakistan case reported as P.L.D. 1967(S.C.)(1) the late Hamoodur Rahman, J., observed that **"even in the case of statutory offence the presumption is that mens rea is an essential ingredient."**
- (d) In a case reported as PLD 1991 SC 963 it was held that where it could be demonstrated that the assessee did not willfully evade the sales tax, it would perhaps be permissible to spare him of the penalty.
- (e) In the case of Mohammad Muslim V. CIT Karachi (1980) 42 Tax 129, the Sind High Court, Karachi held that penalty could be imposed only when the revenue establishes a case indicating dishonest motive of an assessee.
- (f) In the case of Kamran Steel Rolling Mills Vs. Commissioner of Income Tax, Lahore Zone, Lahore reported as 60 Tax 13, the Lahore High Court had held that penal proceedings are criminal in nature and, therefore, have to be established independently on the basis of cogent evidence as is required in criminal proceedings. For the imposition of penalty, it is not sufficient that the assessee's explanation was not satisfactory or even false and that an evidence independent of assessee's explanation should be recorded before penalty could be imposed.

The AR's contention carries weight and in view of the judgements supra which are binding on this office, the penalties levied are hereby deleted.

Appeals stand disposed off in the manner as indicated above.

(NAUSHAD ALI KHAN)
Commissioner of Income Tax
(Appeals -I), Islamabad.

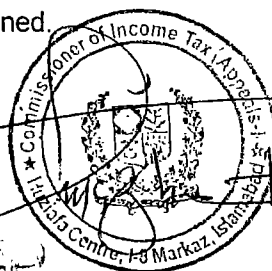
Copy to:

1. The CIT concerned.
2. The TO concerned.
3. The appellant.

*****Kayani*****

ATTESTED

ATTESTED



(NAUSHAD ALI KHAN)
Commissioner of Income Tax
(Appeals -I), Islamabad.

NAUSHAD ALI KHAN
Commissioner of Income Tax
(Appeals -I), Islamabad.

Tax Year : 2005
 National Tax Number : 29-IP-I-07101397
 Name of the Assessee : M/s Fauji Foundation
 Address : 68 Tipu Road, Chakala, Rawalpindi
 Status : Foundation
 Whether Resident / non Resident : Resident
 Method of Accounting : Mercantile
 Section under which the assessment is made : U/s. 182(2)
 D.C. No. & Date of order : 20/5/3

ASSESSMENT ORDER

The tax payer is a foundation has filed return of income for the tax year 2005 on 08-09-2007 which is late by 707 days. The assessment stands finalized u/s 120 of the Income Tax Ordinance, 2001. As the return was late, a show cause notice u/s 190 was issued and served upon the tax payer vide this office No. 250 dated 22-11-2007 which is reproduced as under:-

"You were served upon a show cause notice u/s 190 of the Income Tax Ordinance, 2001 for the tax year 2005 for late filing of return vide this office letter No. 176 dated 0610-2007. Despite proper service of notice no body attended the office nor sent any explanation in this regard. In these circumstances penalty can be imposed. However, to meet the end of justice you are hereby allowed a last but final opportunity to show cause as to why penalty u/s 182 of the Income Tax Ordinance, 2001 may not be imposed in the following manners;-

Due date of filing of return	31-12-2005
Date of filing of return	08-09-2007
Number of days defaulted	707
Tax payable on the declared income	Rs. 110,811,212/-
Penalty leviable 1/10 th of 1% of tax payable	Rs. 1,108,112/-
Maximum penalty leviable	707 x 1108112 = 783,435,184
25% of the tax payable	Rs. 27,062,803/-

As 25% is less than maximum penalty of Rs. 783,435,184/-. Therefore, the penalty @ 25% of the tax payable amounting to Rs. 27,062,803/- will be imposed. The date of compliance is 28-11-2007."

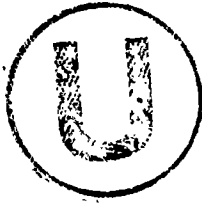
The tax payer has filed reply vide his letter No. T 1832 dated 28-11-2007 which is reproduced as under:-

"We refer to your two show cause notices No. 176 and 250 dated October 6, 2007 and November 22, 2007 respectively issued by you to the above mentioned Foundation whereby you have shown your intention to levy penalty under section 182 of the Ordinance for the submission of Foundation's return of total income for the tax year 2005 and give below our detailed response thereto.
 2. At the outset, we reproduce below the relevant provisions of section 182 of the Ordinance for your ease of reference.

ATTESTED

(M) IMAD ZAHED QURESHI
 DCIT, TAXATION OFFICE LEGAL II
 LARGE TAX PAPER UNIT, KARACHI





13

"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 sub section (4) of section 115 or wealth statement for any tax year as required under this Ordinance shall be liable for 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". (underlining/emphasis ours).

It is apparent from above that penalty for failure to furnish return of total income is to be computed on the amount of tax payable with the return of total income i.e. tax payable under section 137 of the Ordinance and not the tax liability as per said return of total income subject to minimum penalty of Rs. 500/-.

3. In this respect, we also wish to inform you that as per Foundation's return of total income for the tax year 2005 filed on January 7, 2007, income tax amounting to Rs. 1,996,822 is refundable to the Foundation. (Copies of the Form of return (F"Form R1") and "computation of tax liability and tax (refundable)" filed by the Foundation for the tax year 2005 is enclosed for your ease of reference.) Accordingly, you will agree that since no tax was payable with the return of total income, as per item 22 of above referred "Form R1", only minimum penalty of Rs. 500 can be levied in this respect.

4. SHOW CAUSE NOTICE NO. 250 DATED NOVEMBER 22, 2007

4.1 In respect of your contention contained in paragraph 1 of this show cause notice dated November 22, 2007 that

"Despite proper service of notice no body attended the office nor sent any explanation in this respect" (emphasis ours)

we wish to inform you that our Mr. Muhammad Younis attended office on the date fixed for hearing i.e. October 16, 2007 in respect of show cause notice dated October 6, 2007 and discussed with you the provisions of section 182 of the Ordinance and conveyed to you the position explained in paragraphs 2 and 3 above.

4.2 In respect of your intention to levy maximum penalty under section 182 of the Ordinance amounting to Rs. 27,062,803/-, we wish to state that our comments contained in paragraph 2 and 3 above are pertinent.

4.3 Without prejudice to above, we wish to inform you that in terms of our following letters extension in time for filing of Foundation's return of total income had been applied, copies of which letters were also filed with your office. Accordingly, your action of considering "Number of days defaulted" at 707 days is contrary to the facts of the case and thereby illegal and devoid of merit.

	Letter	
	Number	Dated
i)	T 1089	30-09-2005
ii)	T 1207	15-10-2005
iii)	T 1365	31-10-2005
iv)	T 1557	30-11-2005
v)	T 1869	31-12-2005
vi)	T 2098	31-01-2006
vii)	T 2340	07-03-2006
viii)	T 2531	31-03-2006
ix)	T 2785	02-05-2006
x)	T 2939	15-05-2006
xi)	T 3180	15-06-2006
xii)	T 3314	30-06-2006
xiii)	T 138	15-07-2006
xiv)	T 479	16-08-2006

ATTESTED

On the due date the case was adjourned for 26-12-2007. However, no reply was received nor any adjournment was filed.

From the above it is established that tax payer has no plausible explanation. It is fitness of the thing to mention here that M/s Fauji Fertilizer is a big establishment and a separate accounts department is being maintained and has also hired the facility of known C.A. and it is astonishing to note that he file the return late by 676 days. Besides this the AR has taken plea in his first letter ~~an interesting stance~~ that penalty is leviable on the tax payable u/s 137 only, whereas u/s 182 the penalty is leviable on the tax payable in respect of that tax year and not the tax payable alongwith return.

From the above discussion it is established that return was filed late by 676 days, the tax payer has no plausible explanation regarding late filing of return and penalty is leviable of the tax payable in respect of that year. A penalty of 25% of the tax payable is levied being less 1/10th of 1% of the tax payable.

Due date of filing of return:	31-12-2005
Extension allowed upto;	31-01-2006
Date of filing of return:	08-09-2007.
Number of defaulted days;	676
Tax payable on the declared income:	Rs. 110,811,212/-
Penalty leviable for one day.	Rs. 110,811/-
Penalty leviable for 676 days 110811 x 676;	Rs. 74,908,236/-
25% of the tax payable:	Rs. 27,062,803

Assessed as per IT-30. Issue necessary forms.

Dated 26/12 2007

(MAZHAR HUSSAIN RAJA)
Taxation Officer

Penalty order

Commissioner
Income Tax
Companies zone, Islamabad

ATTN:

M. Zaman
C. A. 1124403
1124403
1124403
1124403

18

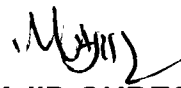
OFFICE OF THE
COMMISSIONER INLAND REVENUE (LEGAL)
LARGE TAXPAYERS UNIT, ISLAMABAD

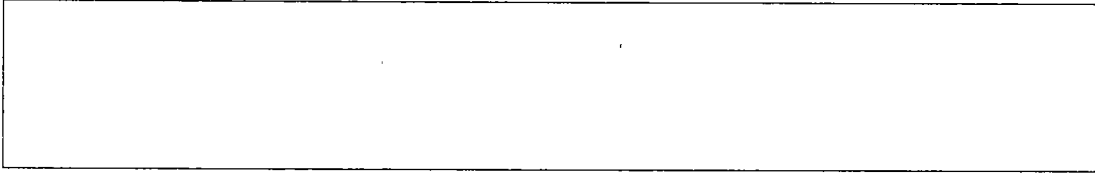
No. 309

Dated: 6/5/2010

**CERTIFICATE REGARDING INTIMATION OF FILING OF REFERENCE, BEFORE
HIGH COURT**

It is certified that M/s Fauji Foundation, 68 Tipu Road, Chaklala, Rawalpindi has been intimated regarding filing of reference u/s 133 before the Honourable Lahore High Court, Rawalpindi Bench, Rawalpindi for Tax Years 2005 and 2006 through copies of appeals which have been sent to the respondent through registered post vide No. 191 dated 5-5-2010


(M. MAJID QURESHI)
Commissioner Inland Revenue (Legal)
Large Taxpayers Unit, Islamabad



20/11/15

IN THE ISLAMABAD HIGH COURT, ISLAMABAD

9298
24/11/15
ITR No.160/2010

COMMISSIONER INLAND REVENUE, LEGAL,
LTU, ISLAMABAD

Vs

M/S FAUJI FOUNDATION

HAFIZ MUNAWAR IQBAL
Advocate High Court

I, Mir Badshah Khan Wazir, Commissioner Inland Revenue, Zone-04, LTU, Islamabad do hereby, appoint and empower Hafiz Munawar Iqbal, (Advocate High Court), hereinafter called "the Advocate" to be advocate for the above mentioned case to do all the following acts, deeds and things or any of them, that is to say:-

- To appear, plead and act in the above-mentioned case in this Court.
- To employ/appoint or nominate any other Advocate/Pleader or substitute on his/their behalf authorizing him to exercise the same powers and authorities hereby conferred on the Advocate as he/they may think fit to do.
- And I/We hereby agree that in the event of whole or any part the fee, agreed by me/us to be paid to the Advocates, remaining unpaid, he/they shall be entitled to withdraw from the prosecution of the said case.

IN WITNESS THEREOF I/We have hereunto set my/our hands to those present, the contents of which have been explained to and understood by me/us on this day of 13.11.2015.

ACCEPTED: subject to the terms and conditions mentioned above.

Hafiz Munawar Iqbal
Advocate High Court

Commissioner Inland Revenue,
(Zone-04) LTU Islamabad. Client(s)

