YOUSUF ADIL
PACE ALIGNED...

Tax Bulletin

January 2026

Tax

Foreword

This publication contains brief commentary on Circulars, SROs and decisions of the adjudicating authorities issued during January 2026.

This document contains general information only, and Yousuf Adil, Chartered Accountants, is not by means of this publication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional advisor.

Yousuf Adil accepts no duty of care or liability for any loss occasioned to any person acting or refraining from action as a result of any material in this publication.

This publication can also be accessed on our Website.

www.yousufadil.com

Karachi
February 02, 2026

Contents

Executive Summary

Income Tax Ordinance, 2001

A. Reported Decisions

1. SCOPE OF SECTION 161 OF THE INCOME TAX ORDINANCE, 2001 IS LIMITED TO RECOVERY OF TAX NOT WITHHELD.

2025 PTD (ATIR) 1867

M/S DATA RICE MILLS
VS.
CIR (WITHHOLDING ZONE), RTO, SARGODHA

APPLICABLE LAW:

Income Tax Ordinance, 2001 – sections 153(7), 161, 161(1), 205, 233, Division II, Part IV of the First Schedule

Brief facts

The appellant is an Association of Persons (AOP), operating a rice mill and is a "prescribed person" under section 153(7) of the Income Tax Ordinance, 2001. The assessing officer alleged that the appellant has understated commission payments and failed to withhold the required tax. The assessing officer estimated the commission rate at 1% based on local market committee rates and required to pay tax thereon. A tax demand was raised under section 161 for non-deduction of tax based on this 1% estimated commission. The Commissioner (Appeals) upheld the demand regarding the estimated commission but deleted other demands. The taxpayer then filed an appeal before the Appellate Tribunal Inland Revenue.

Appellant Arguments

The actual commission paid was 0.5% which was in accordance with the law, and tax was duly withheld and deposited under section 233. The assessing officer has no legal authority under section 161 to increase or reassess reported expenses. Section 161 is strictly for recovering tax on actual payments made, not for re-quantifying or estimating figures. The assessing officer's reliance on Market Committee rates was unsupported by credible evidence. Further, the appellant has placed its reliance on the case where the department has accepted the 0.5% rate for a similar business (M/s Roman Rice Mills), in the same region. This inconsistency constitutes discriminatory treatment and violates Article 25 of the Constitution.

Respondents Arguments

The departmental representative argued that the assessing officer adopted the commission rate based on local market standards. The taxpayer reported a commission rate that was only half of the rate prescribed by the local market committee. The assessing officer was justified in recalculating the withholding tax based on this implied market rate. The department maintained that each case is governed by its own facts and circumstances. The respondent requested that the taxpayer's appeal be dismissed and the previous order upheld.

Decision

The Tribunal ruled that section 161 is limited to the recovery of tax not withheld on actual payments made. The assessing officer is not authorized to reassess, estimate, or alter expense figures reported in a tax return under section 161. If the department doubted the commission rate, it should have invoked section 122 (amendment of assessment) by initiating separate proceedings. The ATIR is of the view that tax must be based on concrete, verifiable facts and cannot be imposed on estimates or conjectures. The Tribunal annulled the orders of the assessing officer and Commissioner (Appeals) and allowed the appeal. The tax demand based on estimated commission was deleted.

2. PROFESSIONAL TAX CONSULTNTS CANNOT BE APPOINTED AS AUTHORIZED REPRESENTATIVE ON BEHALF OF NON-RESIDENT UNDER THE LAW UNDER SECTION 172(3)(F) FOR RECOVERY OF TAX.

2025 PTD (ATIR) 1904

PETER C/O MESSRS PETER & CO.
VS.
COMMISSIONER INLAND REVENUE, RTO, ISLAMABAD

APPLICABLE LAW:

Income Tax Ordinance, 2001 – sections 172, 173 & 233

Brief facts

M/s Sedco Forex International Inc., a non-resident company, ceased its operations in Pakistan and could not be located by the Tax Department for tax recovery. The Assistant Commissioner appointed Messrs. Peter & Co. as a "statutory representative" under section 172(3)(f) of the Income Tax Ordinance, 2001. This appointment was based solely on the fact that the firm had previously acted as "authorized representatives" for the company in tax references from 1997. The Commissioner (Appeals) initially remanded back the case for a fresh hearing because the appellant had only been given one day's notice. Dissatisfied with the decision, M/S Peter & Co. filed an appeal before the Appellate Tribunal Inland Revenue (ATIR), seeking the complete annulment of the appointment.

Appellant Arguments

The appellant argued that acting as an "authorized representative" (professional service provider) does not legally qualify it to be a "statutory representative" for financial liability. The appellant contended that no fiduciary relationship or financial connection existed between the professional services firm and the non-resident company. Further, the appellant asserted that the appointment order was illegal, because it failed to specify a specific tax year as required by law. They claimed the order was inconsistent with the statutory framework of the Income Tax Ordinance, 2001 and argued that the one-day notice for a hearing was a violation of the principles of natural justice and section 172(5).

Respondents Arguments

The departmental representative supported the tax authorities' decision to appoint the firm as a representative for the non-resident. The respondent argued that the firm's long history of representing the non-resident company in various tax matters justified the designation. They maintained that the department had the jurisdiction to declare a past representative as a statutory one to facilitate recovery when a non-resident is untraceable. The respondent contended that the prior professional association provided a sufficient legal nexus for the appointment under the Ordinance.

Decision

The Tribunal allowed the appeal and annulled the orders passed by the lower tax authorities. The Tribunal ruled that professional consultancy under section 223 does not establish the fiduciary or financial connection required for section 172(3)(f). It held that an appointment of a representative must be made for a specific tax year and cannot be open-ended or indefinite. The failure of the assessing officer to specify a time frame for the appointment rendered the entire order illegal and void. The Tribunal emphasized that proper hearing is mandatory to ensure the true intent of the representative provisions is realized.

3. REFERENCE APPLICATION IS NOT MAINTAINABLE AGAINST THE ORDER REMANDED BACK BY THE TRIBUNAL'S

2025 PTD (LHC) 1764

MR. AMIR SAJJAD
VS.
CIR, JHELUM ZONE & OTHERS

APPLICABLE LAW:

Income Tax Ordinance, 2001 – sections 111, 122, 122(9), 132, 132(4), 133

Brief facts

The applicant filed his 2018 income tax return declaring foreign income as exempt. The tax department discovered undeclared property purchases worth Rs. 11,340,000, resulting in an amended income of Rs. 17,086,614 and a tax liability of Rs. 5,199,814 by adding value of purchased properties and foreign remittances. After unsuccessful appeals, the High Court remanded the case to the Appellate Tribunal (ATIR) with instructions to examine the legality of notices issued under section 111 and section 122(9) of the Ordinance. Instead

of deciding the merits, the Tribunal remanded the matter to the assessing officer for de novo proceedings. The applicant then filed this reference application before the High Court to challenge the Tribunal's remand order.

Appellant Arguments

The applicant’s counsel argued that because the High Court had previously remanded the matter in I.T.R. No. 01/2024 with specific observations, the Tribunal was legally bound by those directions. He contended that the Tribunal was precluded from remanding back the case further and should have decided it in light of the Court's earlier guidance. The counsel emphasized that the impugned order was legally untenable given the history of the case. To support his arguments, the appellant placed heavy reliance on the precedent on the case of Chairman, WAPDA, Lahore & another Vs. GULBATKHAN (1996 SCMR 230).

Respondents Arguments

The respondent's counsel submitted that the Tribunal is legally vested with the jurisdiction to remand back the matters and committed no illegality. He argued that the reference application was not maintainable because the Tribunal had only issued a remand order rather than a final decision. Relying on the case of CIR v. Bank Al-Habib Ltd., he argued that the High Court's advisory jurisdiction under section 133 is restricted to final orders. He maintained that since there was no conclusive finding by the Tribunal, no question of law had arisen for the Court to adjudicate.

Decision

The Lahore High Court held that the ATIR possesses express statutory authority under section 132(4) of the Income Tax Ordinance, 2001, to remand the cases to the Commissioner for further inquiry or de novo proceedings. The Court clarified that although earlier judicial observations (such as those in I.T.R. No. 01/2024 regarding the sequence of notices under section 111 and section 122(9) provided guidance, they did not abridge, hedge, or curtail the Tribunal’s inherent legal powers. Crucially, the Court ruled that a reference application under section 133 is maintainable only against a final order that offers a conclusive finding. The Honorable Court placing reliance on the Bank Al-Habib Ltd. (2016 PTD 2548) and E.M. Oil Mills (2011 PTD 2708), emphasized that a remand order does not give rise to a "question of law" because no final determination has been made on the merits. The Court also distinguished the Chairman, WAPDA v. Gulbatkhan precedent, finding it inapplicable to the current facts. Ultimately, the reference application was dismissed as non-maintainable. The reference application was dismissed with no order as to costs.

4. CONSTITUTIONALLY OF PROVISO OF SECTION 37A READ WITH DIVISION VII OF VESTING RIGHTS AS WELL AS CAPITAL GAIN COMPUTATION IS TO BE BASED ON LAW AS APPLICABLE ON DISPOSAL DATE AND NOT AS PER THE LAW APPLICABLE AT ACQUISITION DATE

2025 PTD (LHC) 1795

MR. MANZURUL HAQ
VS.
FEDERATION OF PAKISTAN, ETC

APPLICABLE LAW:

Income Tax Ordinance, 2001 – sections 37A, 37A(1)

Brief facts

The petitioner challenged the constitutionality of the first proviso to Division VII, Part I of the First Schedule of the Income Tax Ordinance, 2001, inserted via the Finance Act, 2022. The dispute arose because the petitioner sold securities in Tax Year 2023 that had been acquired in 2011. Under a proviso that existed before 2014, securities held for more than a year were exempt from capital gains tax. Although that proviso was omitted by Finance Act, 2014, the petitioner argued his long-term holding should remain exempt. The tax authorities applied the new Tax Year 2022 rates, which imposed tax based on the disposal date regardless of the 2011 acquisition.

Appellant Arguments

Rights to a tax exemption accrued at the time the securities were acquired and

held for over a year. These "vested rights" cannot be withdrawn retrospectively by the legislature. The 2022 amendment is discriminatory, because it creates different tax rates based on whether securities were acquired before or after July 1, 2022. This classification fails the test of intelligible differentia and lacks a rational nexus to the law's objectives. The petitioner placed reliance on the case of Anwar Yahya VS Federation of Pakistan (2017 PTD 1069) and other judgements to argue that past protections for long-term investments should be upheld.

Respondents Arguments

No person has a vested right against a statute; the legislature can withdraw tax concessions at any time before a transaction is "past and closed". The legal triggering point for capital gains tax is the date of disposal (i.e. Tax Year 2023), not the date of acquisition (i.e. Tax Year 2011). Through Finance Act, 2014, the omission of the exemption proviso under section 37A(1) removed any legal mechanism for the petitioner's claim. Each tax year is a separate unit of account, and the law in force during the relevant tax year must apply. The classification is rational and intended to incentivize fresh investment by offering lower rates for new acquisitions

Decision

The Lahore High Court dismissed the petition, finding it devoid of merit. The Court ruled that since the protective proviso was omitted by Finance Act 2014, no exemption was available by the time the securities were sold in Tax Year 2023. It was held that the petitioner failed to establish any "vested right" or "promissory estoppel" that would prevent the state from taxing the gain. The Court distinguished the Anwar Yahya VS Federation of Pakistan (2017 PTD 1069), noting it applied to a version of the law that had since been significantly amended. The classification based on acquisition dates was deemed constitutionally valid and aimed at a rational objective, encouraging investment, and found no inconsistency between the charging provision of section 37A and the Schedule. The legislature was affirmed as fully competent to change benchmark requirements for taxing capital gains.

5. FOR TAXPAYERS FOLLOWING SPECIAL TAX YEAR, TIME-BARRED LIMITATION FOR AMENDMENT ASSESSMENT IS TO BE COMPUTED FROM THE END OF RELEVANT FINANCIAL YEAR.

2025 PTD (SHC) 1769

SABRE TRAVEL NETWORK PAKISTAN (PVT.) LTD
VS.
PAKISTAN & OTHERS

APPLICABLE LAW:

Income Tax Ordinance, 2001 – sections: 74, 112, 114, 120 & 122

Brief facts

The petitioners, including Sabre Travel Network and others, challenged show-cause notices issued by tax authorities regarding various tax years. A central issue was the determination of the "limitation period" for amending assessments, when a taxpayer uses a Special Tax Year (e.g., January to December) rather than a Normal Tax Year. The taxpayers argued that the limitation period had already expired by the time the department issued the impugned notices. The dispute dependent on the interpretation of section 74(10) and section 122(2) of the Income Tax Ordinance, 2001, regarding when the clock for limitation starts ticking. The case consolidated multiple petitions (e.g., C.P. No. D-3062 of 2020) involving similar legal questions about time-barred assessments.

Appellant Arguments

The petitioners contended that the limitation period for amending a deemed assessment is five years from the end of the financial year in which the commissioner issued the assessment order. They argued that for a Special Tax Year ending on December 31st, the "financial year" should be interpreted in a way that does not unfairly extend the limitation period. They asserted that the show-cause notices were issued after the statutory time limit had lapsed, making them without jurisdiction. Counsel argued

that a vested right accrues to the taxpayer, once the limitation period expires, and tax laws regarding limitation are substantive, not merely procedural. They maintained that the department could not use a strained interpretation of "tax year" to revive time-barred claims.

Respondents Arguments

The tax authorities argued that the show-cause notices were within the lawful time limit. They relied on section 74(10) of the Ordinance, which states that a Special Tax Year is "inclusive of the financial year" unless the context requires otherwise. The department contended that the limitation period should be counted from the 1st of January of the following year, effectively extending the window for the Commissioner to act. They argued that the logic of the Ordinance allowed this counting method to ensure all taxpayers were treated within the same regulatory framework. The respondents maintained that the notices were a valid exercise of jurisdiction to protect the state's revenue.

Decision

The Sindh High Court allowed the petitions, holding that the impugned show-cause notices were barred by time and issued without jurisdiction. The Court ruled that sections 122(2) and 74(10) must be read together "without any offending tentacles" to ensure clarity in limitation. The Court clarified that for a special Tax Year ending December 31st, the limitation starts from the end of that financial year as per statutory logic. The Bench emphasized that the only way to read these sections harmoniously was to prevent an unlawful extension of the limitation period. Consequently, the notices were set aside, though certain petitions with different facts (C.P. Nos. D-3524 and 3543 of 2022) were de-tagged for separate proceedings.

6. ROYALTY IS NOT DEDUCTIBLE FROM WELL-HEAD VALUE FOR DEPLETION ALLOWANCE

2025 PTD (SHC) 1777 (Cited as 2025 SLD 3088)
CONSOLIDATED JUDGEMENTS
OCCIDENTAL PETROLEUM & OTHERS VS.
COMISSIONER INLAND REVENUE

APPLICABLE LAW:

Income Tax Ordinance, 2001 – sections: Rule 4(2) of Part I of the 5th Schedule

Brief facts

The case involves consolidated reference applications from major oil exploration companies (e.g., Occidental Petroleum, BP Pakistan, United Energy) and the tax department. Two primary legal issues were addressed: the calculation of depletion allowance and the application of tax rate caps under Petroleum Concession Agreements (PCAs). Taxpayers filed returns by calculating their tax liability based on PCA terms, deducting royalty payments before applying the 55% tax cap. The Department issued show-cause notices, arguing that the tax limits must be calculated on profits before deducting royalty. While an earlier Tribunal decision favored taxpayer, a subsequent Larger Bench of the Tribunal ruled in favor of the Department.

Appellant Arguments

Appellants argued that section 26 and Rule 4 of the 5th Schedule of the 1979 Ordinance protect the specific taxation limits provided in their PCAs. They contended the PCAs only apply the phrase "before deduction of payments" to the 50% minimum tax floor, not the 55% maximum cap. Appellants maintained that royalty is an expense and must be deducted from revenue to determine the 'profits and gains' subject to the 55% limit. They argued the Department's interpretation creates an 'absurdity' where the minimum tax liability could exceed the maximum cap. Taxpayers relied on a 1974 CBR circular and long-standing departmental practice to support their method of calculation. They further claimed that under the 1948 Act, tax provisions are redundant on the date of the PCA and cannot be adversely amended later.

Respondents Arguments

The Department argued that the Regulation of Mines and Oil-Fields Act, 1948, is the governing law and has an overriding effect. They cited Para 2 of the 1948 Act's Schedule, which states both the 50% and 55% limits apply to profits "before deduction of payments to the Government". They contended that PCAs cannot include terms or omissions that are inconsistent with this mandatory statutory provision. The Respondents argued the 1974 CBR circular has outlived and irrelevant following legal amendments made in the 1948 Act in the year 1976. They maintained that taxpayers were attempting to read words into the PCAs to pay less tax than what is legally required. The Department insisted that the 1948 Act and the 1979 Ordinance must be interpreted harmoniously to ensure proper tax collection.

Decision

The Court ruled in favor of taxpayers, holding that royalty is not to be deducted from the well-head value for depletion allowance calculations which is already decided by the Supreme Court in the case of Mari Gas Company Limited. However, as regards to the second query, the Court decided the case in favor of the Tax Department, holding that both the 50% and 55% tax limits must be calculated on profits before deducting royalty. The Court held that the 1948 Act has an overriding effect over all other enactments and instruments, including the PCAs. It was decided that PCAs cannot override the mandatory statutory language of the 1948 Act regarding the "before deduction" requirement. The Court rejected the taxpayer's claim of "absurdity," noting that Rule 4(2) provides for adjustments if the aggregate exceeds PCA limits. Ultimately, the Department's appeals were allowed, and all reference applications filed by the taxpayer companies were dismissed.

7. WHETHER A DISCREPANCY BETWEEN INCOME TAX AND SALES TAX RETURNS ALONE CONSTITUTES "DEFINITE INFORMATION" TO AMEND AN ASSESSMENT UNDER TAX LAW

2026 TAX 28: LAHORE HIGH COURT

COMMISSIONER INLAND REVENUE
VS
M/S. ORIENT TRADERS

APPLICABLE LAW:

Income Tax Ordinance, 2001 – sections 120, 120(1), 122, 122(1), 122(5), 122(8), 122(9), 129, 131, 131(1), 133, 133(8), 214C.

Brief facts

The taxpayer's income tax return for 2012 was deemed assessed under section 120(1), later the case was selected for audit. The assessing Officer amended the assessment under section 122, citing a difference between income declared in the income tax return and sales figures in the sales tax return. The taxpayer appealed to the Commissioner (Appeals) where the appeal was partially allowed. Being aggrieved the taxpayer file an appeal before the Appellate Tribunal, who ruled in taxpayer's favor. The tax department filed a reference application before the Lahore High Court, arguing the discrepancy itself was "definite information" under section 122(5).

Appellant Arguments

The department argued that under section 122(8), "definite information" includes details of sales/purchases. The department contended that a clear discrepancy between the income tax and sales tax returns provided definite information warranting an amendment. Reliance was placed on (*Commissioner inland revenue v. Khan CNG filling station*) 2017 PTD 1731 to assert that sales tax returns can form the basis for such action, and that the ATIR erred in its legal interpretation.

Respondents Arguments

The taxpayer argued that the discrepancy alone did not constitute "definite information" as required by section 122(5). The taxpayer provided evidence showing that items like imports in the sales tax return did not translate into taxable income for the period. The assessing officer had ignored this explanation and supporting documents. The taxpayer maintained that the

tribunal's findings were factual and not subject to interference in a reference limited to questions of law.

Decision

The High Court dismissed the tax deparments's application. It held that "definite information" is a mandatory precondition for amending an assessment. The ATIR, as the highest fact-finding authority, had lawfully determined that no such information existed because the assessing officer relied solely on a numerical mismatch without considering the taxpayer's valid explanation and evidence. The Court declined to interfere with this factual finding, ruling that a mere discrepancy between returns does not automatically satisfy the legal requirement as under section 122(5).

8. THIS CASE CONCERNS THE TAXABILITY OF AN INTRA-GROUP TRANSFER OF A TELECOM TOWER BUSINESS AND WHETHER IT QUALIFIED FOR EXEMPTION / TAX DEFERRAL UNDER SECTION 97 OF THE ORDINANCE.

2026 TAX 32: ISLAMABAD HIGH COURT

PAKISTAN MOBILE COMMUNICATIONS LIMITED (PMCL) VS.
THE COMMISSIONER INLAND REVENUE, ZONE-IV LARGE TAXPAYERS UNIT, ISLAMABAD AND OTHERS

Applicable Law: Income Tax Ordinance, 2001 – sections 2(29C), 4, 9, 11, 20, 21, 22, 32, 77, 78, 97, 108, 109, 111, 113C, 120, 122(5A), 122(6), 148, 174, 176, 177, 209, 210, 211.

Brief Facts

In the 2018 tax year, PMCL transferred its telecom tower business to its wholly owned subsidiary, Deodar (Pvt.) Ltd., for USD 940 million (approx. PKR 98.5 billion). Following International Financial Reporting Standards (IFRS 3), PMCL recorded this transaction at Fair Market Value in its financial statements, recognizing an accounting gain of approximately PKR 59.3 billion. PMCL claimed that accounting gain was not taxable, considering provision of section 97 of the Income Tax Ordinance. The tax department rejected the taxpayers argument and issued an amended assessment order. The case raised several legal issues:

- **Jurisdiction:** Whether the reassessment order was passed without jurisdiction (*coram non judice*) by the Commissioner when the power under section 122(5A) had been delegated to an Additional Commissioner.
- **Tax Deferral:** Whether PMCL was entitled to the benefit of section 97(1), which defers tax on asset transfers between wholly owned companies, despite recording the transaction at Fair Market Value and Recording a significant accounting gain.
- **Alternative Tax:** Whether the accounting gain on transfer of asset i.e. could be subjected to section 113C (Alternative Corporate Tax).
- **Industrial Undertaking:** Whether PMCL qualified as an "industrial undertaking" under section 2(29C) for the purposes of section 148(7) concerning the finality of advance tax on imports.
- **Consequential Relief:** Whether the Tribunal should have issued directions regarding depreciation/amortization benefits from pending decisions for earlier years.

PMCL appealed unsuccessfully to the Appellate Tribunal and then filed this reference before the Islamabad High Court.

Appellant Arguments

1. **Jurisdiction of the Commissioner:** Argued that once the power to amend assessments under section 122(5A) was delegated to an Additional Commissioner, the Commissioner himself was denuded of that power and his exercise of delegated power was invalid, rendering the reassessment order *coram non judice*.

2. **Industrial Undertaking Status:** Claimed it qualified as an "industrial undertaking," which would make advance tax on imports adjustable, not final, relying on the precedent of *Telenor Pakistan (Pvt.) Ltd. vs. Appellate Tribunal Inland Revenue*.

3. **Tax Deferral under Section 97(1):** The transaction with 100%-owned subsidiary Deodar met all conditions of section 97(1). The phrase "no gain or loss shall be taken to arise" meant the accounting gain (per IFRS) should be ignored for tax purposes. The transfer of assets qualify the condition of companies belong to a wholly provided under section 97(4) of the Ordinance, and the non-resident status of its parent was irrelevant. The spin-off was driven by legitimate business reasons and was not a tax avoidance scheme.

4. **Alternative Corporate Tax:** Argued that section 113C could not apply to tax the accounting gain if the transaction was eligible for deferral under section 97, as the two sections were mutually exclusive in this context.

5. **Depreciation/Amortization for Prior Years:** Requested that if favorable decisions emerged from pending litigation for earlier years, the resulting benefits should flow through to the 2018 tax year.

Respondent (Tax Department) Arguments

1. **Jurisdiction of the Commissioner:** Cited sections 209-211 of the Ordinance, arguing that delegation is for administrative convenience and does not strip the Commissioner of inherent powers, making the order valid.

2. **Tax Deferral under Section 97(1):** Section 97 is a deferral, not an exemption, and its benefit is conditional on the transaction being recorded at the transferor's tax basis (written down value), not Fair Market Value. By booking USD 940 million consideration and Rs. 59.3 billion gain, PMCL violated section 97(1)(c) as the liability assumed by Deodar exceeded PMCL's tax cost. The court should interpret the section purposively as its intent was to defer tax only where no immediate economic benefit accrued. The transaction resulted in a real economic gain that should be taxed.

3. **Industrial Undertaking Status:** Argued that the definition of "industrial undertaking" under section 2(29C) did not include telecom companies in 2018, and the 2021 Finance Act amendment specifically adding telecom companies proved they were excluded before.

4. **Alternative Corporate Tax:** Defended the potential application of section 113C as a deeming provision that taxes accounting profit as a proxy when higher than tax under corporate tax liability, noting gains from Section 97 transactions were not listed as an exclusion in Section 113C(8).

5. **Depreciation/Amortization for Prior Years:** Contended that any benefit from decisions in prior years would be given as per law, but no speculative directions were warranted.

Decision

1. **Jurisdiction of the Commissioner:** Ruling in favor of tax department. The Court held that under the ITO's scheme (sections 209-211), delegation does not mean deprivation. The Commissioner retains concurrent power to exercise functions even if delegated. The reassessment order was not *coram non judice*.

2. **Tax Deferral under Section 97(1):** Ruling in favor of tax department. This was the central and decisive issue. The Court held that section 97 is a tax deferral provision requiring the transaction to be recorded at the transferor's tax basis. By recording the disposal at fair market value and booking an accounting gain, PMCL failed the condition in section 97(1)(c). The liability assumed by Deodar exceeded

PMCL's written down value. Therefore, the PKR 59.3 billion gain was taxable immediately in tax year 2018. The Court applied a literal interpretation, finding no ambiguity requiring a purposive approach.

3. **Industrial Undertaking Status:** Ruling in favor of tax department. The Court held that in tax year 2018, a telecom company was not an "industrial undertaking" as defined by section 2(29C). The 2021 amendment that added telecom companies was not retrospective. The *Telenor* case was distinguished as it had only remanded the matter for factual inquiry.

4. **Alternative Corporate Tax:** Ruling: Issue rendered moot. Since the Court ruled the gain was taxable under ordinary provisions (as section 97 did not apply), the question of whether it could also be taxed under Section 113C did not require determination.

5. **Advance Tax on Imports:** Ruling: Remanded to Commissioner. The Court did not decide this issue on merits. It remanded the matter back to the Commissioner for a fresh factual inquiry to determine: (a) if PMCL derived income from the imports, and (b) if so, whether such imports fell within the exclusions of section 148(7).

6. **Depreciation/Amortization for Prior Years:** Ruling: No direction issued. The Court declined to give any speculative directions, stating that benefits from pending litigation in prior years would be applicable as per law if and when those decisions are finalized.

   Final Outcome: The appeal was dismissed, and the decisions of the lower forums were upheld, except for the advance tax issue under section 148(7), which was sent back for re-examination.

   This decision has effectively made the provisions of section 97 redundant. It would be interesting to see how the matter is ultimately decided by the Supreme Court of Pakistan.

9. WHETHER THE APPELLATE TRIBUNAL ERRED IN SETTING ASIDE TAX ASSESSMENTS ON THE GROUND THAT THE COMMISSIONER LACKED JURISDICTION.

2026 TAX 107: LAHORE HIGH COURT (RAWALPINDI BENCH)

COMMISSIONER INLAND REVENUE
VS
MASOOD-UL-HASSAN

APPLICABLE LAW:

Income Tax Ordinance, 2001 – Sections 122, 111(1)(b), 133, 207, 208, 209, 211.

Brief facts

The Commissioner Inland Revenue (BTB), Rawalpindi, initiated proceedings under section 122 for tax years 2010 through 2012 against the respondent, Masood-ul-Hassan. Unexplained balances were added under section 111(1)(b) and deemed assessment orders were Passed. The taxpayer's appeals to the Commissioner (Appeals) were dismissed. On further appeal, the ATIR set aside the assessments, ruling that the Commissioner (BTB) lacked jurisdiction over the case. The tax department filed a reference to the High Court, arguing that jurisdiction had been properly transferred to the Commissioner (BTB) by the Chief Commissioner under section 209(1) via an order dated August 20, 2014, which the tribunal had ignored.

Appellant Arguments

The tax Department argued that the Chief Commissioner had validly transferred jurisdiction in the taxpayer's case from the Additional Commissioner to the commissioner (BTB) through a specific order under section 209(1). The Tribunal failed to consider the order passed by the Chief Commissioner, leading to an erroneous conclusion on jurisdiction. The Department also contended that the taxpayer never challenged jurisdiction during the initial proceedings before the assessing officer or the Commissioner (Appeals), and therefore, under settled law, was barred from raising the issue at the appellate stage. The Tribunal's order was based on a misreading and omission of crucial facts and was legally unsustainable.

Respondents Arguments

The taxpayer supported the Tribunal's order, arguing that the commissioner (BTB) did not have lawful jurisdiction over his case. The respondent maintained that the tribunal's decision was correct in law and required no interference from the high court.

Decision

The High Court allowed the tax department's reference and set aside the Tribunal's order. It held that the Chief Commissioner's order dated August 20, 2014, passed under section 209(1), validly transferred jurisdiction to the commissioner (BTB). The Tribunal had either ignored or overlooked this critical document. Furthermore, the court ruled that since the taxpayer did not raise any jurisdictional objection during the initial assessment or first appeal stages, he was precluded from doing so later, as per established precedent. The Tribunal's findings were therefore based on a non-reading and misreading of the record. High court remanded back the matter, confirming that the assessments were lawfully conducted within the Commissioner (BTB)'s jurisdiction.

10. WHETHER THE APPELLATE TRIBUNAL ERRED IN DISMISSING AN APPEAL ON LIMITATION GROUNDS WITHOUT PROPER FACTUAL INQUIRY.

2026 TAX 112: SINDH HIGH COURT

RAKESH KISHWANI THROUGH ATHORIZED AND CONSTITUTIONAL ATTORNEY

VS

ASSISTANT / DEPUTY COMMISSIONER INLAND REVINUE AND OTHERS.

APPLICABLE LAW:

Income Tax Ordinance, 2001 – Sections 131, 133(5).

Brief facts

The taxpayer filed appeals before the ATIR against orders of the Commissioner (Appeals). The appeals were accompanied by applications for condonation of delay, as the taxpayer claimed the appellate orders were not received in time. The Tribunal dismissed the appeals as time-barred, stating the taxpayer had not denied service of the orders through electronic means. The taxpayer filed a reference to the High Court, arguing the Tribunal failed to verify the facts of service.

Appellant Arguments

The taxpayer argued that the order of the Commissioner (Appeals) was not received in time physically at the mailing address, making the appeal before the Tribunal time barred. A condonation application was filed to explain the delay. The Tribunal dismissed the appeal without properly examining this application or verifying the factual basis for its assumption about electronic service. The taxpayer contended that the Tribunal's order was a verbatim copy of another flawed order, demonstrating a failure to apply an independent judicial mind to the specific facts of the case.

Respondents Arguments

The tax department's counsel admitted during proceedings that no objections or comments regarding the service of the order had been filed before the Tribunal. The department did not substantively contest the taxpayer's claim regarding the lack of proper service verification.

Decision

The High Court allowed the taxpayer's reference and set aside the Tribunal's order. It held that the Tribunal, as the highest fact-finding authority, had a duty to ascertain the true facts regarding the service of the appellate order before deciding the condonation application. Its failure to call for proper comments and supporting documents from the tax department rendered its factual assumption incorrect. Furthermore, the Court strongly disapproved of the Tribunal's practice of issuing verbatim, "cut and paste" orders from previous cases, deeming it negligent. The matter was remanded to the Tribunal with directions to: (1) call for proper comments and documents from the tax department to verify service, (2) re-examine the limitation issue and the condonation application afresh, and (3) if condonation is granted, decide the appeal on its merits. A copy of the judgment was ordered to be sent to the Ministry of Law and Justice for necessary action.

Sales Tax Act, 1990

A. Notifications

1. S.R.O. 14(I)/2026 dated January 7, 2026

Through aforesaid notification issued under section 73 of the Sales Tax Act, 1990 (ST Act), FBR has amended previously issued SRO no. 1444(I)/2024 dated September 12, 2024. Through the said amendment, the powers of Commissioner to allow condonation of time limits, where any time or period has been specified under any of the provision of the ST Act or rules made thereunder within which any application is to be made or any act or thing is to be done, has been reduced from three years to a maximum period of two years.

Punjab Revenue Authority

A. Notifications

1. Circular no. 1 of 2026 dated January 23, 2026

The Punjab Revenue Authority (PRA) has mandated that restaurants, hotels, and beauty parlours in Punjab must adopt Raast QR code-based digital payment to promote transparency and ease of doing business.

Following are the key requirements:

- Obtain a QR code-enabled bank account from the State Bank of Pakistan within 14 days.
- Ensure the QR code payment facility is active and operational.
- Display the QR code prominently at the business premises for customers' access.

Sindh Sales Tax on Services Act, 2011

A. Reported Decisions

1. THE LOCATION OF SERVICE PROVISION DETERMINES TAXABILITY, NOT THE LOCATION OF A SUPPORTING ELECTRONIC SYSTEM.

2025 PTD 1733
SINDH HIGH COURT

SUMMIT CAPITAL (PVT.) LIMITED
VS
THE ASSISTANT COMMISSIONER SRB

Applicable provisions: 3(1), 47(1A), 63 and Second Schedule to the Sindh Sales Tax on Services Act, 2011 (SSTSA).

Brief Facts:

The applicants [Summit Capital (Pvt.) Ltd. and JS Global Capital Ltd.] are stockbrokers and foreign exchange brokers providing services of purchase and sale of shares for their clients during the tax periods prior to the Sindh Finance Act, 2017. Transactions are executed through the Karachi Automated Trading System (KATS), an electronic trading portal located in Karachi. The services, however, were rendered from their branch offices in Lahore to clients resident in Punjab.

The Sindh Revenue Board (SRB) contended that since KATS is situated in Karachi, the economic activity takes place in Sindh and therefore the commission earned is taxable under the SSTSA. It also claimed that commission earned on Initial Public Offering (IPO) related services was taxable under Tariff Heading 9813.8100, and imposed penalty and default surcharge.

The taxpayers argued that the place of provision of service was Lahore, KATS being only a technological tool, and that prior to the 2017 amendment, virtual portals were not included in the definition of "place of business in Sindh." They further contended that IPO-related commission did not fall under Tariff Heading 9813.8100.

Decision:

The reference applications were allowed in favor of the taxpayers by the Hon'ble Sindh High Court in the following manner:

Services provided by stockbrokers from offices outside Sindh were not taxable under the Sindh Sales Tax on Services Act, 2011, as at the relevant time the definition of "place of business in Sindh" did not include virtual portals like KATS. The 2017 amendment including virtual presence was prospective and could not be applied retrospectively. Hence, the location of the electronic trading system did not determine taxability.

Commission earned in connection with IPOs did not fall under Tariff Heading 9813.8100. Applying the Harmonized System Rules of Interpretation, the Court held that the heading relating to "banker to an issue" and "other persons" could not be extended to include stockbrokers.

Since the underlying services were not taxable, the imposition of penalty and default surcharge was also unlawful.

2. REGISTRATION IS MANDATORY FOR TAXABLE SERVICES, EVEN IF EXEMPT. EXEMPTION BENEFITS REQUIRE PRIOR REGISTRATION AND RETURN FILING.

2025 PTD 1880
APPELLATE TRIBUNAL SINDH REVENUE BOARD

M/S DERA TONIGHT
VS.
THE COMMISSIONER (APPEALS-II) SINDH REVENUE BOARD, KARACHI AND ANOTHER

Applicable provisions: 24,24B,43 of Sindh Sales Tax on Services Act, 2011.

Brief Facts:

The appellant, M/s Dera Tonight, was providing restaurant services in Sindh but was not registered under the Sindh Sales Tax on Services Act, 2011 (SSTS Act), claiming exemption under Rule 42(1)(a) of the Sindh Sales Tax on Services, Rules 2011 (SSTS Rules) due to low turnover. The Sindh Revenue Board issued a notice for compulsory registration, which the appellant ignored.

Consequently, the Assistant Commissioner compulsorily registered the appellant under Section 24B in November 2023 and imposed penalty under Section 43 of the SSTS Act. The Commissioner (Appeals) upheld the order. The appellant later obtained voluntary registration in March 2024 and challenged both the compulsory registration and the penalty before the Appellate Tribunal.

Decision:

The Appellate Tribunal dismissed the appeal and upheld the orders of the tax authorities.

The Tribunal held that registration under Section 24 of the SSTS Act is mandatory for persons providing taxable services, even if their services are exempt, and that exemption under Rule 42(1)(a) of the SSTS Rules can only be availed after registration and filing of returns. The compulsory registration made in November 2023 was therefore valid, and the subsequent voluntary registration was of no legal effect.

The Tribunal further held that, since the appellant failed to comply with the registration notice, the minimum mandatory penalty under Section 43 of the SSTS Act was correctly imposed.

Khyber Pakhtunkhwa Sales Tax on Services Act, 2022

A. Reported Decisions

1. HIGH COURTS CANNOT INTERFERE WITH FACTUAL FINDINGS IN REFERENCES; THEIR ROLE IS LIMITED TO QUESTIONS OF LAW.

2025 PTD 1914
PESHAWAR HIGH COURT

M/S KHYBER TEA AND FOOD COMPANY
VS
THE COMMISSIONER OF INLAND REVENUE (APPEALS)

Applicable provisions: Section 3B(3),3(2)(b),8B,11(a),11(c),33(9),33(11),34,43,47,53 to the Sales Tax Act, 1990 (the Act)

Brief facts:

In the instant case, M/s Khyber Tea and Food Company filed a sales tax refund claim for the period April 2011 to June 2012 under SRO 180(I)/2011 dated March 5, 2011, which allowed a reduced sales tax rate of 8.5% on tea and spices. The refund claim was subjected to audit, which highlighted several deficiencies: buyer addresses were mostly in remote PATA/FATA areas but verification letters were dispatched from Peshawar; buyers failed to appear when summoned; bank statements showed excess receipts compared to declared sales; and stock, debtors, and creditors were not reconciled.

The Assessing Officer, Commissioner (Appeals), and the Appellate Tribunal rejected the refund claim and imposed a 100% penalty under Section 33(11) of the Sales Tax Act, 1990, alleging an attempt to claim an inadmissible refund. The petitioner filed a reference before the Peshawar High Court challenging both the refund rejection and the penalty.

Decision:

The Peshawar High Court upheld the rejection of the refund claim and noted that the petitioner failed to provide verifiable evidence showing that sales tax had been charged at the reduced rate under SRO 180(I)/2011. The Court emphasized that factual findings of lower authorities cannot be re-examined in a reference and that the burden of proof for refund claims rests with the taxpayer.

However, the Court set aside the 100% penalty and held that no mala fide intention or willful tax evasion was present. The mere inability to substantiate the refund claim due to cumbersome documentation did not justify imposing a punitive penalty. The Court relied on established precedents that penalties under Section 33(11) require proof of fraud, submission of false documents, or dishonest intent, which were absent in this case.

2. FISCAL STATUTES MUST BE INTERPRETED STRICTLY AND THAT NO RETROSPECTIVE BURDEN CAN BE PLACED ON TAXPAYERS UNLESS THE LEGISLATION EXPRESSLY PROVIDES FOR IT.

2025 PTD 1838
PESHAWAR HIGH COURT

PAKISTAN TELECOMMUNICATION COMPANY LIMITED
VS
ADDITIONAL COLLECTOR UNIT-1, KPRA

Applicable provisions:
2(47),2(48),19(1),26,26(1) of the Khyber Pakhtunkhwa Sales Tax on Services Act, 2022.

Brief Facts:

The petitioner, Pakistan Telecommunication Company Limited (PTCL), filed a Sales Tax Reference against the order of the Appellate Tribunal, KPRA, relating to tax periods from 2013 to 2018. The KPRA had disallowed input tax claimed on services received from unregistered persons and also held PTCL liable, as a withholding agent, for failure to withhold and deposit sales tax on services received from non-residents, raising sales tax demand along with penalty and default surcharge. The Collector (Appeals) upheld the principal demand but set aside penalty and default surcharge which was challenged by PTCL before the Appellate Tribunal KPRA. Due to a split decision in the Tribunal and absence of a referee mechanism, the order of the Collector (Appeals) was treated as confirmed which led the petitioner to the present reference before the High Court.

Decision:

The Peshawar High Court held that the disallowance of input tax claimed by PTCL on services received from unregistered persons was lawful, as under the KPRA law only registered persons are entitled to issue valid tax invoices and deposit sales tax, and input tax can only be adjusted against such properly charged and paid tax.

However, on the issue of liability as a withholding agent, the Court observed that prior to the insertion of sub-section (3) in Section 30 to the Khyber Pakhtunkhwa Finance Act, 2021, there was no provision creating personal liability on the recipient of services for failure to withhold and deposit sales tax on behalf of non-resident or unregistered service providers. The amendment introduced such personal liability was held to be prospective in nature and could not be applied retrospectively to tax periods from 2013 to 2018.

Accordingly, the Court ruled that while the principal disallowance of input tax was valid, PTCL could not be fastened with personal liability for withholding tax for the pre-2021 period. As a consequence, the associated default surcharge and penalty, which were dependent upon the existence of lawful tax liability, were also declared without lawful authority. The reference was thus partly accepted in favour of the petitioner.

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, Shahrah-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

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