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**IN THE SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**PRESENT:**

**MR. JUSTICE UMAR ATA BANDIAL**  
**MR. JUSTICE MUNIB AKHTAR**  
**MR. JUSTICE YAHYA AFRIDI**

**Civil Appeal Nos. 1269 to 1273 of 2013.**

(On appeal from the judgment/order dated 13.02.2013 of the Lahore High Court, Rawalpindi Bench passed in ITR Nos. 35,38,16,17&42/2012)

***Commissioner Inland Revenue, RTO,  
Rawalpindi***

(in all cases)

Appellant(s)

**Versus**

***M/s Trillium Pakistan (Pvt) Ltd, Rawalpindi etc.***

(in C.A. 1269-1270/13)

***M/s Shabbir Brothers, Rawalpindi***

(in C.A. 1271-1272/13)

***M/s Aamir Nawaz Malik, Rawalpindi***

(in C.A. 1273/13)

Respondent(s)

For the appellant(s)  
(in all cases)

Dr. Farhat Zafar, ASC

For the respondent(s)  
(in C.A. 1273/13)

Malik Javed Khalid, ASC

Respondent(s)  
(in C.A. 1269-1272/13)

Ex-parte

Date of hearing

31.01.2019

**ORDER**

**UMAR ATA BANDIAL, J.—** These appeals involve a common question of law, namely, whether the default by an assessee to file his income tax return within the prescribed time attracts the penalty imposed under the Table appended to Section 182(1) of the Income Tax Ordinance 2001, Sr. No.1 whereof provides as follows:

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S. No.	Offences	Penalties	Section of the Ordinance to which, offence has reference
(1)	(2)	(3)	(4)
1	Where any person fails to furnish a return of income or a statement as required under section 115 or wealth statement, wealth reconciliation statement or statement under section 165 within the due date.	Such person shall pay a penalty equal to 0.1% of the <u>tax payable</u> for each day of default subject to a minimum penalty of five thousand rupees and maximum penalty of 25% of the <u>tax payable</u> in respect of that tax year. (emphasis supplied)	114,115,116 and 165

2. The difference of opinion between the parties is whether the expression "tax payable" pertains to the amount of tax that remains to be deposited with the return or the expression refers the total tax liability of the assessee for the income year in question. In Civil Appeal No.1269 of 2013 as well as the other connected appeals the respondent assessee claims that the entire amount of tax chargeable upon him for the tax years 2008 and 2009 (in case of C.A. 1269 of 2013) was deducted at source as withholding tax. Consequently, no amount of tax was liable to be deposited along with the tax return for both the tax years. In these circumstances, the learned High Court has held that the minimum penalty of Rs.5000/- provided in Table 1 can be lawfully collected from the respondent. It has supported its view by reference to an Explanation that was inserted in Column 3 of the Table by the Finance Act, 2011 to the following effect:

"Explanation. For the purposes of this entry, it is declared that the expression "tax payable" means tax chargeable on the taxable income on the basis of assessment made or treated to have been made

under sections 120, 121, 122 or 122C. (*emphasis supplied*)."

3. The learned High Court has held that the Explanation expends the meaning of the expression "tax payable" showing that previously that expression meant the amount of tax to be paid. In the present case involving nil outstanding liability to pay tax, the question is whether the Explanation retrospectively imposes for the past period of default an increased penal liability being a proportion of the total "tax chargeable" on the respondent assessee. An explanation in a statute ordinarily operates to clarify the law prospectively. However, retrospective liability is imposed when an explanation attributes a meaning to a substantive provision or expression whereby the burden, obligation or liability of a person is increased for a past period. Such retrospective impact is to be avoided unless the express language of the explanation warrants such an interpretation.


4. 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

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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 enhanced liability sought to be enforced by the appellants under the expanded meaning given by the Explanation in the year 2011 becomes effective from the time of its promulgation and not prior thereto. In the circumstances therefore, we agree with the findings of the learned High Court.

5. For the foregoing reasons, these appeals are dismissed. No order as to costs.

Islamabad  
31.01.2019  
Naseer

  
Not approved for reporting

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