



◆ YOUSUF ADIL

Tax Bulletin

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Foreword



This publication contains brief commentary on Circulars and SROs issued during January 2022 and important reported decisions.

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Income Tax Ordinance, 2001

A. SROs and Circulars

SRO No. 50(I)/2022 dated January 13, 2022

Online integration of Foreign Exchange Dealers/Exchange Companies with FBR

FBR has circulated a draft SRO whereby an amendment has been proposed to Rule 33G of the Income Tax Rules, 2002. Through the SRO, Foreign Exchange Dealers/Exchange Companies are also proposed to be included for an online integration with FBR.

As per rule 33G, the FBR shall ensure to provide a facility on its website to a customer of an integrated enterprise person to verify and ensure that the invoice or bill issued to him has been duly communicated to FBR's Computerized System and in case of non-verification, he may upload the image of invoice or bill to the FBR's portal.

SRO 118(I)/2022 dated January 20, 2022

Amendment in the form of Reference Application to the High Court

FBR has issued the above SRO, amending the Rule 78 of the Income Tax Rules, 2002 requiring the appellant to communicate to the respondent regarding filing of reference before the High court before filing such reference application before the High Court.

Circular No. 11 of 2022 dated January 3, 2022

Extension in time for applicability of payments through Digital mode

Through the Tax Laws (Third Amendment) Ordinance, 2021, a new subsection (1a) was introduced under section 21 of the Income Tax Ordinance, 2001 (the Ordinance) whereby corporate taxpayers are required to

make payment for their expenses under a single account head exceeding Rs 250,000 through digital means from their declared business bank accounts, in order to claim such payments as a deductible expense. Such condition is not applicable to the specified payments on account of utilities, freight, travel fare, postage, payment of taxes and duties, etc.

The Finance Supplementary Act, 2022 empowered the Federal Board of Revenue (FBR) to notify the effective date for the payments to be made through digital means. Accordingly, this provision will not be effective until notified by the FBR through a notification.

Through Circular No. 11 of 2022 dated January 3, 2022, the deadline for digital payments for the corporate sector as stipulated under section 21(1a) of the Ordinance was extended till January 31, 2022. After passing of extended deadline on January 31, 2022, no Circular has been issued by the FBR for further extension in this regard till publication of this document.

Circular No. 12 of 2022 dated January 16, 2022

Explanations of the Amendments made in the Income Tax Ordinance, 2001 through Finance Supplementary Act, 2022

The Circular explains the amendments made in the Ordinance through Finance Supplementary Act, 2022. For detailed comments on the changes introduced through the Act, please refer to our detailed commentary available on <https://www.yousufadil.com/publications/>.

B. Reported Decisions

[A] 2021 PTD 2189 Lahore High Court

Applicable Section: Sect 133 of the Income Tax Ordinance, 2001

Brief Facts:

The Tax Department (appellant) raised the issues before the High Court that specific ground/question of law that was raised before the Appellate Tribunal i.e. "the learned CIR (Appeals) was not justified to annul the amendment order by entertaining the documents which were not produced before the assessing officer during the course of assessment proceedings", which was not addressed by the Tribunal, therefore the impugned order is not sustainable. In this case law, below issues were discussed.

1. Whether Question of Law, neither raised nor adjudicated upon by the Appellate Tribunal, could not be raised before High Court under Section 133 of Ordinance.
2. Where the questions of fact had not been determined, then High Court could remand or refer the matter to Appellate Tribunal for rehearing and deciding the matter afresh as said forum was competent to decide questions of fact arising in a matter.

Decision

The Court relied on Supreme Court of Pakistan's (SCP) judgement reported as (2014 SCMR 907), wherein it was held that only questions of law and not the questions of fact arising out of order of the Tribunal can be raised before the High Court, which include:

- (i) questions of law argued and answered by the Tribunal;

- (ii) questions of law were argued but finding on same have not been given by the Tribunal; and
- (iii) questions which were never argued but had been adjudicated by the Tribunal.

In the said judgement, it was also clarified by the SCP that the question of law neither raised nor adjudicated upon by the Tribunal cannot be raised in the reference for opinion of this court.

By relying on the above judgement of SCP, the Lahore High Court held that since the matter was raised and taken note of by the ATIR, the same is to be considered as a question arising out of the impugned order passed by the ATIR, even if no finding had been given on the same by the ATIR.

In respect of acceptance of documentary evidence, which was not furnished at assessment stage, the Court commented that it requires addressing of some basic and incidental questions of fact, such as:

- (i) whether notice was properly served upon the respondent by the adjudicating officer before passing the order;
- (ii) whether proper opportunity was provided to her to produce documents before the assessing officer;
- (iii) whether there existed any occasion or justification for producing documents for the first time before the CIR(A), etc.
- (iv) The Court remanded back the matter to the ATIR for the purpose of rehearing and deciding the matter afresh after taking into consideration the grounds raised by the applicant department in appeal and also the stance of the respondent.

**[B] (2021)124 TAX 567 = 2022
PTD 19
Lahore High Court**

Applicable sections:

Sec 122, 177, 177(1), 177(1)(a)(d),
177(2), 177(4) & 214(C) of the Ordinance

Brief Facts:

1. The notice, issued under section 177 Ordinance for selecting the case of the petitioners for audit, was called into question in this Writ petition.
2. The petitioners contended that the Commissioner Inland Revenue (the Commissioner), before selecting the case for audit, is required to call for record or documents from the taxpayer and to communicate to him the reasons for doing so.

Decision

The Court repeated its decision in other judgements whereby it was held that mere selection for audit does not cause an actionable injury to the Taxpayer. The reason and objective for conducting an audit under a scheme of self-assessment, which is the regime provided by the Ordinance, is to check the accuracy, truthfulness and veracity of the returns filed by the Taxpayers. These are required to be supported by the requisite documentation and records. When a Taxpayer is selected for audit, he is called upon to explain his case where explanation is required and furnish the documents which support such explanation. In case, he satisfies the authorities that the tax returns submitted by him are truthful, reliable and supported by the necessary documentation, it may not culminate in further proceedings or in an amendment in the returns and enhanced tax liability may not be the outcome. This is so because mere selection for audit by itself is not a complete process. This is the beginning of a process which may or may not culminate in revision of assessment,

enhanced tax liability or other adverse legal consequences.

Selection for audit per se does not entitle a taxpayer to challenge the same in a court of law - The selection for audit per se does not saddle the taxpayer with any liability and accordingly, it was held in Allah Din's case that such a selection does not constitute an actionable injury to the taxpayer entitling him to challenge the same in a court of law. Further, if the assessment gets amended in the course of an audit the taxpayer shall have the remedy to challenge the same by resorting to the remedies of multiple appeals/references available under the Ordinance.

Requirements of the proviso to section 177(1) have been met- The High Court further held that Commissioner in the impugned notices has given reasons for summoning the record/documents and for selection for audit, thus the requirements of the proviso to section 177(1) have been met and, therefore, there is no occasion for the petitioners to be aggrieved of the notices issued to them and to challenge the same.

All the writ petitions were dismissed by the High Court.

**[C] 2021 PTD 971 = 2021
PTCL 468 = (2021)124
TAX 589
Sindh High Court**

Applicable Sections:

Section 5A of the Ordinance
Articles 73 & 77-Fourth Schedule-Federal
Legislative List- Entry No. 43 to 53 Constitution
of The Islamic Republic of Pakistan, 1973

Brief Facts:

1. Section 5A of the Income Tax Ordinance, 2001 was introduced through the Finance Act, 2015 and later amended through the Finance Act, 2017

for taxing undistributed profits for tax years 2017 to 2019.

2. The petitions have assailed the vires of section 5A of the Income Tax Ordinance, 2001 ("Ordinance") and seek for the same to be declared unconstitutional.

Decision

Article 73 of the Constitution deals with money bills and elucidates that recourse thereto may be had for taxation and certain pertinent matters, delineated therein.

The distinguishing feature of tax is that it imposes a common burden for raising revenues for a general, as opposed to a specific, purpose.

The law defines tax as a compulsory exaction of monies by public authorities for utilization for public purposes.

For an imposition to qualify as a tax, under the Federal Legislative List, it may be covered within entries 43 to 53 therein.

Insertion of Section 5A in the Ordinance, including amendments thereto from time to time, does not fall within the parameters delineated per Article 73 hence the provision of Section 5A is found to be ultra vires of the Constitution and is struck down.

Sales Tax Act, 1990

A. SRO and Circulars

SRO No.01(I)/2022 dated January 03, 2022

Change in Petroleum Rates

As a result of change in OGRA notified petroleum prices, the rates of Sales tax have been revised with effect from December 16, 2021 as under:

S. No.	Description	PCT heading	Previous ST Rates	Revised ST Rates
1	MS (Petrol)	2710.1210	1.63% ad valorem	4.77% ad valorem
2	High speed diesel oil	2710.1931	7.37% ad valorem	9.08% ad valorem
3	Kerosene	2710.1911	8.19% ad valorem	8.30% ad valorem
4	Light diesel oil	2710.1921	0.46% ad valorem	2.70% ad valorem

Sales Tax General Order No. 7 of 2022 dated January 05, 2022

Tier-I Retailers - Integration with FBR's POS System

Through insertion of sub-section (6) to section 8B of the Sales Tax Act, 1990 vide Finance Act, 2019, adjustable input tax for a tax period of a Tier-I Retailer "(T-1R)" who did not integrate its retail outlet in the manner prescribed under sub-section (9A) of section 3 of the Act, 1990 was to be reduced by 15%. The said rate of disallowance was increased to 60% through recent amendment made vide Finance Act, 2021.

Vide the instant Sales Tax General Order, a list of 1,284 identified T-1Rs has been placed on FBR's web portal allowing them to integrate with FBR's system by 10th of January 2022 and the procedure of exclusion from this list of 1,284 identified T-1Rs shall apply as laid down in Para 2 of STGO 1 of 2022 dated August 3, 2021. It has also been mentioned that in case of failure to make the requisite integration by such notified

persons, their input tax claim would be disallowed, without any further notice or proceedings, creating tax demand by the same amount.

Above STGO is a part of strong measures being taken by the FBR for implementation of POS integration system.

SRO no.43(I)/2022 dated January 10, 2022

Through this SRO, sub-rule 2 has been added to Rule 150ZU of Sales Tax Rules, 2006 (i.e. Intimation of filing of appeal to the respondent), whereby the Appellant is required to send copy of memorandum and grounds of appeal to the respondent before filing of appeal in the Appellate Tribunal and copy of reference in case of filing reference before the High Court.

SRO no. 51(I)/2022 dated January 13, 2022

New sub rules (2A) and (2B) have been added to Rule 11 (De-Registration) of the Sales Tax Rules, 2006 whereby:

- the obligation of the registered person to file monthly sales tax return under section 26 of the Act shall remain suspended, until he is de-registered or his application is rejected, as the case may be;
- on receipt of the complete requisite records as required by the Commissioner in writing to conduct audit or inquiry of the applicant to determine his liability, entry to this effect shall be made in the computerized system, which shall automatically de-register the applicant on expiry of ninety days thereof, subject to provisions of sub-rule (4) of Rule 11.

This is a positive measure by the FBR since it will make the sales tax de-registration process easy for the taxpayers and will

dispose of the several deregistration applications pending with the department.

SRO no. 88(I)/2022 dated January 18, 2022

Change in Petroleum Rates

As a result of change in OGRA notified petroleum prices, the rates of Sales tax have been revised with effect from January 01, 2022 as under:

S. No.	Description	PCT heading	Previous ST Rates	Revised ST Rates
1	MS (Petrol)	2710.1210	4.77% ad valorem	2.50% ad valorem
2	High speed diesel oil	2710.1931	9.08% ad valorem	5.44% ad valorem
3	Kerosene	2710.1911	8.30% ad valorem	8.30% ad valorem
4	Light diesel oil	2710.1921	2.70% ad valorem	2.70% ad valorem

S.R.O.169 (1)/2022 dated January 31, 2022

Through insertion of a new entry to the table provided in Rule 18(9) of the Sales Tax Rules, 2006, special due dates for sales tax payment and filing of return have been specified in case of WAPDA Hydroelectric Power:

S.NO.	Category of registered person	Due Date	
		For payment	For filing
(1)	(2)	(3)	(4)
7	WAPDA Hydroelectric Power	18th day of the month following the tax period to which sales tax invoice relates	21' day following the 18th day as specified in column (3)"; and

Circular No. 05 of 2022 (Sales Tax) dated January 18, 2022

It is stated in aforesaid Circular that many integrated Tier-1 retailers are indulged in making cash transactions which mutilates not only against the overall scheme of things but also the intended objectives of POS integration.

Accordingly, in order to achieve the desired objectives of the overall scheme of online integration and highest standards of documentation, reporting and transparency, FBR has reemphasized Rule 150ZEB(11) of the Sales Tax Rules, 2006, which mandates that each Tier-I Retailer must have the facility of debit and credit card machine installed at each notified outlet and the sales through debit or credit cards shall not be ordinarily refused.

Circular No. 06 of 2022 (Sales Tax) dated January 20, 2022

Through this circular, FBR has given explanation of the certain amendments introduced in the Sales Tax Act, 1990, through Finance (Supplementary) Act, 2022 which inter alia include the following:

1. It has been clarified that as a result of omission of serial No.64 of Eight Schedule of Sales Tax Act, 1990 viz. Food, Food Stuff and Sweetmeats supplied by Restaurants, Bakeries, Caterers and Sweetmeats Shops with reduced rate sales tax of 7.5%; such products shall now be chargeable to tax @ 17% under the VAT regime with effect from January 16, 2022.
2. Whereas it is further explained that services mentioned under serial No.1 of the Schedule to ICT Service Ordinance, 2001 by Hotels, Motels, Guest Houses, Marriage Halls and Lawns (by whatever name called) including "pandal" and "shamiana" services, clubs including race clubs, and caterers shall continue to be chargeable to tax @16%.

With regard to the S.no. 2 above, there appears to be an inconsistency to the extent of services provided by marriage halls and lawns for which reduced rate of 5% has been provided through entry no. 10 of the Table 2 of the Schedule to the ICT Ordinance. The descriptions of entry No.1 and Entry No. 10 of the Table 1 and Table 2 respectively of the Schedule to the ICT Ordinance, are being reproduced hereunder for reference purposes:

S. No 01. Table 1	S. No. 10. Table 2
Services provided or rendered by hotels, motels, guest houses, marriage halls and lawns (by whatever name called) including "pandal" and "shamiana" services, clubs including race clubs, and caterers.	Services provided or rendered by marriage halls and lawns, by whatever name called, including "pandal" and "shamiana" services and caterers.

In order to avoid any future litigation, FBR should clarify the above inconsistency in rates.

B. Reported Decisions

[A] 2021 PTD (Trib.) 2192 Appellate Tribunal Islamabad Wateen Solution Private Limited vs CIR, LTU, Islamabad

Applicable sections: Sec 3 & Sec 11 of the Sales Tax Act, 1990 (the Act)

Brief Facts:

1. Department carried out proceedings for assessment and recovery of sales tax on assets written off by the Appellant, treating such write-off being the disposal / transfer of assets.
2. The deletion of assets from the books of accounts was due to fire

broken out in Company's premises on February 11, 2012 (being the relevant date for written off assets) but Show Cause Notice was issued on June 13, 2017 i.e. after 5 years from the relevant date.

3. As per Section 11(5) of the Act- Show Cause Notice was required to be issued within a period of 5 years of the relevant date.
4. Case of department was based on the information from financial statement of the appellant wherein the appellant had written off the assets on the ground that they were burnt in fire.

Decision

The Tribunal declared both the orders assessment order and appellate order of CIRA as null and void holding that:

- Section 3 of the Act mandates that the sales tax is charged and levied on taxable supplies carried on for the furtherance of taxable activity whilst burning of assets does not constitute any taxable activity under said section 3.
- Show cause notice is barred by time since it should have been issued prior to February 11, 2017 but it was issued on June 13, 2017 (i.e. after 5 years of the date of fire incidence taken place). The Tribunal added that the tax department cannot touch the pocket of the taxpayer on the basis of time barred show-cause notice and no recovery can be enforced for the period beyond five years. The reliance has been placed on the judgments reported as 2014 PTD 52, 2010 PTD 251, 2013 PTD 1536, 2001 YLR 339 and 2011 SCMR 179.

Federal Excise Act, 2005

SRO No.44(I)/2022 dated January 10, 2022

Through this SRO, subsection 2 has been added to Rule 48D of the Federal Excise Rules, 2005 (i.e. Intimation of filing of appeal to the respondent) whereby the appellant is now required to send copy of memorandum and grounds of appeal to the respondent in case of appeal to Appellate Tribunal and the copy of reference in case of filing reference before the High Court.

Punjab Sales Tax on Services Act, 2012

A. Notification

PRA/Orders.06/2021/I 42 dated January 11, 2022

Through this notification, the Punjab Revenue Authority with the approval of the Government has taxed construction services provided to Azad Pattan Hydropower Project at the reduced rate of 1% without input tax adjustment and refund, with immediate effect.

B. Decision

[B] 2021 PTD (Trib.) 2184 Inland Revenue Punjab Tribunal Messrs Omer Ataullah Khan vs CIRA PRA, Lahore

Applicable sections: Sec 27, 29, 60 & 63 of Punjab Sales Tax on Services Act, 2012 (PSTSA)

Brief Facts:

1. This appeal was filed under section 66 of the PSTSA against order dated 27.03.2019 passed by Commissioner Appeals Punjab Revenue Authority (PRA).
2. On 09.11.2018 the Enforcement Officer issued the show-cause notice for registration/e-enrollment with PRA under section 25 read with paragraph (d) of subsection (1) of section 41 of the PSTSA whereby the appellant was treated as property developers, builders and promoters and was requested to get registered/enrolled under section 25 of PSTSA within 7 days and was also required to deposit sales tax and file monthly sale tax returns with PRA.
3. Subsequently, the Enforcement Officer passed the order dated 04.02.2019 whereby the appellant was found liable to be registered compulsorily under section 25.
4. Feeling aggrieved of the said order, the appellant filed an appeal before the

Commissioner Appeals, PRA. The said appeal was dismissed, solely on the ground that the order impugned was not appealable.

5. Being dis-satisfied with the order dated 27.03.2019 of Commissioner Appeals, PRA, the Appellant filed appeal before the Inland Revenue Punjab Tribunal on the point that whether or not the order passed by the Enforcement Officer for compulsory registration under section 27 of the PSTSA, is appealable before the Commissioner Appeals.

Decision

The Tribunal maintained the order of the Commissioner Appeals and dismissed the appeal of the Appellant, giving the following decision:

1. The order of the Enforcement Officer does not deal with any question relating to the assessment of tax and imposition of any type of financial penalty upon the appellant. Said order in nutshell, deals with the question of registration of the appellant on the ground of its being taxable service provider. Hence, said order of compulsory registration cannot be said to be an assessment/adjudication order passed by the officer under section 60 of the PSTSA and is not appealable before the Commissioner Appeals.
2. The Tribunal further stated that the grievance of the appellant that he was not required to be registered compulsorily under section 27 of The Act, could easily be redressed under subsection (2) of section 29, of The Act and under Rule 13 of (Registration and De-registration), Rules, 2012. If the appellant satisfies the authority by the producing the evidence that the appellant does not qualify to be treated as taxable service provider, the Authority is bound under the law to deregister the appellant or otherwise

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