

Tax Bulletin

April 2024



Tax

Foreword



This publication contains brief commentary on Circulars, SROs and decisions of the adjudicating authorities issued during March 2024.

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Karachi
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Executive Summary

Direct Tax – SROs			
S.No.	Reference	Summary / Gist	Page No.
1	S.R.O. 399(I)/2024	FBR vide SRO dated March 14, 2024 has notified Chartered Accountant firms with 'satisfactory' Quality Control Review rating available on ICAP's website for the purpose of certification of completion of project as required under sub-clause (ii)(B) of clause (e) of sub-section (3) of section 100D.	8
2	S.R.O. 419(I)/2024	FBR vide SRO dated March 21, 2024 has approved the Rules proposed vide S.R.O.1846(I)/2023 dated December 22, 2023 for the application of section 164A of the Income Tax Ordinance, 2001 for the settlement of transactions liable to withholding tax by SWAP agents.	8
3	S.R.O. 457(I)/2024	FBR vide SRO dated March 30, 2024 has approved the special procedure proposed through SRO No. 420(I)/2024 dated March 21, 2024, providing for the scope and payment of tax, filing of return and assessment in respect of small traders and shopkeepers, in such cities or territories, as may be specified therein.	8
4	S.R.O. 469 (I)/2024	FBR vide SRO dated April 3, 2024 has introduced Pakistan Honour Card scheme for Tax Year 2023 as provided under section 181B of the Income Tax Ordinance, 2001.	10
Direct Tax – Reported Decisions			
1	C.As. 368 of 2017, etc.	<p>SUPREME COURT (SC) IN ITS DECISION HAS UPHELD THE JUDGMENT OF SINDH HIGH COURT REGARDING THE INTERPRETATION OF CLAUSE (2) OF ARTICLE VI OF THE Double Tax Treaty (DTT) BETWEEN PAKISTAN AND USA.</p> <p>SC held that there is only one interpretation of rebate provided under clause (2) of Article VI of the DTT i.e. 1 anna in a Rupee when expressed in percentage is 6.25%.</p>	10

S.No.	Reference	Summary / Gist	Page No.
2.	2024 PTD 309	IHC HELD THAT IT IS A SETTLED PREPOSITION NOW THAT WHETHER OR NOT INFORMATION CONSTITUTES DEFINITE INFORMATION FOR THE PURPOSE OF SECTION 122(5) OF THE 2001 ORDINANCE IS TO BE DETERMINED ON A CASE TO CASE BASIS AND NO OVERARCHING TEST CAN BE LAID DOWN	11
3.	2024 PTD 358	IMPLICATIONS OF TURNOVER TAX ON SALE OF ASSETS AND SCRAP SALES ATIR held that sale of fixed assets without any co-relation with the business activity without the element of profit making quality, fall outside the scope of turnover, gross sales or gross receipts. Further, scrap do not form part of the trading goods or stock-in-trade and, hence, the scrap sales could not be taken as a part of turnover for the purpose of section 113 of the Ordinance.	12
Indirect Tax Circulars – Sales Tax Act, 1990			
1.	C.No.2(54)SS(BDT-1)GST/49599-R	This Circular has been issued in pursuance of earlier circular dated February 1, 2024 whereby Single Sales Tax Return (SSTR) was launched for Telecom Sector. Through this Circular, FBR has requested that any proposed changes to the legislative framework for sales tax return that may impact implementation of Single Sales Tax Return, should be communicated to the Design Development and Implementation Committee of Single Portal through Chief (Provincial Taxes) so that the provincial revenue authorities are taken on board.	14
2.	C.No.3(1)/ST&FE/MIS C/2023/42611-R	This Circular supersedes Sales Tax Circular No.02 of 2020/IR Operations dated September 21, 2020. Through this Circular, FBR has prescribed revised standard operating procedure for disposal of cases of condonation of time limit under section 74 of the ST Act which are mutatis mutandis applicable for condonation sought under section 43(2) of the Federal Excise Act, 2005.	14

S.No.	Reference	Summary / Gist	Page No.
Indirect Tax – Reported Decisions			
1.	2024 PTD 368 (Lahore HC)	<p>REFERENCE AGAINST A JUDGMENT OR ORDER OF APPELLATE TRIBUNAL CAN ONLY BE FILED ON A QUESTION OF LAW</p> <p>The LHC decided the reference application against the applicant department on the premise that the decision by the Appellate Tribunal is based on findings of fact, and it has been consistently held by the superior courts that the court cannot entertain any questions regarding findings of fact. Thus, it is evident that a reference to the High Court against a judgment or order of the Appellate Tribunal can only be filed on a question of law.</p>	14
2.	2024 PTD 370 (Lahore HC)	<p>POST-SANCTION AUDIT OF REFUND CLAIMS DOES NOT CAUSE ANY PREJUDICE TO THE PETITIONERS</p> <p>SHC viewed that conducting an audit in cases of post sanction refund claim would not cause any prejudice significant enough to challenge it in constitutional jurisdiction. The audit aims to verify the accuracy, truthfulness, and veracity of the refund claims, which have already been paid. Therefore, the Court concluded that the audit does not cause any prejudice to the petitioners.</p> <p>SHC dismissed the petitions being misconceived and held that no reason was made out to interfere with the impugned notices and the audit exercise being carried out by the respondent-department.</p>	15
Indirect Tax – Reported Decisions - Balochistan Sales Tax on Services Act, 2015			
	2024 PTD 331 (Balochistan HC)	<p>NOTIFICATIONS IN QUESTION WERE MERELY EXPLANATORY AND DID NOT OVERRIDE THE PROVISIONS OF THE BALOCHISTAN SALES TAX ON SERVICES ACT</p> <p>BHC held that Government of Balochistan does not qualify as an end consumer, as they act as a withholding agent and play a significant role in the economic activity chain by utilizing the services of petitioners/contractors in accordance with the sales tax laws.</p>	17

S.No.	Reference	Summary / Gist	Page No.
		BHC dismissed the petitions stating that the notifications in question were merely explanatory and did not override the provisions of the Balochistan Sales Tax on Services Act.	

Income Tax Ordinance, 2001

A. SROs

1. S.R.O. 399(I)/2024 dated March 14, 2024

Section 100D of the Income Tax Ordinance, 2001 (the Ordinance) provides special provisions related to builders and developers. Sub-clause (ii)(B) of clause (e) of sub-section (3) of section 100D of the Ordinance requires certification of completion of a development project by a Firm of Chartered Accountants, having an ICAP Quality Control Review (QCR) rating of 'satisfactory', notified by the Federal Board of Revenue for this purpose. FBR vide above-mentioned SRO has notified Chartered Accountant Firms with 'satisfactory' QCR rating available on ICAP's website for the purpose of certification of completion of project, as required under section 100D of the Ordinance.

2. S.R.O. 419(I)/2024 dated March 21, 2024

FBR vide SRO dated March 21, 2024 has approved the Rules proposed vide S.R.O.1846(I)/2023 dated December 22, 2023 for the application of section 164A of the Income Tax Ordinance, 2001 for the settlement of transactions liable to withholding tax by SWAP agents. For summary and details, please refer:

<https://yousufadil.com/download/tax-bulletin-january-2024/>

<https://download1.fbr.gov.pk/SROs/20243211732956284419dated21.3.24.pdf>

3. S.R.O. 457(I)/2024 dated March 30, 2024

Section 99B of the Income Tax Ordinance, 2001 provides that FBR with the approval of the Minister in charge may, by notification in the official Gazette, prescribe special procedure for scope and payment of tax, filing of return and assessment in respect of such small traders and shopkeepers, in such cities or territories, as

may be specified therein. FBR vide SRO dated March 30, 2024 has published special procedure for small traders and shopkeepers named Tajir Dost (Special) Procedure, 2024 which were earlier proposed vide SRO 420(I)/2024 dated March 21, 2024.

Highlights of the Special Procedure are as under:

- **Scope:**

Special procedure shall apply to the traders and shopkeepers operating through a fixed place of business including a shop, store, warehouse, office or similar physical place located within the territorial civil limits including cantonments in the cities as specified in the Schedule (i.e. Karachi, Lahore, Islamabad, Rawalpindi, Quetta and Peshawar) for registration and payment of minimum advance tax.

- **Provisions of the Ordinance to apply:**

The provisions of the Ordinance shall apply to the persons specified under this special procedure in respect of:

- computation of income for a tax year and tax payable thereon;
- collection and deduction of tax as provided in the Ordinance;
- computation and payment of advance tax liability under section 147 of the Ordinance;
- sections 4C (Super Tax) and 7E (Deemed Income) of the Ordinance if liable to pay such tax; and
- chapters IX, X, XI, XII, XIII of the Ordinance and the schedules thereto, if not specified in above clauses.

- **Registration:**
 - Every trader and shopkeeper shall apply for registration under section 181 of the Ordinance or through Tax Asaan App or on FBR's portal or through FBR's Tax Facilitation Centers by April 30, 2024.
 - If a person, who is required to be registered under the Special Procedure, does not apply for the registration, the Commissioner Inland Revenue shall register the trader or the shopkeeper as the case may be.
 - The provisions of section 182 of the Ordinance shall mutatis mutandis apply to the trader or shopkeeper who has not applied for registration as mentioned above.
- **Minimum monthly advance tax payable by a person:**
 - Every person shall be liable to pay monthly advance tax that shall be treated as minimum tax in respect of income from business covered under special procedure.
 - Payment of advance tax is not applicable where income of a person is exempt from tax under any of the provisions of the Ordinance.
 - Advance tax payable shall be reduced by 25% where –
 - (a) the person pays in lump sum the whole or the balance, as the case may be, of remaining advance tax for the relevant Tax Year on or before any of the due dates for payment of such tax under the said paragraph; or
 - (b) if the person who has not filed income tax return, files income tax return for Tax Year 2023, before the due date for payment of first monthly installment.
- **Mode and manner of payment of advance tax:**
 - The monthly advance tax payable shall be paid with effect from July 1, 2024 for the relevant tax year and the first payment shall be due on July 15, 2024 and thereafter on the 15th day of every month.
 - The tax payable shall be paid through a separate Computerized Payment Receipt against Payment Slip ID generated by Tajir Dost module or through FBR's portal or through FBR's Tax Facilitation Centers.
- Following definitions are provided under paragraph 8 of the Special Procedure:
 - (a) **annual rental value** means ten percent of the fair market value of the business premises;
 - (b) **business premises** include all business places, store, warehouse, or any other place connected to business or an office or a home operating as a business place;
 - (c) **indicative income** means amount calculated on the basis of the annual rental value in accordance with the formula as may be prescribed;
 - (d) **fair market value of business premises** means the amount calculated as per the valuation of immovable properties notified by the Board under section 68 of the Ordinance, or where such valuation has not been notified by the Board, the values fixed by the District Officer (Revenue), or Provincial or any other authority authorized to fix such values for the purposes of stamp duty;
 - (e) **National Business Registry** means a central repository database of traders and shopkeepers which is accessed through Tajir Dost module of Tax Asaan App, FBR's portal for the purpose of registration and payment of advance tax under this special procedure;
 - (f) **Ordinance** means the Income Tax Ordinance 2001, (XLIX of 2001);
 - (g) **person** means traders and shopkeepers falling under the scope of this special procedure.
 - (h) **shopkeeper** includes wholesaler, dealer, retailer, manufacturer-cum-retailer, importer-cum-retailer, or such person who combines the

activity of retail and wholesale with any other business activity or other person in the supply chain of goods.

4. S.R.O. 469 (I)/2024 dated April 3, 2024

Section 181B of the Income Tax Ordinance, 2001 (the Ordinance) provides that FBR may make a scheme for introduction of a taxpayer honour card for individual taxpayers, who fulfills a minimum criteria to be eligible for the benefits as contained in the scheme.

Through the above-mentioned SRO, FBR has issued "Pakistan Honour Card" scheme (the Scheme) for Tax Year 2023. Highlights of the Scheme introduced is as under:

- The scheme applies to top taxpayers falling under each category specified in paragraph 3 and were recipients of awards by the Prime Minister of Pakistan on March 26, 2024 in the 'Tax Excellence Award' ceremony.
- Persons qualifying under the Scheme shall be issued a Pakistan Honour Card.
- A list of categories and number of recipient of the entitled taxpayers are provided under paragraph 3 of the Scheme.
- Only Individual taxpayers shall be entitled to privileges mentioned in paragraph 5 of the Scheme. In case of AOP and Company, an individual as designated by the AOP and Company shall be entitled.
- A taxpayer is entitled for the card, only if:
 - (a) the taxpayer falls within any category specified in paragraph 2;
 - (b) tax on the basis of the return or statement of final taxation has been fully paid;
 - (c) no arrear or current demand is outstanding against the individual, the AOP, or the company, as the case may be, unless the said demand is disputed in any court or stayed by any court; and
 - (d) no criminal proceedings are pending in any court.

- The holder of the card shall be entitled to and enjoy the following privileges:
 - (a) the facilities and privileges as are provided at the CIP/VP lounges of airports managed by the Pakistan Airports Authority excluding lounges managed and maintained by Airlines for their passengers;
 - (b) fast track clearance at immigration counters;
 - (c) issuance of official passport; and
 - (d) invitation for Annual dinner by the Prime Minister.
- The list of recipients in each category is based on the information provided by the Pakistan Revenue Automation Limited (PRAL) to the Federal Board of Revenue, along with a certificate regarding correctness and authenticity of the list.
- The validity of privileges under the scheme shall be for one year from the date of issuance of the card.
- Ministry of Interior, Federal Investigation Authority, Pakistan Airports Authority, Directorate General of Immigration and Passports and any other department or authority relevant or concerned, in any manner for the purpose of this scheme, are required to assist and implement the provisions of the scheme in providing privileges or facilities to the holders of the card as per the provisions of the said Ordinance.

B. Reported Decisions:

1. SUPREME COURT (SC) IN ITS DECISION HAS UPHELD THE JUDGMENT OF SINDH HIGH COURT REGARDING THE INTERPRETATION OF CLAUSE (2) OF ARTICLE VI OF THE DTT BETWEEN PAKISTAN AND USA.

**C.As. 368 of 2017, ETC.
SUPREME COURT OF PAKISTAN**

**COMMISSIONER INLAND REVENUE
VS
SMITH KLINE BEECHAN HOLDINGS
CORPORATIONS, USA AND OTHERS**

APPLICABLE SECTIONS: ARTICLE VI OF THE DOUBLE TAX TREATY BETWEEN PAKISTAN AND UNITED STATES OF AMERICA (USA)

Brief Facts:

Appeals were filed by the tax department in all cases before the Supreme Court of Pakistan against the decisions of Lahore High Court and Sindh High Court related to the matter of interpretation of Article VI of the DTT between Pakistan and USA.

Clause (1) of the Article provides that the rate of US tax on dividend paid by a US corporation to a Pakistani company, not having Permanent Establishment (PE) in USA, and owning more than 50% of the voting rights in the US Corporation shall not exceed 15%.

Whereas, Clause (2) of the Article provides that for a US Corporation, a public company having no PE in Pakistan and owning shares carrying more than 50% of the voting powers of the Company resident of Pakistan, rate of tax on dividend i.e. 15% will be reduced by 1 anna in a Rupee.

As per interpretation of Appellant's legal counsel of clause (2) of Article VI, rebate equivalent to 1 anna in a Rupee means reduction by 1/16th of the tax rate which comes out to 0.0625% and not 6.25%. Hence, the rate of tax applicable for dividend i.e. 15% would be reduced by 0.0625% resulting in applicable rate of 14.0625%. The Counsel contended that due to difference in the calculation of rebate, the courts below have granted relief, which is more than the amount given in Article VI of the DTT.

Decision:

The Honorable Supreme Court in its decision held that Article VI provides rebate on rate of tax instead on the amount of tax. Hence, rebate of 1 anna in a Rupee means 1/16th i.e. equal to a rebate of 6.25%. Accordingly, the applicable rate of dividend i.e. 15% as reduced by 6.25% would be 8.75%. Hence, the Petition filed by the tax authorities, being devoid of any force, was dismissed.

- 2. IT IS A SETTLED PREPOSITION NOW THAT WHETHER OR NOT INFORMATION CONSTITUTES DEFINITE INFORMATION FOR THE PURPOSE OF SECTION 122(5) OF THE ORDINANCE IS TO BE DETERMINED ON A CASE TO CASE BASIS AND NO**

OVERARCHING TEST CAN BE LAID DOWN

**2024 PTD 309
ISLAMABAD HIGH COURT**

**COMMISSIONER INLAND REVENUE (LEGAL DIVISION) LEGAL TAXPAYERS UNIT, ISLAMABAD
VS
KHUDADAD HEIGHTS, ISLAMABAD**

APPLICABLE SECTIONS: 122(5), 122(8), 122(9) AND 133(1) OF THE INCOME TAX ORDINANCE, 2001 (THE ORDINANCE) 25,62, 65, 65(1)(a), 65(1)(b), 65(1)(c) OF THE INCOME TAX ORDINANCE, 1979

Brief Facts:

The Tax Officer passed the Order under section 122(5) of the Ordinance based on possession of definite information obtained through bank statements.

The Taxpayer filed an appeal before CIRA against the above Order. CIRA through his Order deleted the demand raised by the Tax Officer.

The Tax Department filed an appeal against the above Order before ATIR. ATIR held that the Tax Department possessed no definite information for the purposes of section 122(5) of the Ordinance and decided the matter in favour of the Taxpayer.

Being aggrieved by the above decision, the Tax Department filed an appeal before IHC.

Arguments:

The Tax Department argued that the law in relation to definite information had been clarified by the Supreme Court in judgement reported **2017 SCMR 1414** (Commissioner Inland Revenue v Khan CNG Filling Station) and the finding of the ATIR that there existed no definite information with the Tax Department was erroneous.

The Tax Department further argued that the Tax Officer had sought bank statements from the Taxpayer and it was on the basis of entries in the bank statement that the Tax Officer issued a show-cause notice to the Taxpayer under section 122(5) of the Ordinance and bank statements were to be treated as definite information.

The Taxpayer on other hand argued that CIRA had set aside the demand generated by the Tax Officer on the basis that the Taxpayer had successfully provided complete explanation to reconcile how advances were received from customers for purposes of construction of the project and how refunds were issued to customers. It was on such a basis that CIRA concluded that all entries in the bank statement of the Taxpayer could not be treated as revenue that was to be offered up for taxation in the form of income.

The Taxpayer further submitted that the ATIR correctly concluded that entries of the bank statement, which were comprehensively explained to CIRA, did not constitute definite information for the purpose of Section 122(5) of the Ordinance.

Decision:

The IHC decided the matter in favour of Taxpayer and held as under:

- IHC referred to the judgment of Supreme court reported as 2021 SCMR 1290 wherein Supreme Court clarified that the facts in *Khan CNG Filling Station* were different and in such case, "the precise question was whether a formula for natural gas consumption developed by OGRA and the result obtained from an application of that formula could constitute definite information within the meaning of law".
- It is a settled preposition now that whether or not information constitutes definite information for purposes of section 122(5) of the Ordinance is to be determined on a case to case basis and no overarching test can be laid down.
- Information would be deemed to be definite for the purpose of Section 122(5) of the Ordinance where such information engenders and supports the reasonable or definite belief with regard to the outcomes now referred to in sub-clauses (i) or (ii) or (iii) of section 122(5) without any need to subject such information to further analysis, rationalization, scrutiny or processing.
- In view of the entries reflected in such bank statement the Tax Department suspected that the income of the Taxpayer might be higher than what

which was offered up for taxation, it was the CIRA that afforded the Taxpayer an opportunity to explain the entries in the bank statement and the Taxpayer successfully did so which is why the CIRA then set aside the additional demand generated after reassessment by the Tax Officer. The findings of CIRA itself demonstrated that the basis on which the Tax Department-initiated reassessment proceedings was not definite information.

- ATIR did not err in concluding that bank statements did not constitute definite information for purposes of section 122(5) of the Ordinance, as it stood at the relevant time. Consequently, the judgment of the ATIR does not suffer from any infirmity in terms of its finding in relation to lack of definite information.

3. IMPLICATIONS OF TURNOVER TAX ON SALE OF ASSETS AND SCRAP SALES

**2024 PTD 358
APPELLATE TRIBUNAL INLAND
REVENUE**

**COMMISSIONER INLAND REVENUE,
LTU, LAHORE
VS
M/S WORLD CALL TELECOM LTD**

**APPLICABLE SECTIONS: 15, 15A,
16, 30, 67, 113, 120, 122(5A), 127
OF THE INCOME TAX ORDINANCE,
2001 (THE ORDINANCE)**

Brief Facts:

The taxpayer is a listed company deriving income from providing Wireless Local Loop (WLL) and long distance and international (LDI) services. The taxpayer filed income tax return, which was deemed as an assessment order under section 120 of the Ordinance. The Assessing Officer initiated the proceedings under section 122(5A) treating the taxpayer's return for the said tax year as erroneous in so far as prejudicial to the interest of revenue for different stated reasons and eventually assessment was amended under section 122(5A) resulting in specified amount of tax demand.

Being aggrieved, the taxpayer filed appeal before the Commissioner Inland Revenue against amended assessment order . The CIRA

set aside the assessment order to some extent and deleted charge of minimum tax and additions made on account of allocation of expenses to property income, dividend income and exempt capital gain whereas maintained the inadmissible deductions claimed by the taxpayer on the basis of provisions of section 34(3) of the Ordinance. Thereafter, the department filed appeal before the ATIR assailing the CIRA's order to the extent of the said deletions. Summary of the issues agitated in the appeal is as follows:

- Charge of Minimum Tax: Turnover for the purpose of computation of turnover tax under section 113 of the Ordinance include "the gross fees" in case of rendering services, providing of services or giving benefits including commissions without exclusion of sales tax/discount. Further, turnover includes 'turnover from all sources' including scrap sales, sale of fixed assets and miscellaneous income.
- Allocation of Expenses to Property Income: Property/rental income is subject to tax as separate block of income, however, expenses attributable to this income have not been allocated to this income especially the depreciation claimed in respect of rented out property, repair/maintenance allowance and administrative/financial expenses etc.
- Allocation of expenses to Dividend income: Dividend income is chargeable to tax as separate block of income, however, the financial and administrative expenses required to be allocated to dividend income offered for tax at reduced rate i.e. in terms of section 67 of the Ordinance, were not allocated/apportioned as required.
- Allocation of expenses to exempt capital gain: Apportionment of expenses between exempt capital gain and income earned from other operations shall be warranted under the Ordinance.

Decision:

The ATIR dismissed the department appeal on the specified issues in the following manner:

- Charge of Minimum Tax: As per section 113(3)(a) of the Ordinance, the term 'turnover' means gross sales or gross receipts exclusive of sales tax and federal excise tax or trade discount and any deemed income assessed as final discharge of tax liability. Further, the amounts, though received during the course of carrying on the business, would fall outside the scope of the expressions 'gross sale; 'gross receipts' envisaged in the definition of turnover if these do not have profit making quality about them.

Therefore, it is held that every sale of fixed asset cannot be considered as part and parcel of the taxpayer's business activity and in the absence of any evidence relating to such sale of fixed asset with the business activity with the element of profit or gain, such inclusion of sale receipts of assets in total turnover cannot be endorsed. In addition, scrap do not form part of the trading goods or stock-in-trade, the scrap sales could not be taken as a part of turnover for the purpose of section 113 of the Ordinance.

- Allocation of Expenses to Property Income: There is no room for allocation of expenses based on rationale that the income of the taxpayer is taxed under two heads of income as this is against the provisions of section 67 of the Ordinance read with Rule 13 of Income Tax Rules, 2002.
- Allocation of expenses to Dividend income: As a matter of principle, only the actual expenses are allocated. There is no scope for any estimate of expenditure being made and no notional expenditure can be allocated unless the facts of a particular case warrant such allocation. For the case in hand, the taxpayer has not incurred any material expenditure in earning this income hence the same does not warrant allocation of expenses.
- Allocation of expenses to exempt capital gain: As per the ATIR, earlier reported decision (2006 PTD 356) apportionment of expenses is not permissible between exempt capital gain and income earned from other operations.

Sales Tax Act, 1990

A. NOTIFICATION(S)

Circulars:

1. **C.No.2(54)SS(BDT-1)GST/49599-R dated March 18, 2024**

Earlier, an initiative of launching of Single Sales Tax Return (SSTR) was jointly developed by the Federal Board of Revenue and Provincial Tax Authorities for the telecom sector vide circular dated February 1, 2024. The SSTR has been developed after rounds of negotiations between FBR, Provincial Revenue Administrations and the Telecom Sector under the auspices of the Committee constituted vide Notification No.2878-IR-I/ 2023 dated October 20, 2023 for the Design Development & Implementation of Single Portal, and Single Portal Committee constituted vide Notification No.3482-IR-I12023 dated December 21, 2023. The SSTR has been implemented across all jurisdictions, allowing telecom companies to submit their returns for the month of January in February 2024.

Through this circular, FBR has requested intimation of any proposed changes to the legislative framework that may impact SSTR implementation, to the Design Development and Implementation Committee of Single Portal through Chief (Provincial Taxes) so that the provincial revenue authorities are taken on board.

2. **C.No.3(1)/ST&FE/MISC/2023/4261 1-R dated March 4, 2024**

Through this circular, FBR has prescribed revised standard operating procedure for disposal of cases of condonation of time limit under section 74 of the ST Act under which are mututatis mutandis applicable for condonation sought under section 43(2) of the Federal Excise Act, 2005:

- Registered persons must apply to the Commissioner of Inland Revenue with relevant jurisdiction for any extension of

time or period, providing reasons for the delay. If a request reaches the Board directly, it will be forwarded to the appropriate Commissioner for action. However, if the Board has adequate information, it can pass orders without involving the Commissioner Inland Revenue concerned.

- The concerned Commissioner Inland Revenue after carefully examining the provided grounds and any additional information requested, shall send his categorical recommendations to the Board on the format prescribed in the [Circular](#).
- The concerned Commissioner Inland Revenue shall send his recommendations to the Board within 15 days of receiving application in RTO/LTO/CTO/MTO. However, if the Commissioner requests additional information, the fifteen-days period will begin upon receipt of the required data.
- The Board will then examine the request and recommendations, deciding on approval or rejection of the request and accordingly communicate to the Commissioner and applicant.

This Circular supersedes Sales Tax Circular No.02 of 2020/1R Operations dated September 21, 2020.

B. Reported Decisions:

REFERENCE AGAINST A JUDGMENT OR ORDER OF APPELLATE TRIBUNAL CAN ONLY BE FILED ON A QUESTION OF LAW

**2024 PTD 368
LAHORE HIGH COURT**

**THE COMMISSIONER INLAND REVENUE
VS
M/S. CHAWLA ENTERPRISES**

Applicable provisions: 3, 6, 7, 8, 10, 11(3), 22, 23, 26, 47, 47(5) and 73 of the ST Act.

Brief facts:

In the instant case, a show-cause notice was issued to the taxpayer for alleged violation of certain provisions of the ST Act regarding input tax adjustment, which culminated in passing of order-in-original which was upheld by Commissioner (Appeals).

Taxpayer filed second appeal before Appellate Tribunal Inland Revenue (ATIR), which was allowed by learned Judicial Member, however, learned Accountant Member while disagreeing with the findings of his counterpart, proceeded to refer the matter to the Referee Member after framing certain questions to be decided by the latter. Learned Referee Member, vide order dated November 02, 2015, agreed with the opinion of Judicial Member. The department filed reference application before the Hon'ble Lahore High Court (LHC) with following questions of law:

1. Whether the learned Appellate Tribunal has failed to appreciate that there is no bar under the law to pass an order under section 11(3) of the ST Act if the audit of the registered person was conducted earlier?
2. Whether the learned Appellate Tribunal was justified to hold that post refund audit initiated by the competent authority in pursuance of Rules 36 and 38 of the ST Rules read with Sections 3, 6, 7, 8, 10, 22, 23, 26 and 73 of the Act, was illegal?
3. Whether the order passed by the learned Appellate Tribunal is consistent with the relevant provisions of the ST Rules, whereas double jeopardy of tax is not involved in order-in-original, as the audit observations / tax amounts involved are different from the observations/tax amounts previously pointed out in the audit conducted under section 38B of the Act?

Decision:

The LHC first asked the legal counsel of the applicant department to show as to whether any question of law is arising out of the impugned order and whether findings of facts,

returned by learned Appellate Tribunal, can be reviewed while exercising the jurisdiction prescribed. In return, the learned counsel of the Applicant department could not convince the court regarding any legal issue.

Accordingly, the Lahore High Court decided the reference application against the applicant department by placing reliance on the reported judgments of the Hon'ble Supreme Court of Pakistan in the cases 2014 SCMR 907 and 2019 SCMR 906 and declined to exercise its jurisdiction.

The Court explained that the decision by the Appellate Tribunal is based on findings of fact. It has been consistently held by the superior courts that the court cannot entertain any questions regarding findings of fact. Thus, it is evident that a reference to the High Court against a judgment or order of the Appellate Tribunal can only be filed on a question of law.

The Court further pointed that the impugned order reveals that the Appellate Tribunal observed that no such discrepancy, as mentioned in the show-cause notice, was discovered during the audit proceedings for the tax periods from November 2011 to March 2012. Additionally, the refund was approved by the applicant-department after a thorough review of the records, resulting in the respondent being subjected to double jeopardy of tax, which is deemed untenable.

2. POST-SANCTION AUDIT OF REFUND CLAIMS SHOULD NOT CAUSE ANY PREJUDICE TO THE PETITIONERS

**2024 PTD 370
SINDH HIGH COURT**

**M/S. YUNUS TEXTILE MILLS LIMITED and OTHERS
VS
FEDERATION OF PAKISTAN**

Applicable provisions: 36 of the ST Rules.

Brief facts:

In the instant case, Deputy Commissioner issued post sanction audit notices to the companies of their respective refund claim. However, the companies contended that Rule 36 and the proviso thereof requires that the Commissioner Inland Revenue has to carry out such exercise hence, the impugned notices are

without lawful authority and jurisdiction. Being aggrieved, the companies filed constitutional petition.

Decision:

The Court dismissed the petitions being misconceived and held that no reason was made out to interfere with the impugned notices and the audit exercise being carried out by the respondent-department.

The Court further noted that the petitioners sought Sales Tax refunds through various online facilities introduced by FBR from time to time, such as STARR/ERS/FASTER. These refunds were processed, sanctioned, and paid through the FBR's online portal without prior audits. Rule 36 of the ST Rules allows for post-sanction audit of such refund claims. The Court found that the petitioners' plea was misconceived, as the rule does not mandate that the audit must be conducted by the Commissioner Inland Revenue himself. Instead, it requires an order by the Commissioner to direct manual post-audit and

scrutiny of the claim. Even if no such order for a manual audit has been issued, it can still be conducted post facto.

The Court also pointed out that the petitioners had obtained refunds without undergoing the audit process through the online portal. If an audit is directed under Rule 36 for the audit of such refund claims, it does not amount to an adverse order or a cause for raising a question regarding jurisdiction. Refunds have always been subject to pre-audit, but the FBR's online system now allows for sanction and payment without pre-audit.

The High Court viewed that conducting an audit in this case would not cause any prejudice significant enough to challenge it in constitutional jurisdiction. The audit aims to verify the accuracy, truthfulness, and veracity of the refund claims, which have already been paid. Therefore, the Court concluded that the audit does not cause any prejudice to the petitioners.

Balochistan Sales Tax On Services Act, 2015

A. Reported Decisions:

NOTIFICATIONS IN QUESTION WERE MERELY EXPLANATORY AND DID NOT OVERRIDE THE PROVISIONS OF THE BALOCHISTAN SALES TAX ON SERVICES ACT

**2024 PTD 331
BALOCHISTAN HIGH COURT**

**CONSTRUCTION ASSOCIATION OF PAKISTAN
Vs
THE GOVERNMENT OF BALOCHISTAN**

Applicable Provisions: 2(14), 2(86), 6 and 7 of the Balochistan Sales Tax on Services Act, 2015.

Brief Facts:

The petitioners are registered with the Pakistan Engineering Counsel (PEC) and engaged in construction and works contracts with Government Departments. The petitioners being aggrieved of charging Balochistan Sales Tax on Services (BSTS) under the Balochistan Sales Tax on Services Act, 2015, challenged the notification bearing No.FD.SO(MPR)1-46/BST/20203714-48 dated May 4, 2020 issued by the Finance Department to the Accountant General Balochistan and all District Account Officers asking them to withhold BSTS at the rate of 6% on construction services under Tariff Heading 9814.2000 of the Schedule to the Act.

The petitioners also challenged the levy of BSTS on the ground that since the Government is end user of contract services hence it should bear the burden of BSTS. The petitioners also agitated against the rates of BSTS and their application on running bills.

Decision:

The High Court dismissed the petition and held that notifications in question were merely explanation of provisions of Balochistan Sales Tax on Services Act, issued for information of general public and government departments. Such notifications had no binding force to override provisions of Balochistan Sales Tax on Services Act and presence or absence of notifications did not make any difference to the application of Balochistan Sales Tax on Services Act.

The Court further held that rates in question gave two options to the petitioners, they either could opt for standard rate and get adjusted their input tax against their output tax or alternatively could go for lower rates and forgo adjustment of input tax against output tax. Moreover, Government of Balochistan does not possess characteristics of end-consumer instead they function as a withholding agent and are actively involved in the economic activity chain, who utilized the services of petitioners /contractors for furtherance of economic activity in terms of sales tax laws.

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