

# Tax Bulletin

**December 2025**



# Foreword



This publication contains brief commentary on Circulars, SROs and decisions of the adjudicating authorities issued during November 2025.

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**Karachi**  
**December 26, 2025**

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# Executive Summary

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<b>Direct Tax – Reported Decision</b>			
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<b>3</b>	<b>2025 PTD (Trib) 1707</b>	<p><b>FOREIGN INDENTING COMMISSION, EVEN IF SUBJECT TO FINAL TAX REGIME, MUST BE INCLUDED AS "COMMISSION" UNDER SECTION 4C(2)(I) FOR SUPER TAX PURPOSES, AND CANNOT BE TREATED AS IMPUTABLE INCOME UNDER SECTION 4C(2)(III).</b></p> <p>The ATIR concluded that foreign indenting commission, even though subject to the Final Tax Regime, shall be included in the taxable income on a gross basis for the purpose of super tax, instead being computed as imputable income</p>	08
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5	(2025) 131 TAX 399 = (2025) 131 LHC 681 = 2025 PTD 1670	<b>THE LHC HELD THAT ABOLISHING THE APPELLATE TRIBUNAL INLAND REVENUE PRIMA FACIE UNDERMINES ACCESS TO INEXPENSIVE AND EXPEDITIOUS JUSTICE, OVERBURDENS THE HIGH COURTS, AND THEREFORE REQUIRED THE FBR TO JUSTIFY THE CONSTITUTIONAL VALIDITY AND RATIONALE OF THE AMENDMENT.</b>	10
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2	<b>2025 TAX 517 SUPREME COURT OF PAKISTAN</b>	<p><b>REFERENCE APPLICATIONS CAN INCLUDE QUESTIONS OF LAW ARISING OUT OF AN ORDER EVEN NOT ARGUED PREVIOUSLY</b></p> <p>The Supreme Court held that the High Court’s reference jurisdiction under section 47 of the ST Act is appellate in nature and not narrowly confined to issues argued before the Tribunal. Any question of law arising out of the Tribunal’s order can be examined even if raised for the first time at the reference stage.</p> <p>The Court emphasized that limitation is integral to the main dispute and must be examined by courts irrespective of whether it was previously agitated. The High Court was</p>	13

S.No.	Reference	Summary / Gist	Page No.
		<p>found to have erred in refusing to consider the limitation issue.</p> <p>The High Court was held to have wrongly declined to examine the issue of limitation.</p>	
3	<b>2025 TAX 548 LAHORE HIGH COURT</b>	<p><b>CONDONATION OF LIMITATION IS AN EXCEPTIONAL POWER WHICH MUST BE EXERCISED WITH COGENT REASONS AND AFTER OBSERVING DUE PROCESS.</b></p> <p>The LHC held that the power to condone limitation under section 74 of the ST Act is exceptional and cannot be exercised mechanically. Any such order must be supported by cogent reasons and preceded by an opportunity of hearing.</p> <p>An unreasoned condonation order passed in violation of due process was held to be arbitrary and unconstitutional.</p> <p>Since the condonation order was void, all subsequent proceedings based upon it were rendered unlawful and liable to be quashed.</p>	13
4	<b>2025 TAX 565 PESHAWAR HIGH COURT</b>	<p><b>RETROSPECTIVE RECLASSIFICATION WITHOUT JURISDICTION, AUDIT, OR DUE PROCESS IS VOID AB INITIO.</b></p> <p>The PHC held that a registered retailer could not be retrospectively reclassified as a manufacturer-cum-retailer on the basis of a contravention report prepared by an officer lacking jurisdiction.</p> <p>The Court ruled that desk review or data analysis could not substitute a mandatory audit under the ST Act, nor could tax liability be imposed without independent application of mind by the adjudicating authority.</p> <p>In the absence of statutory definition, lawful audit, jurisdiction, and due process, the entire proceedings were declared without jurisdiction and void ab initio, and the tax demand was quashed.</p>	14

# Income Tax Ordinance, 2001

## A. Reported Decisions

### 1. **SUBSIDIARIES DO NOT AUTOMATICALLY INHERIT THE PARENT'S TAX STATUS.**

**SUPREME COURT OF PAKISTAN**

**(2025) 132 TAX 522**

**M/S F.C. SECURITY SERVICES (PVT.) LIMITED, PESHAWAR  
VS  
COMMISSIONER INLAND REVENUE,  
ZONE I, REGIONAL TAX OFFICE,  
PESHAWAR**

#### **APPLICABLE LAW:**

Clause 58 of Part-I of the Second Schedule, specifically sub-clause (2)(i).

#### **Brief facts:**

The appellant F.C. Security Services (Pvt.) Limited, is a private company providing security services. It sought income tax exemption for the tax years 2007, 2008, and 2009 under clause 58(2)(i) of Part-I of the Second Schedule to the Ordinance. The appellant is wholly owned by the Frontier Constabulary Foundation, a welfare organization enjoying tax exemption under SRO 205(I)/86. The tax authorities denied the exemption of the appellant, and the decision was upheld by the Peshawar High Court, leading the petitioner (the appellant) to file civil petitions before the Supreme Court.

#### **Appellant Arguments:**

The appellant contended that being wholly owned by the Frontier Constabulary Foundation, which was established for the welfare of serving and retired personnel and enjoyed statutory tax exemption, the same exemption should extend to the subsidiary company. It was further argued that clause 58(2)(i) should be interpreted broadly to cover entities operating under such welfare foundations. Reliance was also placed on an exemption certificate issued in 2012, which listed F.C. Security Services (Pvt.)

Ltd. as one of the projects of the Foundation, to support the claim that its income was exempt from tax.

#### **Respondents Arguments:**

The tax department argued that the appellant was a separate legal entity incorporated under company law and therefore was required to be assessed independently for tax purposes. It was maintained that clause 58(2)(i) applies exclusively to trusts established for welfare purposes and not to commercial, profit-oriented companies. According to the respondent, the exemption certificate was limited to exempting income received by the Frontier Constabulary Foundation from its projects and did not extend to income earned and retained by the subsidiary company.

#### **Decision:**

The Supreme Court dismissed the petitions and held that the appellant was not entitled to the exemption sought under clause 58(2)(i). It ruled that tax exemptions must be construed strictly and that a subsidiary company cannot automatically inherit the tax exempt status of its parent foundation. It was further held that clause 58(2)(i) applies only to trusts established exclusively for welfare purposes, whereas the appellant was a for-profit company providing security services. The exemption certificate was interpreted to apply solely to income received by the Frontier Constabulary Foundation and not to the income earned by the appellant. Accordingly, the Supreme Court concluded that the entire income of the appellant was liable to tax.

## 2. **THE GAIN ON THE SALE OF FIXED ASSETS (VEHICLES) WAS DECLARED EXEMPT FROM INCOME TAX UNDER CLAUSE (132)**

**LAHORE HIGH COURT**

**(2025) 132 TAX 525**

**KOHINOOR ENERGY LIMITED  
VS  
COMMISSIONER INLAND REVENUE,  
etc.**

### **APPLICABLE LAW:**

Clause 132 of Part I of the Second Schedule, Section 22(8), and Section 133.

### **Brief facts:**

The Appellant, Kohinoor Energy Limited, is a public limited company engaged in electric power generation. It filed its return for Tax Year 2012 claiming exemption under clause (132), Part-I of the Second Schedule to the Ordinance, in respect of income derived from its power project. The claimed exempt income also included gain on sale of property, plant, equipment, and vehicles. The tax department treated the gain on sale of fixed assets as taxable business income. While the ATIR allowed exemption on sale of land, it denied exemption on the sale of vehicles. Aggrieved thereby, the taxpayer filed a reference application before the LHC.

### **Appellant Arguments:**

The applicant argued that the gain on sale of fixed assets, including vehicles, was directly linked to and arose from the operation of the exempt power project and therefore formed part of the exempt business income under Clause (132). It was contended that vehicles constituted integral fixed assets of the project, and their disposal could not be treated separately from the exempt business. Reliance was placed on the earlier judgment of the Court in ITR No. 224 of 2016 (decided on 18.09.2018), where exemption on sale of fixed assets, scrap, and exchange gain had already been allowed. In that judgment, the Court had already held that income from the sale of fixed assets, sale of scrap, and exchange gains were exempt as they were derived

from the company's business. They highlighted that this 2018 judgment had been recently affirmed by the Supreme Court of Pakistan (in CPLA No. 2623-L of 2018), making it a settled legal principle.

### **Respondents Arguments:**

The respondent department supported the order of the ATIR and maintained that gain on sale of vehicles did not qualify for exemption under Clause (132). According to the department, such gain constituted taxable income under section 22(8) of the Ordinance and could not be regarded as income derived from the exempt power generation activity.

### **Decision:**

The LHC allowed the reference application and decided the questions of law in favour of the appellant. It held that the issue was no longer res integra, as the same had already been conclusively decided by the Court in ITR No. 224 of 2016, which judgment had subsequently been affirmed by the Supreme Court in March 2025. Following the binding precedent, the Court ruled that gain on sale of fixed assets, including vehicles, constitutes income arising from the exempt business of the power project and is therefore covered by the exemption under Clause (132), Part-I of the Second Schedule. Consequently, the impugned order of the ATIR was set aside to the extent it denied exemption, and the reference was disposed of accordingly.

## 3. **FOREIGN INDENTING COMMISSION, EVEN IF SUBJECT TO FINAL TAX REGIME, MUST BE INCLUDED AS "COMMISSION" UNDER SECTION 4C(2)(I) FOR SUPER TAX PURPOSES, AND CANNOT BE TREATED AS IMPUTABLE INCOME UNDER SECTION 4C(2)(III).**

**2025 PTD (TRIB) 1707**

**APPELLATE TRIBUNAL INLAND  
REVENUE**

**WARTSILA PAKISTAN (PVT.) LTD.  
VS  
COMMISSIONER INLAND REVENUE,  
LARGE TAXPAYER OFFICE (LTO),  
LAHORE**

### **APPLICABLE LAW:**

Sections 4(C)



### Brief facts:

The appellant, Wartsila Pakistan (Pvt.) Limited filed its return for Tax Year 2023. In its return of income, the appellant declared income for the purpose of super tax under section 4C below the Rs. 150 million threshold, and accordingly, no super tax was paid. However, the tax department classified the foreign indenting commission earned by the appellant as "commission" under clause (i) of sub-section (2) of section 4C. As a result, the income for the purpose of super tax was enhanced above the threshold, and super tax was levied. The appellant contested this treatment before the ATIR.

### Appellant Arguments:

The appellant contended that foreign indenting commission is subject to the Final Tax Regime (FTR) under Sections 154/154A, and therefore should not be included at gross value for Super Tax purposes. It was argued that such income should only be taken as "imputable income" under Section 4C(2)(iii). According to the appellant, the term "commission" in Section 4C(2)(i) refers exclusively to commission taxed under the Normal Tax Regime (e.g., Section 233) and does not cover FTR commission. Reliance was placed on an earlier ATIR decision in M/s Atlas Copco Pakistan v. CIR, ITA No. 3867/LB/2023) which supported this interpretation.

### Respondents Arguments:

The tax department argued that the term "commission" used in Section 4C(2)(i) is unqualified and unrestricted, and therefore covers all types of commission income, irrespective of whether it falls under FTR or the normal regime. It was further contended that section 4C(2)(iii) expressly excludes amounts specified in clause (i), meaning that commission income cannot be reclassified under the head of imputable income.. Hence, the entire foreign indenting commission was rightly included in the Super Tax base.

### Decision:

The ATIR dismissed the appeal and upheld the levy of Super Tax. It held that the word "commission" in Section 4C(2)(i) must be given its plain and ordinary

meaning, covering all commission income without distinction of tax regime. The ATIR emphasized the exclusionary phrase in Section 4C(2)(iii) "excluding amounts specified in clause (i)" and ruled that accepting the appellant's view would render this phrase redundant, which is impermissible in statutory interpretation. The earlier decision in Atlas Copco Pakistan was set aside for failing to consider this crucial exclusion. Consequently, foreign indenting commission, even though subject to FTR, was held to be includable as commission under Section 4C(2)(i), pushing the appellant above the threshold and making it liable to Super Tax.

### 4. THE HIGH COURT HELD THAT CLAUSE (105A) REFERS SPECIFICALLY TO THE "PRECEDING FOUR TAX YEARS," NOT TO THE YEAR IN WHICH THE AUDIT IS COMPLETED.

**2025 PTCL 204 = (2025) 131 TAX 433 = 2025 PLJ 93**

### SINDH HIGH COURT

**M/S. FAZLEE SONS (PVT.) LTD. VS  
FEDERATION OF PAKISTAN & OTHERS.**

### APPLICABLE LAW:

Section 177(1) of the Income Tax Ordinance, 2001, and Clause (105A) of Part IV of the Second Schedule.

Constitution of Pakistan, 1973 - Section: 199(1)(a)(ii)

### Brief facts:

The petitioner, M/s Fazlee Sons (Pvt.) Limited challenged an audit selection notice dated October 11, 2024 issued under section 177(1) of the Ordinance, for Tax Year 2023. The petitioner claimed protection from audit under Clause (105A) of Part IV of the Second Schedule, asserting that its tax affairs for Tax Year 2018 had already been audited and finalized on June 28, 2024. On this basis, it contended that it could not be selected for audit again until four years had elapsed from the completion of the earlier audit, i.e., after June 28, 2028.

### Appellant Arguments:

The petitioner argued that Clause (105A) bars the application of section 177 where a taxpayer has been audited in any of the preceding four tax years, and since the audit for Tax Year 2018 was completed in June 2024, the four years protection period should be counted from that date. It was further contended that the impugned audit notice for Tax Year 2023 was without lawful authority. Reliance was also placed on an FBR Circular dated July 21, 2022, which, according to the petitioner, supported the interpretation that the four years period runs from the year in which the audit is finalized.

### Respondents Arguments:

The tax department maintained that Clause (105A) refers strictly to “preceding four tax years” and not to the date or year in which an audit is completed. It was argued that the audit conducted related to Tax Year 2018, irrespective of the fact that it was concluded in 2024. Therefore, selection of the petitioner for audit for Tax Year 2023 fell squarely within the law. The respondents also contended that the FBR Circular could not override or alter the clear language of the statute.

### Decision:

The SHC dismissed the petition in limine, holding that the petitioner’s interpretation of Clause (105A) was misconceived. The Court ruled that the phrase “preceding four tax years” refers to the tax years themselves and not to the year in which an audit is completed. An audit remains an audit of a specific tax year, regardless of when it is finalized. Accepting the petitioner’s interpretation would effectively extend audit immunity to nearly ten years, which would defeat the legislative intent and undermine the audit regime. The Court further held that the FBR Circular relied upon by the petitioner was inconsistent with the statutory provision and therefore had no binding legal effect. Consequently, the audit notice for Tax Year 2023 was declared lawful, and the constitutional petition was dismissed.

## 5. THE LHC HELD THAT ABOLISHING THE APPELLATE TRIBUNAL INLAND REVENUE PRIMA FACIE UNDERMINES ACCESS TO INEXPENSIVE AND EXPEDITIOUS JUSTICE, OVERBURDENS THE HIGH COURTS, AND THEREFORE REQUIRED THE FBR TO JUSTIFY THE CONSTITUTIONAL VALIDITY AND RATIONALE OF THE AMENDMENT.

**(2025) 131 TAX 399 = (2025) 131 LHC 681 = 2025 PTD 1670**

**LAHORE HIGH COURT**

**MIAN MUHAMMAD AKRAM  
VS  
FEDERATION OF PAKISTAN ETC.**

### APPLICABLE LAW:

Sections 126-A, 133, and 134A of the Income Tax Ordinance, 2001, and Articles 4, 10-A, and 37(d) of the Constitution of Pakistan, 1973.

### Brief facts:

The petitioners challenged the Tax Laws (Amendment) Act, 2024, whereby amendments were made to the Income Tax Ordinance, 2001 abolishing the ATIR as an appellate forum. Prior to the amendment, the appellate hierarchy consisted of an appeal before the CIRA, followed by ATIR, and thereafter a tax reference before the High Court under section 133. The impugned amendment removed ATIR and provided for a direct appeal from the CIRA to the High Court, which the petitioners contended was unconstitutional and violative of fundamental rights.

### Appellant Arguments:

The petitioners argued that removal of ATIR deprives taxpayers of an essential specialized appellate forum, thereby overburdening the High Courts and delaying justice. It was contended that the amendment violates Articles 4, 10-A, and 37(d) of the Constitution, as it results in discriminatory and costly access to justice particularly since FBR is exempt from court fees while taxpayers must pay substantial fees to approach the High Court. The petitioners further asserted that CIRA often pass non-speaking and

defective orders, making ATIR an indispensable corrective forum.

### **Respondents Arguments:**

The respondents, including the Federation of Pakistan and FBR, justified the amendment on the ground that large amounts of revenue (claimed to be around Rs. 2 trillion) were stuck in litigation before ATIR due to delays, inadequate benches, and inefficiencies. It was argued that abolishing ATIR would simplify and expedite the appellate process, reduce frivolous appeals, and lead to administrative efficiency and cost savings.

### **Decision:**

The Lahore High Court (Rawalpindi Bench), while not finally deciding the constitutional challenge, made strong prima facie observations against the impugned amendment. The Court noted that the amendment places an extraordinary and unmanageable burden on the High Courts, which have a limited number of tax benches, and that the removal of ATIR undermines the constitutional mandate of inexpensive and expeditious justice under Article 37(d). The Court observed that FBR itself is a

major contributor to frivolous litigation and that eliminating ATIR would aggravate backlog and delay. It further held that executive explanations or policy justifications cannot override constitutional guarantees. Consequently, the Court directed the Director General (Law), FBR to personally appear and submit a detailed report explaining the rationale, objectives, and constitutional compatibility of the amendment. The matter was adjourned for further hearing, keeping the constitutional validity of the amendment under close judicial scrutiny.

# Sales Tax Act, 1990

## A. Notifications/Circulars

### 1. S.R.O. 2402(I)/2025 dated December 10, 2025

Through this SRO, FBR has revised minimum value of supply of locally produced steel goods for the purpose of payment of sales tax on ad valorem basis, in suppression of previous SRO 1636(I)/2024 dated October 17, 2024. Item wise detail is as under:

No.	Goods	Revised Minimum values inclusive of Sales Tax	Previous Minimum Values as per SRO 1636(I)/2024
1.	Steel bars and other long profiles	Value determined as average national retail price (PBS data) for major cities, adjusted downward by Rs. 1,500 per metric ton (PMT).	Rs. 205,000
2.	Steel Billets	85% of value at Sr. No.1	Rs. 175,000
3.	Steel Ingots/bala	80% of value at Sr. No. 1	Rs. 160,000
4.	Ship plates	75% of value at Sr. No. 1	Rs. 154,000

## B. Reported Decisions

### 1. THE TARIFF DIFFERENTIAL SUBSIDY (TDS) IS NOT PART OF THE VALUE OF SUPPLY AND IS NOT LIABLE TO SALES TAX.

**2025 PTD 1614  
LAHORE HIGH COURT**

**THE COMMISSIONER INLAND  
REVENUE  
VS  
M/S MULTAN ELECTRIC SUPPLY  
COMPANY LIMITED**

**Applicable provisions:** 13, 2(46), 2(46)(i), 47, 47(5) and Sixth Schedule to the ST Act, 1990.

### Brief Facts:

The Commissioner Inland Revenue filed reference application against M/s Multan Electric Supply Company Limited challenging a common order passed by the Appellate Tribunal in favour of M/s Multan Electric Supply Company Limited and other DISCOs. The dispute arose from the department's stance that Tariff Differential Subsidy (TDS) received by electricity distribution companies from the Federal Government formed part of the "value of supply" of electricity and was therefore liable to sales tax under the ST Act. The DISCOs contended that TDS was a government subsidy to consumers, not consideration for supply, and thus fell outside the scope of taxable value. The Appellate Tribunal accepted this position which prompted the department to seek a reference on questions of law before the High Court.

### Decision:

The Lahore High Court dismissed the reference applications and upheld the Tribunal's decision.

The Court held that the Explanation inserted in section 2(46)(i) of the ST Act through the Finance Act, 2022 clearly clarified that subsidies provided by the Federal or Provincial Governments to electricity consumers are not included in the value of supply and have never been chargeable to sales tax.

The Court rejected the department's argument regarding non-retrospective application and observed that the legislative language rendered the question of retrospectivity irrelevant.

The Court relied on binding precedents involving other DISCOs, the Court concluded that TDS is not liable to sales tax and answered the questions of law against the department, thereby affirmed the Tribunal's order.

**2. REFERENCE APPLICATIONS CAN INCLUDE QUESTIONS OF LAW ARISING OUT OF AN ORDER EVEN NOT ARGUED PREVIOUSLY**

**2025 TAX 517  
SUPREME COURT OF PAKISTAN**

**HASEEB WAQAS SUGAR MILL LIMITED  
AND ANOTHER  
VS  
GOVERNMENT OF PAKISTAN**

**Applicable provisions:** 47 to the ST Act, 1990.

**Brief Facts:**

In the instant case, the petitioner and others filed sales tax references under Section 47 of the ST Act whereby challenged the Orders-in-Original issued by the authorities. The main issue concerned was whether the adjudication orders-in-original were passed beyond the statutory limitation period and if so, whether such a question of limitation could be raised for the first time before the High Court in its reference jurisdiction, despite not having been agitated before the lower forums.

The High Court dismissed the references and held that its reference jurisdiction was limited only to questions of law that had been raised and decided by the Tribunal. Since the question of limitation was being raised for the first time before the High Court, it refused to consider it.

The Petitioner, being dissatisfied with this decision filed Civil Appeals before the Supreme Court of Pakistan and challenged the High Court's refusal to examine the limitation issue.

**Decision:**

The Supreme Court allowed the civil appeals filed by registered person and set aside the impugned judgment of the High Court. The Hon'ble Supreme Court examined the scope of reference jurisdiction under Section 47 of the ST Act (pari materia to Section 133 of the Income Tax Ordinance, 2001) and held that the High Court's reference jurisdiction was appellate in nature.

The Hon'ble Court held that it could consider any question of law arising from the Tribunal's order, even if it had not been argued before the lower forums.

The Supreme Court emphasized that limitation was always an integral part of the main dispute and must be examined by the Court, regardless of whether it was previously raised. The High Court had wrongly restricted its jurisdiction and erred in dismissing the references solely because the limitation question was not previously argued.

**3. CONDONATION OF LIMITATION IS AN EXCEPTIONAL POWER WHICH MUST BE EXERCISED WITH COGENT REASONS AND AFTER OBSERVING DUE PROCESS.**

**2025 TAX 548  
LAHORE HIGH COURT**

**M/S THE COCA COLA EXPORT  
CORPORATION  
VS  
DEPUTY COMMISSIONER INLAND  
REVENUE ETC.**

**Applicable provisions:** 10, 11, 11(5), 25, 30, 36, 43(2), 45-B, 46, 66 and 74 to the ST Act, 1990.

**Brief Facts:**

The petitioner had duly filed its sales tax and federal excise returns for the tax periods falling in years 2016 and 2017. Under section 11(5) of the ST Act and section 14(1) of the Federal Excise Act, 2005 the tax authorities were required to initiate any proceedings relating to non-payment, short payment or evasion of tax within five years from the relevant filing dates. After expiry of the statutory limitation periods, no proceedings were pending against the petitioner.

Subsequently, the tax authorities invoked section 74 of the ST Act to condone the expired limitation period and on the strength of such condonation, issued show cause notices seeking to reopen the completed tax periods. The petitioner challenged the legality of the condonation order and the consequential notices on the grounds of lack of jurisdiction, absence of recorded reasons, denial of opportunity of hearing, and that the 2022 amendment to section 74 (empowering

condonation of time limit at any time before or after the expiry of such time or period) could not retrospectively revive past and closed transactions.

On the other hand, the respondents department submitted that since the case of the petitioner was that of a tax fraud, therefore, no limitation runs against such a fraud as, per learned counsel, fraud vitiates the most solemn proceedings.

#### **Decision:**

The Lahore High Court allowed the constitutional petition and declared the impugned order and the consequent show cause notices unlawful. The Court held that an order under section 74 is not appealable, therefore constitutional jurisdiction was rightly invoked.

On merits, it was held that condonation of limitation is an exceptional power which must be exercised with cogent reasons and after observing due process. The absence of reasons and denial of hearing rendered the condonation order arbitrary and violative of Articles 4 and 10A of the Constitution as well as section 24A of the General Clauses Act, 1897.

Since the foundational order was void, all subsequent proceedings based upon it automatically fell. The Court avoided ruling on retrospectivity of amendments or allegations of fraud, holding that once the condonation order was invalid, no further adjudication was required.

#### **4. RETROSPECTIVE RECLASSIFICATION WITHOUT JURISDICTION, AUDIT, OR DUE PROCESS IS VOID AB INITIO.**

##### **2025 TAX 565 PESHAWAR HIGH COURT**

##### **M/S. MIR "A" BAKERS AND SWEETS VS DIRECTOR INTELLIGENCE & INVESTIGATION AND OTHERS.**

**Applicable provisions:** Section 2(9), (46), 3, 4, 6, 7, 8, 11, 13, 14, 22, 23, 25, 30A, 33, 34, 38, 40B and 47 to the ST Act, 1990

#### **Brief facts:**

The applicant is a sales tax registered person operating a bakery and sweets business and had, after due verification by the tax authorities, been registered and continuously treated as a retailer under the Sales Tax Special Procedures regime. Throughout the relevant period, the applicant filed quarterly sales tax returns as a retailer, supplied goods from its retail outlet to final consumers, and remained subject to routine departmental audits in which no irregularity was reported.

Subsequently, relying solely on a contravention report prepared by an officer of the Directorate General of Intelligence and Investigation (DGI&I), the tax department alleged that the applicant was in fact a manufacturer-cum-retailer and retrospectively applied the standard sales tax rate instead of the reduced retailer rate, thereby raising a substantial tax demand along with penalties and default surcharge.

This reclassification was made without initiating any formal audit under the ST Act without modifying the applicant's registration status through the prescribed legal process and without confronting the applicant with the foundational contravention report. The applicants' appeals before the Commissioner (Appeals) and the Appellate Tribunal were dismissed, leading to the reference before the High Court.

#### **Decision:**

The Peshawar High Court allowed the sales tax reference and annulled the assessment order, appellate orders and the entire tax demand.

The Court held that the officer of the DGI&I lacked lawful territorial and functional jurisdiction over the applicant and that the SROs relied upon by the department did not validly confer such powers in the absence of defined jurisdiction or class of persons.

It was further held that mere desk review or analysis of data could not replace a mandatory audit under the ST Act, and that the adjudicating authority failed to conduct any independent inquiry or apply its own mind.

The Court also observed that the term “manufacturer-cum-retailer” was not defined in the statute or rules, and no

legal mechanism existed for retrospectively altering an approved registration status that had been consistently accepted by the department. Since the entire proceedings were founded on jurisdictional defects and violation of due process, they were declared void ab initio, and all consequential actions were quashed.



# Contact Us

## For more information you may contact

**Atif Mufassir**

Partner – National Leader Tax & Legal  
Karachi Office  
Email: amufassir@yousufadil.com

**Zubair Abdul Sattar**

Partner Tax & Legal  
Karachi Office  
Email: zsattar@yousufadil.com

**Rana Usman Khan**

Partner  
Lahore Office  
Email: rmukhan@yousufadil.com

**Imran Ali Memon**

Partner Tax & Legal  
Karachi Office  
Email: immemon@yousufadil.com

**Arshad Mehmood**

Senior Advisor Tax & Legal  
Karachi Office  
Email: amehmood@yousufadil.com

**Sufian Habib**

Executive Director Tax & Legal  
Islamabad Office  
Email: sufianhabib@yousufadil.com

**Muhammad Shahzad Hussain**


Partner Business Process Solutions  
Karachi Office  
Email: muhahussain@yousufadil.com

## Our Offices

**KARACHI**

Cavish Court, A-35, Block 7 & 8  
KCHSU, Shahr-e-Faisal  
Karachi - 75350, Pakistan


 Phones: + 92 (21) 34546494-97

 Fax: + 92 (21) 34541314


 Email: sghazi@yousufadil.com

**ISLAMABAD**

#18-B/1  
Chohan Mansion, G-8 Markaz  
Islamabad, Pakistan

 Phones: + 92 (51) 8350601,  
+ 92 (51) 8734400-3

 Fax: + 92 (42) 35440521


 Email: shahzad@yousufadil.com

**LAHORE**

134-A, Abubakar Block New  
Garden Town, Lahore, Pakistan

 Phones: + 92 (42) 35440520


 Fax: + 92 (42) 35440521


 Email: rmukhan@yousufadil.com

**MULTAN**

4th Floor Mehr Fatima Tower,  
Opp. High Court,  
Multan Cantt, Multan, Pakistan

 Phones: + 92 (61) 4571131-2

 Fax: +92(61) 4571134

 Email: rmukhan@yousufadil.com

## About Yousuf Adil

Yousuf Adil, Chartered Accountants provides Audit & Assurance, Consulting, Risk and Financial Advisory and Tax & Legal services, through over 725 professionals in four cities across Pakistan.

For more information, please visit our website at [www.yousufadil.com](http://www.yousufadil.com)

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