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Tax Bulletin

February 2025

Tax

Foreword

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

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Karachi
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Income Tax Ordinance, 2001

A. Reported Decisions:

1. OBLIGATION OF THE DEPARTMENT TO ISSUE SHOW CAUSE NOTICE UNDER SECTION 161 OF THE ORDINANCE AND RECONCILIATION UNDER RULE 44 OF THE RULES FOR IDENTIFYING WITHHOLDING TAX OBLIGATIONS ON THE TAXPAYER.

(2024) 130 TAX 703

ISLAMABAD HIGH COURT
COMMISSIONER INLAND REVENUE VS M/S HEWLETT PACKARD PAKISTAN (PRIVATE) LIMITED

APPLICABLE SECTIONS: SECTIONS 161 & 177 OF THE ORDINANCE AND RULE 44 OF THE RULES

Brief Facts:

The Petitioner being a private limited company was alleged by the department to have failed to deposit tax collected or deducted during the conduct of an audit proceeding under Section 177 of the Ordinance leading to an assessment order under Section 122(1) of the Ordinance. The order identified payments under the heads royalty, rent etc.

Arguments

The petitioner argued that no independent transactions were specified for which withholding obligations were not discharged. Additionally no opportunity was afforded to the taxpayer to reconcile or explain whether the payments were or were not subject to withholding obligations. The first time transaction was identified was in the assessment order under Section 122(1) of the Ordinance.

The petitioner further stated that the amounts reflected as payable under the head of rent, royalty etc were all clubbed together in the assessment order and no independent transactions were pointed out in relation to which there existed a tax withholding obligation. Petitioner stated that all of these issues were flagged for consideration of CIRA but he did not adjudicate any of these issues in the appellate order. This aspect of the matter was also not taken cognizance of by the ATIR.

Decision

The IHC addressed several critical points in its decision:

- Proceedings under Section 161 and 177 of the Ordinance are distinct and independent of each other. They should not be conflated.
- The assessing officer should have followed Rule 44 of the Rules to reconcile the withholding tax obligations discharged by the taxpayer.
- A show cause notice should have been issued under Section 161 of the Ordinance confronting the taxpayer with transactions in which withholding obligations were not fulfilled.

The IHC held that the assessment order as well as the decisions of the CIRA and the ATIR are found to be unsustainable. Thus, the IHC has remanded back the matter to CIRA to initiate appropriate proceedings under Rule 44 and subsequently under Section 161 of the Ordinance, if necessary.

2. LEGAL REPRESENTATIVES OF THE DECEASED HAVE RIGHT TO OBTAIN COPIES OF TAX RETURNS.
(2025) 130 TAX 18

LAHORE HIGH COURT

SADIA ISHFAQ
VS
CHIEF COMMISSIONER AND 6 OTHERS

APPLICABLE SECTIONS: 216(1) AND 216(3)(M) OF THE ORDINANCE

Brief Facts:

The petitioner, being the daughter of a deceased taxpayer, sought access to her deceased father's tax returns from the Commissioner Inland Revenue. The request was rejected by the Commissioner, who cited Section 216(1) of the Ordinance as in his view all such particulars are confidential in the garb of Section 216 of the Ordinance and that such information can be provided to a civil court as per 216(3)(m) of the Ordinance.

Arguments

The petitioner submitted that being the legal representative of her deceased father, she has the right of accessing the tax returns of her father to determine her share of the properties left by her father.

The respondent from the department on the other hand submitted that the petitioner needs to approach a civil court to obtain the required information in view of Section 216(1) and 216(3)(m) of the Ordinance.

Decision

The LHC held that:

- A legal representative of a deceased taxpayer has the right to access the tax returns of the deceased to claim their entitlement to the deceased assets, particularly for the purposes of inheritance under applicable laws (such as Islamic inheritance law).
- Section 216(3)(m) is intended to allow the disclosure of taxpayer information in the context of civil court proceedings involving the Federal Government or income tax authority. However, it does not prevent a legal representative from accessing the tax records when the purpose is to deal with inheritance matters.
- The LHC emphasized that the legal representative does not need to initiate a civil suit to access the tax records, they can directly request the relevant tax authority for the documents necessary for the settlement of the deceased's estate.

The LHC decided that the petitioner, being one of the legal representative of the deceased, is entitled to obtain the information from the tax returns to lay claim on her legal entitlement under the Islamic Law of Inheritance. The LHC opined that Section 216 does not place any bar on legal representative of deceased taxpayer from obtaining the copies of his / her tax returns.

The Constitutional petition filed by the daughter of the deceased was allowed and the Commissioner's decision was set aside. The Commissioner Inland Revenue was ordered to provide the tax returns of the deceased.

3. EXEMPTION ON WAIVER OF LOAN TO BE ALLOWED IN VIEW OF CLAUSE (3A) OF PART IV OF THE SECOND SCHEDULE TO THE ORDINANCE

2025 PTD 35

LAHORE HIGH COURT

COMMISSIONER INLAND REVENUE VS M/S STANDARD ICE AND COLD STORAGE, LAHORE

APPLICABLE SECTIONS: SECTION 70 AND SECTION 34(5) AND Clause (3A) OF PART IV OF THE SECOND SCHEDULE TO THE ORDINANCE

Brief Facts:

The respondent had filed its return of income which was deemed Assessment order under Section 120 of the Ordinance. The same was reviewed by the taxation officer invoking Section 221 of the Ordinance and an addition was made by the officer treating amount of loan as income, waived under State Bank's amnesty scheme in lieu of irrecoverable loans / debts while denying benefit of clause (3A) of Part IV of the second schedule to the Ordinance. The taxpayer's first appeal was allowed and the addition was deleted. ATIR also affirmed the order passed by the CIRA. The department filed reference application against the decision of the ATIR.

Arguments

The department argued that the benefit of Clause (3A) of Part IV of Second Schedule to the Ordinance cannot be extended without appreciating that clause was inserted through Finance Act 2004 and that the intent of legislature cannot be to allow retrospective effect and benefit cannot be availed for the purposes of Tax Year 2004. The department further stated that waiver of loan is to be treated as income of the taxpayer. Another limb of the argument was that exemption granted through clause (3A) had to be construed strictly to the advantage of the department.

Decision

The LHC held that:

- Clause (3A) possessed all the features and attributes of a curative, declaratory and beneficial enactment affirming the spirit of the BPD Circular no 29 dated 15.10.2002.
- Benefit was available and effective from the date of BPD circular No.29 i.e 15.10.2002 and applicability whereof could not be denied for the purposes of Tax year 2004.
- Retrospectivity of clause (3A) stood endorsed in terms of the clarification made, by FBR through Circular No. 14 of 2004 dated 17 July 2004.
- In these circumstances, mere insertion of Clause (3A) through Finance Act, 2004 would not make its application prospective denuding it of its curative and declaratory character

Conclusion:

The LHC allowed retrospective application of clause (3A), question of law was answered in the affirmative and decided against the department, declaring that clause (3A) was declaratory and had retrospective effect. Reference application filed by the department was dismissed.

4. SECTION 122(5A) DOES NOT EMPOWER THE OFFICER TO CONDUCT INQUIRIES SIMILAR TO AN AUDIT UNDER SECTION 177 OF THE ORDINANCE.

2025 SLD 344 = (2025) 131 TAX 35

APPELLATE TRIBUNAL INLAND REVENUE, MULTAN BENCH

THE CIR, RTO, MULTAN VS DR. HAFEEZ ANWAR WAPDA TOWN, MULTAN

APPLICABLE SECTIONS: SECTION 114,120,122(1),122(5A),127,129 & 177 OF THE INCOME TAX ORDINANCE, 2001 AND SECTION 24A OF GENERAL CLAUSES ACT, 1897

Brief Facts:

The respondent, an individual running a clinic / hospital, was selected for tax audit. After scrutiny, the tax officer identified discrepancies and issued a show cause notice under Section 122(5A) of the Ordinance. Consequently, an amended assessment order was passed under section 122(5A), disallowing certain expenses and adding them to the respondent's income. Order was challenged before the CIRA, who deleted the additions. The decision was subsequently challenged by the Department before the ATIR.

Arguments

The department argued that the CIRA deleted the additions made under the heads of Surgery Fee, Salary and Cleanliness, X-Ray Receipt, ECG Stationery, Building Repair, Entertainment, disposable items, and Miscellaneous, without any legal backing. The department further argued that the order passed under Section 122(5A) of the Ordinance, is a speaking order and no arbitrariness can be attached to the amended order.

The respondent argues that the scope of section 122(5A) of the Ordinance is limited one and cannot be extended to disallowance of expenses. The order of the officer is illegal and contrary to the

provisions of section 122(5A) of the Ordinance. The respondent further submitted that the order of CIRA is based on proper appreciation of facts of the case and needs to be upheld.

Decision

The ATIR decided the matter in favour of respondent as follows:

In order to amend the assessment order under section 122(5A) of the Ordinance, the two predominant and mandatory conditions i.e. error of law and loss to the revenue must present in the deemed assessment order; means if there is no error of law and revenue implication is involved, the jurisdiction of section 122(5A) cannot be invoked.

The calling for record from the respondent without referring to any erroneousness qua factual and legal in the deemed assessment order is in defeat to the intent and scope of section 122(5A) of the Ordinance.

The calling for record under section 122(5A) would mean to conduct the audit under section 177 of the Ordinance, and there remains no difference between the two provisions and accepting this plea would make one of the two provisions redundant; and this definitely is not the intent of legislature. The ATIR has already enunciated the principles to invoke the provision of section 122(5A) of the Ordinance in a judgment Reported as 2017 PTP (Trib) 1911.

It transpires that the show cause notice is based on bold presumptions and conjectures. The assessing officer's order based on information acquired from the respondent, which is in the nature of inquiry from the respondent and does not fall within the ambit of section 122(5A).

5. ATIR CANNOT IMPOSE ARBITRARY CONDITIONS FOR STAY ORDERS

(2025) 131 TAX 14

LAHORE HIGH COURT

MUHAMMAD ZUBAIR VS FEDERATION OF PAKISTAN

APPLICABLE SECTIONS: 130(2), 131(5),133 & 134A(11) OF THE INCOME TAX ORDINANCE, 2001.

Brief Facts:

Petitioners filed petitions before the LHC against ATIR Orders for granting stay against tax demand subject to the partial payments.

Arguments

The Petitioner argued that the ATIR is the first independent forum and any injunctive order passed by it must state reasons for imposing any condition or else the object and purpose of appeal will stand negated. The Petitioner further contended that the section 131(5) of the Ordinance, does not visualize any condition for grant of stay and the discretion exercised by the ATIR by imposing conditions in these matters is unlawful.

The Department argued that the ATIR possesses discretionary power to stay recovery of any tax due by virtue of any order being assailed, subject to restrictions or limitations and that the impugned conditions in the instant cases depict only reasonable exercise of judicial discretion.

Decision

LHC allow petitions and decide the matter as follows:

- ATIR's authority to grant stay is discretionary but should ensure unrestricted access to justice.
- There is no legal requirement in Section 131(5) for taxpayers to deposit tax as a condition for stay (unlike Section 133(10), which requires a 30% deposit for a High Court stay).
- Imposing conditions without justification is arbitrary and shows lack of application of mind by ATIR.

ATIR was directed to decide appeals of the petitioners within 30 days from this LHC order.

6. SECTION 209 OF THE ORDINANCE EMPOWERS BOTH THE FBR AND THE CHIEF COMMISSIONER TO TRANSFER JURISDICTION IN RESPECT OF CASES OR PERSON FROM ONE COMMISSIONER TO ANOTHER.

2025 PTD 58

LAHORE HIGH COURT

COMMISSIONER INLAND REVENUE
VS
MASUD UL HASSAN AND OTHERS

APPLICABLE SECTIONS: 131, 133, 122 & 209 OF THE INCOME TAX ORDINANCE, 2001.

Brief Facts:

The proceeding under section 122 of the Ordinance for tax years 2011, 2012 and 2013 were initiated against the respondent on failure to submit satisfactory explanation which resulted into deemed assessment under section 122(1) of the Ordinance. Being aggrieved, the respondent filed an appeal before the CIRA, which confirmed the additions. The decision of the CIRA was further challenged before ATIR. The ATIR vide its order decided the matter in favour of respondent and stated that the impugned orders of amendment of assessment for all years under appeal are illegal, for having been passed by the officer, who did not have jurisdiction in the cases of the respondent.

Being aggrieved by the above decision, appellant file appeal before LHC.

Arguments

The appellant (the department) argued that ATIR passed the order ignoring the jurisdiction of Commissioner vested upon him specifically by the Chief Commissioner in terms of section 209(1) of the Ordinance.

The respondent (the taxpayer) argued that impugned orders have been passed strictly in accordance with law and does not require any interference.

Decision

The LHC decides the matter in favour of Appellant as follows:

ATIR has failed to properly consider the jurisdiction vested with Commissioner in question vide an order dated August 20, 2014.

Section 209 of the Ordinance empowers both the FBR and the Chief Commissioner to transfer jurisdiction in respect of cases or person from one Commissioner to another.

In the present case, the Chief Commissioner vide an order dated August 20, 2014, transferred jurisdiction of the respondent from Additional Commissioner to the Commissioner.

Responded had not taken the objection with regard to jurisdiction of Commissioner at the time of filing of reply to show cause notice or at the time of filing of appeal before CIRA. It has been held in the case reported as **2003 SCMR 686** that *"when no objection to the jurisdiction of a Court or Tribunal is taken in the forum of first instance, then it cannot be raised either in appeal or in revision".*

7. TAXPAYER ELIGIBLE FOR THE TAX CREDIT UNDER SECTION 107AA BASED ON THE INVESTMENT MADE BEFORE THE CUT-OFF DATE, IRRESPECTIVE OF THE SUBSEQUENT TIMING OF INSTALLATION

2025 PTD 51

LAHORE HIGH COURT

COMMISSIONER INLAND REVENUE
VS
BE BE JAN FIBERS (PRIVATE) LIMITED

APPLICABLE SECTIONS: 239 OF THE INCOME TAX ORDINANCE, 2001 AND 107AA OF THE INCOME TAX ORDINNACE, 1979

Brief Facts:

Appellant, the department, filed an appeal before LHC and raised below question of law:

Whether the ATIR justified ignoring the provisions of section 239 (15) of the Income Tax Ordinance, 2001, which lay down that the requirements of investment and installation have to be fulfilled upto June 30, 2002, for claiming of tax credit under section 107AA of the repealed Income Tax Ordinance, 1979.

Arguments

The appellant argued that in terms of section 107AA of repealed Ordinance tax credit was only claimable provided the plant and machinery, acquired upon investing funds, was installed before June 30, 2002.

Further, the legislative intent was reaffirmed through sub-section 15 of section 239 of Ordinance, and since respondent had not installed the machinery till cut off date, therefore, no credit could be claimed for tax years 2004 and 2005.

The respondent argued that admissibility of tax credits was subject to the requirement of investing funds for acquisition of plant machinery, before June 30, 2002, and not to ensure the installation of the machinery.

Further, the question of installation of machinery had relevance for the purposes of income year, in which adjustment of tax credit against the tax payable was claimed and allowable.

Decision

LHC decides the matter in favour of respondent as follows:

- It is evident that condition precedent for being eligible for the tax credit was investment made within the timelines prescribed and entitlement for the adjustment, for a particular income year, was dependent upon installation of plant and machinery.
- The expression ***'for installation'*** limits the purpose of investment ensuring that plant and machinery was installed and not to be offered for sale or lease. There is difference between being eligible and claiming entitlement in respect thereof.
- Subsection (15) of section 239 had not altered the situation to the disadvantage of the taxpayer nor could said provision of law be construed to take away eligibility to tax credit accrued, upon investment before June 30, 2002.
- Subsection (15) of section 239 actually supported section 107AA of the repealed Ordinance by affirming cut-off date of June 30, 2002.
- Subsections (2) and (3) of Section 107 AA of repealed Ordinance provides timing and mechanism for claiming tax credit which have nothing to contribute for the purposes of determining eligibility for tax credit.
- In view of the above, ATIR has rightly interpreted section 107AA in the context of sub-section (15) of section 239 of the Ordinance.

Sales Tax Act, 1990

A. Notifications:

1. S.R.O. 55(1)/2025 dated January 24, 2025

Through this notification, FBR has made following further amendments to the rule 14 of the Sales Tax Rules, 2006 and the sales tax return. These changes, listed below, will impact manufacturers, importers, distributors, and wholesalers, requiring them to enhance their reporting and compliance measures:

- All registered manufacturers supplying taxable goods are now required to submit Annex-J with their monthly return. It is important to note that Annex-J pertains to the details of the goods manufactured, produced, and supplied. Previously, this requirement was limited to specific sectors.

- In addition, all registered commercial importers, distributors, and wholesalers supplying taxable goods are now required to provide quantity-wise stock details in a new form, Annex-H1, along with their monthly sales tax return.

2. S.R.O. 69(1)/2025 dated January 29, 2025

Through this notification, FBR has introduced significant amendments to the Sales Tax Rules, 2006. These changes primarily focus on the issuance of electronic invoices and the integration of point-of-sale (POS) systems. The previous Chapters (Special Procedure for Issuance of Electronic Invoices between Buyers and Sellers), XIV-AA (Online Integration of Tier-1 Retailers), and XIV-BB (Integration of Electronic Invoicing and Licensing) have been consolidated into a single Chapter XIV, now titled "Procedure for Licensing, Issuance of Electronic Sales Tax Invoices, and Integration of Registered Persons."

The updated rules are summarized as below:

Applicability - Rule 150Q: Applicable to all registered persons (as notified by the Board) for the electronic integration of hardware and software used to generate and transmit electronic invoices, either through a licensed integrator or as outlined in the rules.

Additionally, those who have previously registered and integrated their point of sale with the Board's computerized system are considered to be integrated under these rules.

Obligations and requirements – Rule 150R: Registered businesses (now termed as "integrated persons") must:

  - Install and integrate electronic invoicing hardware/software with FBR's computerized system in the manner specified by the Board in the STGO.
  - Register their outlets, points of sale (POS), or electronic invoicing machines through FBR's online system.
  - Ensure that all sales are made exclusively through these integrated systems.

- The point of sale/electronic invoice machine must generate, store, and transmit invoice data, issue digitally signed sales tax invoices, communicate with the Board's system to obtain a unique invoice number, encrypt and securely preserve invoice data, generate and print a QR code, conduct regular closings, and log any adjustments or modifications.

- The Annexure C of the sales tax return shall be auto-filled from the electronic invoices issued by the integrated person.

- POS software must be capable of alert messages to the Board's system in case of malpractice or error.

- The Board may require integrated persons to integrate debit/credit

card machines, QR Code, or other digital transaction modes.

- Integrated persons may be required to record transactions with a CCTV camera, retaining recordings for at least one month.

- Electronic invoices for exempt items must be issued through the system integrated with the Board's Computerized System.

- The cost of integration, including equipment and software, will be borne by the integrated person.

- Integrated persons must display a signboard bearing the FBR's logo and their registration number and specified text "Integrated with FBR".

- Integrated persons selling online must register their website, software, and mobile application with the Board's system.

- Electronic invoices must contain specific details, including the unique FBR invoice number, QR code, registration number, and other information. However, some requirements, like extra and further tax, may be exempt for retailers selling to the general public other than a manufacturer-cum-retailer or an importer-cum-retailer.

Issuance of electronic invoice and record – Rule 150S:

- Integrated persons must issue real-time verifiable electronic sales tax invoices for taxable supplies and services and records of these invoices must be retained electronically for six years.

- Electronic debit and credit notes are also required to be issued and retained for six years.

- For online sales, including those via online marketplaces, electronic invoices are generated automatically and maintained for six years.

Conditions for electronic storage – 150T: Electronic documents must be stored in a way that allows the information from the original transmission to be recreated during a departmental audit.

Audit – 150U: Integrated persons must provide access to premises and records to authorized Inland Revenue Officers for audit purposes. The Board may also issue instructions for technical audits.

Extension in due date of Integration – 150V: The Commissioner IR may grant 60-day extension in aggregate with 15 days interval, and integrated persons must issue paper invoices until then.

Provisions of Electronic Transactions Ordinance, 2002 – 150W: The Electronic Transactions Ordinance, 2002, applies to the recognition of electronic documents, transactions, and the accreditation of certification service providers.

Consequences of non-compliance or contravention – 150X: Integrated person who tamper with systems or violate any provisions will face penalties under section 33 of the Act and restrictions under any provisions.

Responsibilities of Integrated Persons - 150XA: Integrated person must ensure electronic invoicing systems are installed, functional, and report any issues (failures, damages, etc.) within 24 hours. Also report inoperative systems with reasons and evidence within 24 hours

Verification Facility by the Board - 150XB: The Board will provide a facility on its website for buyers to verify invoices sent to its computerized system.

Internet Interruption - 150XC: Offline-mode invoices due to internet or power failures must be identified and uploaded within 24 hours after service restoration.

Functions of the Officer of Inland Revenue - 150XD: The officer will monitor the system's operation through authorized periodic visits on behalf of the Commissioner. If an integrated person fails to account for sales without generating the required invoices, the Officer will calculate the taxes on those

unaccounted invoices and recover them according to the law, potentially taking further penal actions as per the Act or associated rules.

Licensing - 150XE:

- No person may integrate notified registered persons with software without obtaining a license, except as specified in rule 150XF.
- Licensees can only maintain or operate systems or provide services that are authorized under these rules.
- All electronic invoicing and point of sale software, including payment counters, must be integrated with the Board through a licensed integrator.

PRAL as Licensed Integrator - 150XF: PRAL will serve as the licensed integrator under rules 150XE, 150XJ(1) and 150XL and will provide free integration services to registered persons upon request. Additionally, PRAL will offer free downloadable electronic invoicing or point of sale software on the Board's official website as needed.

Functions of the Licensing Committee - 150XG: The Board will notify a licensing committee to perform functions according to rules 150XI, 150XK, and 150XN, and to inform the convener of the committee.

Application for License - 150XH: License applications must be submitted in duplicate with required documentation to the Board.

Grant of License Procedure - 150XI: Upon receiving a licensing application, the licensing committee will review the documents and assess the applicant's eligibility within 7 days. If needed, they may conduct physical inspections. The committee will then recommend or reject the application within 15 days, providing reasons for their decision. They will recommend licensing for applicants who meet the criteria to the Board, which must approve before granting the license.

Rights of Licensee - 150XJ: Licensees can install and operate electronic invoicing/POS software on real time basis. Licenses valid for 5 years and is non-transferable and cannot be used by a sub-contractor.

License Renewal - 150XK: Renewal applications must be submitted 3 months prior to expiry, with evaluations conducted by the committee.

Technical Support - 150XL: The licensee is tasked with post-deployment system maintenance, which involves setting up IT equipment for electronic invoicing, upgrading hardware and software, fixing bugs, and promptly resolving issues. They must also ensure the secure and real-time transmission of sales data to the FBR database.

System Supervision - 150XM: The Board will appoint a team for system supervision and resolve operational issues.

License Cancellation Procedure - 150XN: When issues arise with a licensee, the team must inform the Board. A notice will be sent to the licensee within 15 days, asking them to explain why their license should not be canceled due to:

- Failure to provide services
- Violating license conditions
- Breaking rules or laws
- Material evidence warranting cancellation

The licensing committee can cancel the license after reviewing the case and hearing from the licensee. If canceled, the licensee may appeal to the Board, whose decision is final.

Fees and Charges - 150XO: Licensees can charge fees for software configuration and integration as specified by the Board's thresholds.

Inland Revenue Enforcement Network - 150XP: An enforcement network will be established to address tax evasion and ensure compliance.

Network Functioning - 150XQ: Enforcement squads will verify integration of invoicing software and real-time reporting of invoices.

B. Reported Decisions

1. THE PETITIONER FAILED TO ESTABLISH THAT DEPUTY COMMISSIONER HAS LACKED THE JURISDICTION TO ISSUE THE SHOW-CAUSE NOTICE.

2024 TAX 713
LAHORE HIGH COURT

M/S RIAZ BOTTLERS (PVT.) LTD.
VS
FEDERATION OF PAKISTAN AND OTHERS
Applicable provisions: 48 and 49 to the Sales Tax Act, 1990 (the Act)

Brief facts:

The petitioner, entered into a scheme of arrangement with Lotte Akhtar Beverages (Pvt.) Limited (Lotte), which was approved by the High Court. Following the scheme, the petitioner's assets were transferred to Lotte. The Department issued a show-cause notice to the petitioner, alleging that the petitioner transferred its taxable activity to Lotte, an unregistered entity, making the petitioner liable to pay sales tax under Section 49(1) of the ST Act.

The petitioner challenged the jurisdiction of Deputy Commissioner Inland Revenue to issue the show-cause notice through a constitutional petition. Further, the petitioner argued that Section 49 of the ST Act was not applicable to the transaction as the transfer of assets occurred based on a court order.

Decision:

The Court has dismissed the writ petition and held that the petitioner failed to establish that Deputy Commissioner has lacked the jurisdiction to issue the show-cause notice.

The Court clarified that the allegations in the show-cause notice do not inherently indicate a lack of jurisdiction, rather their validity depends on the application of Section 49 to the transaction. Given that the petitioner had already responded to the notice and the matter was pending before the Deputy Commissioner, any adverse order would be subject to appeal under the ST Act.

The Court relied on the judgment passed in the case of Commissioner Inland Revenue v. Jahangir Khan Tareen (2022 SCMR 92) to reinforce the principle that writ petitions are not appropriate for challenging show-cause notices when statutory remedies are available.

2. APPELLANT CANNOT BE HELD LIABLE TO CHARGE FURTHER TAX/EXTRA TAX ON SUBSEQUENT SUPPLIES OF ITEMS ALREADY SUBJECTED TO LEVY OF EXTRA TAX UNDER SECTION 3(5) OF THE ACT.

2025 TAX 19
APPELLATE TRIBUNAL INLAND REVENUE

M/S. S.G. TRADING COMPANY
VS
THE COMMISSIONER INLAND REVENUE

Applicable provisions: Section 3(1A), 8(1)(c), 14 and 25 of the ST Act.

Brief facts:

In the instant case desk audit of sales tax returns and import data of the appellant revealed that he has imported items like tyres etc. and has declared sales of the same specified goods to various unregistered persons for the tax periods from August, 2013 to November, 2017 under sections 25 of the ST Act. The audit team observed non-payment of further tax on supplies of imported goods and of extra tax on taxable supplies of tyres. The appellant was issued with a show cause notice. The appellant neither appeared nor submitted his written reply. Resultantly, the Inland Revenue Officer passed the impugned Assessment Order. Being aggrieved the appellant preferred appeal before learned Commissioner (Appeals) on the ground that its supplies were subject to extra tax under Rule 58T of the Sales Tax Special Procedure Rules, 2007, which exempted subsequent supplies from sales tax, making the imposition of further tax legally unsustainable. However, Commissioner (Appeals) confirmed the treatment accorded by the Assessing Officer. Being

aggrieved, the appellant filed second appeal before the learned Appellate Tribunal.

Decision:

The Tribunal decided the appeal in the favor of the appellant and held that the subsequent supplies of the appellant's products were exempt from payment of sales tax due to being subject to sales tax and extra tax under Rule 58T of the Sales Tax Special Rules, 2007.

The Tribunal stated that the appellant cannot be charged further tax under section 3(1A) because it is a provision excluded from section 3(5) of the Act, which specifically applies to the appellant's supplies.

The Tribunal further held that the penal provision can only apply to individuals responsible for violating the law, not third parties like the appellant who committed no violation of law. The onus is on the department to ensure compliance of law, not the appellant.

The Tribunal concluded that no tax can be charged directly or indirectly from persons who are exempt or not liable to the levy. The buyers of the appellant's products are exempt from sales tax registration, and therefore, no further tax can be levied on supplies made to them.

3. A TAXPAYER CANNOT BE SUBJECTED TO TAX BASED ON ASSUMPTIONS OR PRESUMPTIONS, BUT ONLY UNDER CLEAR AND UNAMBIGUOUS PROVISIONS OF LAW.

2025 PTD 127
APPELLATE TRIBUNAL INLAND REVENUE

M/S. IMPERIAL SANITATION
VS
THE COMMISSIONER INLAND REVENUE

Applicable provisions: Section 2{(35),(39),(41),(46)}, 3, 3(1), 3(1A), 6, 11, 22, 23, 25(3), 26, 26(1) and 33 of the ST Act.

Brief facts:

In the instant case, the taxpayer was issued a show-cause notice for failing to declare sales in their sales tax returns. Consequently, these undeclared sales were construed by the Assessing Officer as taxable supplies made to unregistered persons, leading to an alleged sales tax evasion. The Assessing Officer after examination, held that the taxpayer had undeclared taxable supplies as per their Income Tax Return for the Tax Year 2021, leading to tax liabilities and Further Tax under section 3(1A), 6, 22, 23 and 26 of the ST Act.

The taxpayer, being dissatisfied filed appeal before the Commissioner (Appeals) and argued that there was no valid legal basis for the tax demand as there was no clear evidence that linked the cash credits to taxable supplies as per the law, and they had maintained that they had not conducted taxable activities. However, the Commissioner (Appeals) confirmed the order of the Assessing Officer.

Being aggrieved, the taxpayer filed second appeal before the Appellate Tribunal.

Decision:

The Tribunal decided the appeal in favor of the taxpayer and held that the Department had failed to establish a direct connection between the alleged undeclared sales and any taxable supplies or business activities, as stipulated under the ST Act.

The Tribunal emphasized that the Act does not include deeming provisions that automatically classify cash credits as taxable supplies. The authorities had not provided substantial evidence to justify the tax demand; therefore, the imposition of sales tax, further tax, and penalties was invalid. The decision of both the Assessing Officer and the Commissioner Inland Revenue (Appeals) are thereby set aside.

4. SECTION 74 DOES NOT APPLY TO ACTIONS UNDER SECTION 11 OF THE ACT (NOW REPEALED), WHICH DEALS WITH TAX ASSESSMENT AND RECOVERY.

2025 PTD 16
LAHORE HIGH COURT

M/S. MEHR DASTGIR LEATHER AND FOOTWEAR INDUSTRIES (PVT.) LIMITED
VS
FEDERATION OF PAKISTAN

Applicable provisions: Section 10(3), 11, 11(2), 37 and 74 of the ST Act.

Brief facts:

The petitioner challenged a Show-Cause Notice issued under Section 11(2) of the ST Act alleging an inadmissible refund claim. The petitioner stated that the dispute had already been resolved at the level of Supreme Court of Pakistan, which had previously dismissed related references. Despite these court orders, the department failed to process the approved claims which led the petitioner filed complaints with the Federal Tax Ombudsman. Subsequently, a Show-Cause Notice was issued after a considerable delay of 15 years and 8 months, which the department justified by invoking an approval from the Federal Board of Revenue under Section 74 for condonation of the time limit. The FBR purportedly extended the deadline for finalizing the assessment of the refund claims but the Show-Cause Notice was issued just days before the deadline.

Decision:

The High Court allowed the petition and determined that the FBR's condonation of the time limit under Section 74 did not apply to actions initiated under the now-repealed Section 11 of the Act, which governed tax assessments and recovery.

The Court noted that the issuance of the show cause notice after 15 years lacked reasonable justification, making it ultra vires and beyond the scope of the officer's authority. Furthermore, the FBR's condonation did not articulate sufficient grounds or rationale, violating the principles of fairness and transparency expected in administrative decisions. The Court referenced ruling by the Supreme Court of Pakistan reported as (2021 SCMR 1154), which emphasized the necessity of providing clear reasons when extending limitation periods, asserting that legal rights accrued to the petitioner should not be disregarded without valid justification.

The Court ultimately struck down the impugned show cause notices and directed the department to process the refund claims within three months.

5. COMPARISON BETWEEN INCOME TAX AND SALES TAX RETURNS IS ILLOGICAL AND UNLAWFUL AS THEY ARE GOVERNED BY DISTINCT LAWS

2025 PTD 43
BALOCHISTAN HIGH COURT

THE COMMISSIONER INLAND REVENUE
VS
M/S RAZA UR REHMAN AND BROTHERS AND ANOTHER

Applicable provisions: Section 3, 11, 46 and 47 of the ST Act.

Brief facts:

In the instant case, the registered person underwent a desk audit for the periods from July 2019 to June 2021 which resulted into the issuance of show cause notice citing discrepancies such as late returns and claims of inadmissible input tax. Following non-compliance from the registered person, a tax demand was established. The registered person appealed to the Commissioner (Appeals), which was rejected due to insufficient documentation supporting claims of exempt supplies. Being aggrieved, the registered person filed appeal before the Appellate Tribunal who allowed the appeal and indicated that the claimed exempt supplies to the Frontier Corps of Balochistan were valid under the Sixth Schedule of the Act.

However, department being aggrieved filed sales tax reference application under section 47 of the ST Act, as amended by the Tax Laws (Amendment) Act, 2024 and

challenged the order of the Appellate Tribunal.

The Commissioner of Inland Revenue proposed multiple legal questions stemming from ATIR's order, which questioned the obligation of the registered person to pay sales tax according to sections 3 and 3(1A) of the Act, treatment of declared business receipts in income tax returns as sales for sales tax purposes, and the justifications for vacating orders of lower authorities without addressing a substantial tax demand due to claimed exempt supplies.

Decision:

The Court reviewed the ATIR's decision and found significant issues in relation to the assessment and decisions of both the Department and the Commissioner (Appeals). The Court emphasized that the Department's basis of comparison between income tax and sales tax returns was flawed as they are governed by distinct laws, hence rendering such inference illogical and unlawful.

The Court also noted unresolved discrepancies regarding the registered Person's input tax claims in the periods of 2019-20 and 2020-21, which were mischaracterized by the Tribunal as non-claimed.

Consequently, the Court vacated the orders of the lower authorities and remanded the case back for a thorough re-examination, ensuring the registered person is given adequate opportunity to present evidence concerning late filings and input tax claims.

The Zonal Commissioner Inland Revenue was instructed to oversee this process, ensuring judicious and lawful procedural adherence.

KP Sales Tax Special Procedure (Withholding) Rules, 2024

A. Notifications

1. KPRA/WH-REG/2024/1424 dated January 3, 2025

The Khyber Pakhtunkhwa Sales Tax on Services Special Procedure (Withholding) Regulations, 2024 have been introduced to align with the KPRA Sales Tax on Services Act, 2022, replacing the previous Khyber Pakhtunkhwa Sales Tax on Services (Withholding) Regulation, 2020. These new regulations are effective immediately and apply to designated categories of withholding agents.

Key provisions of these regulations require withholding agents to clearly indicate in relevant documentation that sales tax will be deducted from payments for taxable services. The withheld amounts must then be deposited into the appropriate government account. The Khyber Pakhtunkhwa Revenue Authority (KPRA) is empowered to mandate self-audits and reports from these entities and may conduct its own verification or re-audits as necessary.

Following are the notable changes in the scope of the regulations:

- Banking and courier services (excluding services between banking and courier companies) have now been excluded from the withholding tax framework.
- The new regulations establish a clear and straightforward timeline for withholding agents, requiring them to deposit the withheld tax by the 15th day of the following month or on the date of payment to the service provider, whichever is earlier. In contrast, the old regulations linked the deposit date to the prescribed due date of the month in which the withholding agent claimed input tax credits.
- The new regulations eliminate references to input tax credit claims and provisions for withholding agents who do not claim credits within a six-month period.
- The new regulations enhance clarity in the processes relating to tax deduction, reporting, and compliance, aiming for improved coordination between the withholding agents and regulatory authorities.

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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.

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