

**ORDER-SHEET**  
**IN THE ISLAMABAD HIGH COURT**  
**ISLAMABAD**

**I.T.R. No. 58 of 2014**

**M/S National Telecommunication Corporation**  
**VS**  
**Commissioner Inland Revenue (Legal), Large Taxpayer Unit, etc.**

Serial No. of order of proceedings	Date of order of proceedings	Order with signatures of judge, and that of parties of counsel, where necessary.
1	2	3

**04.08.2022 Ch. Naeem ul Haq Advocate for the  
applicant.  
Barrister Atif Rahim Burki, Advocate  
for respondent.**

The instant Sales Tax Reference emanates from order of the learned Appellate Tribunal Inland Revenue, Islamabad ("**Tribunal**") dated 17.04.2014. Through this order the appeal filed by the applicant against penalty imposed under Section 182(1) of the Income Tax Ordinance, 2001, by the Commissioner vide order dated 15.10.2009 and upheld by the Commissioner (Appeals) vide order dated 22.10.2010, was dismissed.

**2.** Learned counsel for the applicant submitted that there was a delay of 21 days in filing the tax return for the year 2008 and the applicant had sought an extension. The Commissioner of Income Tax had granted an

extension of 15 days. Subsequently, the applicant filed an application for further extension of time for filing the tax return, which was neither allowed nor denied explicitly. Thereafter the Taxation Officer vide order dated 05.10.2009 imposed penalty for delay in filing tax return and generated a demand of Rs.4,167,904/-. He stated that according to the return filed by the applicant for the tax year 2008, while there was delay of 21 days' in filing tax return, no tax was payable at the time of filing of such return.

3. Learned counsel for the applicant contended that provisions of Section 182(1) of Income Tax Ordinance, 2001 ("Ordinance"), were not attracted when no tax was payable by the taxpayer for the relevant tax year, which was not appreciated by the learned Commissioner (Appeals) and the Appellate Tribunal. He relied on **Commissioner Inland Revenue, Zone-III, Karachi Vs. Messrs General Tyre and Rubber Co. of Pakistan Ltd. Karachi (2013 PTD 387)**, wherein the learned Sindh High Court held that since there was no tax payable at the time of filing of the tax return

thus the penal provisions of Section 182 were not attracted. Learned counsel further relied a judgment reported as **Commissioner Inland Revenue, Zone-II, L.T.U., Karachi Vs. Independent Newspaper Corp. (Pvt.) Ltd. Karachi (2019 PTD 447)**, wherein it was held that the Taxation Officer was under obligation to provide reasonable time for filing of return when earlier application for extension was allowed and in such case no penalty ought to be imposed.

4. Learned counsel for Tax Department stated that the question of whether provisions of Section 182(1) were attracted and penalty under Section 182(1) applicable where no tax is payable at the time of filing of return was settled by the august Supreme Court in **Commissioner Inland Revenue, RTO, Rawalpindi Vs. Messrs Trillium Pakistan (Pvt.) Ltd., Rawalpindi and others (2019 SCMR 1643)**. The Apex Court held that in Section 182(1) of the Ordinance, the term "tax payable" pertains to amount of tax payable that remained to be deposited with the return at the time of filing of the tax return payment of which remained

tstanding for the tax year. He however omitted whether or not any tax was payable by the taxpayer for tax year 2008 at the time of filing of the tax return for the year had not been determined as a factual matter by the forums below and such factual question could not be determined by this court in its reference jurisdiction.

We are in agreement with the contentions of the learned counsel for both parties. We are guided by the august supreme Court's decision in **Trillium kistan (Pvt.) Ltd.**, wherein the following was held:

*"The expression "tax payable" originally used in Column 3 of the Table quantified the amount of penalty payable by an assessee in the event of the specified default by him. Being penal in nature, that expression was subject to a narrow interpretation. However, in the year 2011 the said expression ibid was clarified to have a wider meaning which increased the leviable amount of penalty. At the relevant time in this case, namely, tax year 2008 and tax year 2009, a plain interpretation of the expression*

*meant that the amount of tax payable with the return formed the base figure for calculating the penalty amount. Prior to the Explanation, the expression "tax payable" could not be read to impose a larger penalty based on the amount of tax that was chargeable on the taxable income of the assessee for that assessment year. In the present case, due to deductions of withholding tax at source no amount of tax was payable with the return by the respondent-assessee."*

The question of law framed for our consideration has already been settled by the Apex Court. The "tax payable" for purposes of Section 182(1) of the Ordinance is the tax due which remains payable at the time of filing of the tax return for a tax year. In the event that due to payment of advance tax (or lack of taxable income (or available tax credit in relation to a tax year etc.), no tax is payable at the time of filing of the tax return, no prejudice is caused to state exchanger due to late filing of the tax return and consequently penalty under Section 182(1)

on the basis of total declared income for such tax year would not be attracted.

**6.** In the instant matter it was for the Commissioner to determine whether any tax remained payable by the applicant for tax year 2008 at the time that it filed the tax return of the said year. This has not been done. While the applicant asserts that no tax for tax year 2008 remained payable at the time of filing of the tax return, such factual question has not been determined or addressed by the Commissioner, Commissioner (Appeals) or the Tribunal. We therefore deem it appropriate to remit the matter back to the Commissioner Inland Revenue (Respondent No.1) to consult the tax record determine if any tax was payable by the applicant at the time when the tax return for the relevant year was filed with a delay of 21 days. And in the event that any tax was payable at such time, the Commissioner can then calculate the penalty due for purposes of Section 182(1) of the Ordinance in relation to the amount the payment of which remained out standing at the time of filing of the tax return.

7. The instant tax reference stands **disposed of** accordingly.

8. Let a copy of the order be sent to the Registrar of the learned Tribunal under the seal of this Court as well.

(ARBAB MUHAMMAD TAHIR)  
JUDGE

(BABAR SATTAR)  
JUDGE

\*A.R.ANSARI\*