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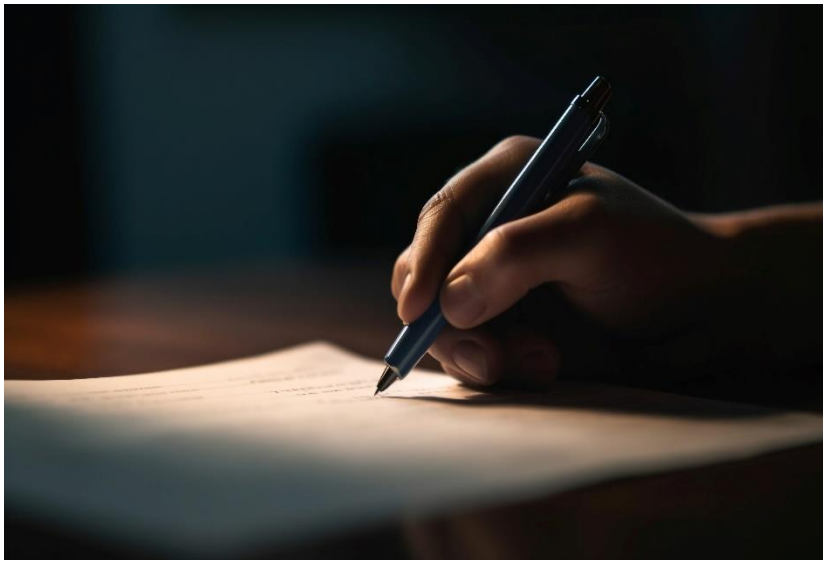
Tax Bulletin

January 2025

Tax

Foreword



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

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Karachi
January 20, 2025

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Income Tax Ordinance, 2001

A. Reported Decisions:

1. PARLIAMENT HAS THE AUTHORITY TO IMPOSE CAPITAL VALUE TAX UNDER ENTRY 50 OF THE FEDERAL LEGISLATIVE LIST, AS IT PERTAINS TO THE TOTAL WEALTH OF THE TAXPAYER, INCLUDING FOREIGN ASSETS

(2023) 127 TAX 49 = 2024 PTD 1478

SINDH HIGH COURT

IRFAN HUSSAIN HALAI AND OTHERS VS FEDERATION OF PAKISTAN AND OTHERS

APPLICABLE SECTIONS: SECTION 9 & 116(2) OF THE INCOME TAX ORDINANCE, 2001 AND SECTIONS 141 & 142 OF CONSTITUTION OF PAKISTAN, 1973

Brief Facts:

The petitioners challenged Section 8(2)(b) of the Finance Act, 2022, which imposes capital value tax on the value of foreign assets (both movable and immovable properties) owned by a resident individual.

Arguments

The petitioners argued that Parliament lacks the legislative competence to impose such a tax on foreign assets, particularly on immovable property located abroad. They asserted that the powers of the federal legislature have been curtailed following the 18th Amendment to the Constitution, and that Parliament does not have the authority to tax foreign assets under Article 142 of the Constitution.

The respondents, however, argued that Parliament has the authority to legislate on this matter and that the tax is within its competence, especially under the relevant constitutional provisions.

Decision

The SHC addressed several critical points in its ruling:

Foreign Assets and Their Taxability

The SHC ruled that foreign assets, which are declared in the taxpayer's wealth statement, can be taxed under Entry 50 of the Federal Legislative List. The tax is not specifically on immovable property but rather on the overall value of the assets held by a resident individual. Therefore, the tax falls within the scope of federal taxation under Entry 50, even if some of these assets are located outside Pakistan.

Sovereign Jurisdiction and Extra-Territorial Taxation

The SHC emphasized that a sovereign state has jurisdiction over its nationals, even when they are outside the state's territorial boundaries. The principle of extra-territorial taxation allows a nation to regulate and tax the conduct of its nationals, even if they are abroad. This extends to the taxation of foreign assets of such nationals, as provided under Articles 141 and 142 of the Constitution.

Territorial Limits and Federal Power

The SHC noted that any matters not within the territorial limits of the provinces revert to the Parliament. The use of the term "not including" in Entry 50 does not exclude the taxation of foreign assets; rather, it specifically addresses the taxation of immovable property, which is under provincial jurisdiction.

Interpretation of Constitutional Provisions

The SHC applied the "golden rule" of interpretation, reading constitutional provisions in their natural and grammatical meaning. The SHC held that the Constitution grants Parliament the authority to levy taxes on the capital value of foreign assets held by its residents, and there is no constitutional bar against such a levy.

Capital Value Tax on Foreign Assets

The SHC reaffirmed that the tax on foreign assets is a capital value tax, which is similar to wealth tax and falls within the federal domain. The foreign assets are part of the resident taxpayer's total wealth and can therefore be taxed as such.

Conclusion

The SHC ruled that the provisions of Section 8 of the Finance Act, 2022, which impose a tax on the capital value of foreign assets, are not ultra vires to the Constitution. The tax is within the legislative competence of Parliament, and the petitions challenging it were dismissed.

2. IHC UPHELD THAT THE DEFINITION OF WELLHEAD VALUE EXCLUDES PROCESSING AND TRANSPORTATION COSTS BUT DOES NOT ALLOW FOR THE EXCLUSION OF ROYALTIES

2023 PTD 455 = (2024) 130 TAX 651

ISLAMABAD HIGH COURT

THE ATTOCK OIL COMPANY LIMITED
VS
CENTRAL BOARD OF REVENUE, ISLAMABAD AND OTHERS

APPLICABLE SECTIONS: RULE 3 & 6 OF THE FIFITH SCHEDULE TO THE ORDINANCE.

Brief Facts:

The dispute centered around whether the royalty payments made by petroleum exploration and production companies to the government should be excluded from the wellhead value when calculating the depletion allowance under Fifth Schedule of the Ordinance.

Arguments

Appellant submitted that the Rule 3 of Part-I of the Fifth Schedule to the Ordinance provides that 15% of the gross receipts represent the wellhead value of the production of a petroleum exploration and production company is permissible to be claimed as depletion allowance.

Appellant submitted that Rule 6(10) of Part-I of the Fifth-Schedule defines wellhead value as that assigned to it in an agreement between a petroleum exploration and production company and the Government, and in the absence of a definition provided in such agreement, the meaning assigned to wellhead value. It was submitted that Petroleum Rules, 1986 defined the Wellhead value as the market value of petroleum after excluding gathering, processing, treatment and transportation costs.

The department on other hand supported the decision of the learned Tribunal wherein it had been held for purposes of calculation of depletion allowance that royalty was to be deducted from the wellhead value.

Decision

Rule 3 of Part I of the Fifth Schedule read together with Rule 6(10) of the Ordinance when read in juxtaposition with Rules 2(e), 2(k) and 38 of the Petroleum Rules, 1986, does not make any provision for exclusion of royalty from the market value of petroleum.

There is nothing preventing the legislature from providing within the Ordinance that depletion allowance would be calculated on the basis of wellhead value, which in turn would be calculated on the basis of market value of petroleum by excluding from such value any amount payable to the Government as royalty.

IHC upheld that:

- The definition of wellhead value excludes processing and transportation costs but does not allow for the exclusion of royalties.
- The royalty payments made to the government cannot be deducted from the wellhead value when calculating the depletion allowance.
- The depletion allowance is to be calculated using the full wellhead value, without making any adjustments for the royalty payments.

3. OBLIGATIONS SUCH AS WWF PAYMENTS REQUIRE DETERMINATION AND COMMUNICATION THROUGH A WRITTEN ORDER.

2023 PTD 492 = (2024) 130 TAX 671

LAHORE HIGH COURT

COMMISSIONER INLAND REVENUE, LAHORE VS DESCON ENGINEERING LIMITED, LAHORE

APPLICABLE SECTIONS: SECTION 4 OF THE WORKERS WELFARE FUND ORDINANCE, 1971

Brief Facts:

The respondent taxpayer, an industrial establishment as per Section2(f) of the WWF Ordinance, filed income tax return for the tax year 2006 along with a proof of payment of WWF, which was taken as deemed assessment under section 120(1) of the Ordinance. Later on, respondent's case was selected for audit under section 177 of the Ordinance and assessment was amended under section 122(1) of the Ordinance, whereby besides other additions, WWF was charged on amended assessed income. Feeling aggrieved, respondent filed appeal before CIRA, whereby matter to this extent was remanded to pass fresh order after providing opportunity of hearing to respondent. Respondent agitated the matter by filing a second appeal before ATIR, which was accepted.

The Department filed appeal at LHC against Tribunal Order and following questions of law, urged to have arisen out of impugned order passed by ATIR:

- Whether on the facts and circumstances of the case, ATIR was justified to delete amount payable to WWF on the ground that no written order was passed under section 4 of WWF Ordinance, whereas taxation officer assessed income vide written order under section 122(1) of Ordinance, and computed amount payable to WWF in the said Order?
- Whether on the facts and circumstances of the case, the framework of WWF Ordinance, requires independent adjudication of assessed income under Income Tax Ordinance followed by an independent separate order for determination of amount payable to WWF, whereas the said amount is to be computed on the basis of income assessed under income tax law and recovery of same is also to be made under said law?

Arguments

The department submitted that income was assessed and amended through written order on the basis whereof WWF was charged, thus, no illegality was committed but this aspect of the matter was not taken into consideration by the ATIR while passing the impugned order.

Conversely, the respondent submitted that charging of WWF was neither confronted through show-cause notice nor respondent was provided an opportunity of defense in as much as no written order in this regard under the provisions of WWF Ordinance was passed, thus, impugned order is liable to be upheld.

Decision

LHC responded on these matter as under:

The language of section 4 of WWF Ordinance, especially the word shall clearly bind the Officer, where he is not inclined to endorse the paid WWF as due amount, to make determination of due amount of WWF by way of an order in writing requiring the industrial establishment to make up the deficiency by assigning a target date. Thus, the provision is self-explanatory in comprehending that determination of due amount of WWF shall be made through a written order.

The Superior Courts of Pakistan, through numerous decisions, have settled the proposition that taxing authorities cannot demand amount without issuing a show-cause notice, and providing opportunity of hearing and fixing liability in terms of the relevant provisions of law. Needless to say that provision of notice to a person,

who is being proceeded against, must be read in every statute, irrespective of the fact that whether or not such provision was incorporated therein (2021 PLC (C.S.)221, 2019 CLC Note 28 DB, PLD 2018 Peshawar 170, 2017 PTD 19622017 CLD 521 DB, 2012 PTD 1329, 2008 PTD 1551 and 2002 PTD 2780).

It was imperative that the amount of WWF due and obligation to pay, in the context of agreement, must be determined and communicated in writing, upon issuance of notice. Failure to fulfill the requirement of proper notice, observance of principles of natural justice and determination by way of order in writing, in the facts and circumstances of the case, has rendered the impugned demand unsustainable.

An order in writing does not necessarily mean a separate order. The Officer is authorized under the law to make an order relating to WWF while finalizing the assessment proceedings through a written order and order relating to charge of WWF would be part of assessment order (2002 PTD 14).

In view of the above, the Court answered to question No.1 in affirmation i.e. against the department and in favour of respondent, whereas question No.2 was answered in negative i.e. against respondent and in favour of the department.

4. SECTION 24A OF THE GENERAL CLAUSES ACT REQUIRES THAT ANY EXECUTIVE OR JUDICIAL AUTHORITY PROVIDE REASONS FOR ITS DECISIONS

2024 PTD 1566 = (2024) 131 TAX 698

LAHORE HIGH COURT

**MEDEQUIPS THROUGH MANAGING PARTNER VS
THE COMMISSIONER INLAND REVENUE AND 3 OTHERS**

APPLICABLE SECTIONS: 133,133A, 133(1) & 133(8) OF THE INCOME TAX ORDINANCE, 2001 AND SECTION 24A OF THE GENERAL CLAUSES ACT, 1897

Brief Facts:

The case revolves around the failure of the ATIR to provide a speaking order while deciding an appeal. The Appellant, aggrieved by the decision, filed a reference application, arguing that the ATIR order lacked reasoning. The key legal question was whether the reference application was maintainable and whether the ATIR's failure to give reasons in its order violated legal principles that require decisions to be reasoned and transparent.

Arguments

The Appellant argued that the ATIR had failed to provide a speaking order when deciding the appeal. In the operative part of the order, the ATIR simply reproduced arguments from both sides and the decisions of lower authorities without giving reasons for rejecting or accepting them. The Appellant emphasized that such an order violated the principles of natural justice and fairness, as required by Section 24A of the General Clauses Act and other judicial precedents.

The department argued that a reference application could only be maintained if it raised questions of law or mixed questions of law and fact arising from the order of the ATIR. They contended that since no questions of law or facts had been addressed by the ATIR, the reference application should be dismissed.

Decision

LHC responded on these matter as under:

The LHC found that the ATIR had failed to provide any reasoning for its decision, which was essential for ensuring transparency and fairness in the judicial process. A speaking order is required not only to explain the rationale behind a decision but also to allow higher courts to understand the reasoning when reviewing the decision.

The LHC emphasized that Section 24A of the General Clauses Act requires that any executive or judicial authority provide reasons for its decisions. Failure to do so makes the decision susceptible to being set aside.

The LHC ruled that no questions of law or facts were addressed in the ATIR's order because it was devoid of reasoning. Since the order failed to deal with the legal issues raised by the Appellant, the reference application filed by the Appellant was maintainable.

5. THE PROCEEDINGS UNDER SECTION 161 OF THE ORDINANCE FOUND TO BE DEFECTIVE BECAUSE THE OFFICER DID NOT ESTABLISH THAT THE APPELLANT HAD VIOLATED THE PROVISIONS OF THE LAW.

2024 PTD 1553

APPELLATE TRIBUNAL INLAND REVENUE

MUHAMMAD AKHTAR VS COMMISSIONER INLAND REVENUE, WITHHOLDING TAX ZONE, RTO-II, ISLAMABAD

APPLICABLE SECTIONS: SECTIONS 20, 153(3), 160, 160(1), 165,182 & 205 OF THE INCOME TAX ORDINANCE, 2001 AND SECTION 50 OF THE INCOME TAX ORDINANCE, 1979

Brief Facts:

The Appellant is an individual who derives income from business. The appellant, being a withholding agent, was liable to deduct tax at the time of making payments under various provisions of Ordinance. The officer observed that the appellant did not fully discharge his legal obligations as withholding agent while making payments to different suppliers/vendors. The appellant was confronted with different issues through SCN asking for various details/documents which were not complied with. Consequently, the proceedings culminated in finalization of order under section 161(1) of the Ordinance.

Being aggrieved, the appellant preferred before the CIRA who confirmed the order of the Officer. Therefore, the taxpayer filed appeal before ATIR.

Arguments

The appellant argued that:

- It was not determined whether the appellant was indeed a withholding agent under the definition of a "prescribed person".
- The transactions subject to deduction/withholding tax were not properly identified.

Decision

ATIR responded on these matter as under:

The Officer did not properly satisfy the conditions required, before taking action under Section 161 of the Ordinance.

The officer should have first determined whether the appellant was a withholding agent and whether the transactions were subject to withholding tax, whether the appellant had correctly withheld the appropriate amount of tax and whether it was credited to the relevant appellant.

The Officer did not follow the correct course of action under Section 165 of the Ordinance when the required statements were not filed or contained discrepancies. Instead of taking recovery action under Section 161, the officer should have confronted the appellant about the deficiencies in the statements and imposed penalties under Section 182 of the Ordinance, if applicable.

The proceedings under Section 161 of the Ordinance were found to be defective because the officer did not establish that the appellant had violated the provisions of the law.

6. SECTION 161 IS NOT A CHARGING SECTION AND CANNOT BE USED TO INVOKE RECHARACTERIZATION OF INCOME.

ITA No.19/PB/2023 & ITA No.20/PB/2023
TY 2017 & 2018

APPELLATE TRIBUNAL INLAND REVENUE

KHYBER PAKHTUNKHWA HIGHWAY AUTHORITY (KPKHA)
VS
COMMISSIONER INLAND REVENUE, RTO, PESHAWAR

APPLICABLE SECTIONS: SECTION 161 & 205 OF THE INCOME TAX ORDINANCE, 2001

Brief Facts:

The appellant is a corporate body established in 2001, and the principal activity of the appellant is to construct road highways in KPK Province. In the years under consideration, the appellant for the first time in partnership with FWO constructed Swat Expressway under the Public Private Partnership Act, 2014 (PPP Act). The officer, while invoking sections 161/205 of the Ordinance, identified a minor withholding tax default under section 153 for the tax years in question. The Officer reclassified an investment transaction involving Class-B Ordinary shares of Rs. 100 each, representing the appellant's contribution to the Swat Motorway Express project under a PPP arrangement. Despite the investment being acknowledged as paid-up capital by the SECP and sourced from the Government of KPK, the officer disregarded the explanation provided by the appellant and passed orders holding the appellant liable for alleged non-compliance with tax deduction/payment requirements under the Ordinance.

Being aggrieved, the appellant filed appeal before CIRA, who vide its order confirmed the order passed by the officer. Being aggrieved with the decision of CIRA, the appellant filed appeal before ATIR.

Arguments

The appellant argued that:

- It has been stated that no specific notice under section 109 of the Ordinance was served upon the appellant, which is a sine qua non for the initiation of proceedings. It was argued that omission of issuance of show cause notice cannot be called a procedural irregularity and therefore, it is not a curable defect. Reliance is placed on 2019 PTD 1828 and 2020 PTD 799.

- No independent order was framed for the re-characterizing transaction of investment under section 109 of the Ordinance, rather simply giving the background of the issue or reproducing proceedings of minutes of the meeting of the provincial "PPP" Committee held under the Chairmanship of Chief Minister, KP.

- All the recipients are NTN holders and have been filing their income tax returns, therefore, in terms of section 161(1B) of the Ordinance, the default surcharge could have only been recovered from the appellant. It was argued that the primary liability to pay the tax deducted was that of the person from whom it was being deducted.

The department argued that:

- The proceedings under section 161 of the Ordinance were initiated wherein the appellant was intimated of the issue of tax avoidance at the time of the release of funds to SEPCO. The appellant was also apprised that section 3 of the Ordinance had an overriding effect on PPP Act and the transaction could be recharacterized under section 109 of the Ordinance. In support, reliance was placed on the minutes of the meeting chaired by the Chief Minister, KPK, and the others member including the Chief Secretary KPK and secretary Finance, who specifically pointed to the fact that the transaction of equity financing could be re-characterized by the revenue department and eventually the tax would be required to be paid.

- As far as the provision of section 161(1B) is concerned, the prime liability to withhold the tax was on the part of the appellant which failed to do so. Notwithstanding the aforesaid, the recipient SEPCO has not exhausted its minimum tax liability, therefore, the appellant cannot claim the benefit of section 161(1B) of the Ordinance. Therefore, sections 109 1(a) & (c) were applied and the transaction was recharacterized.

Decision

ATIR responded on these matters as under:

- It is settled law that the liability of the person liable to deduct tax (i.e., the appellant) is only secondary and vicarious.

- It would be highly anomalous if the liability of the actual or primary taxpayer/payee was accepted or had no objection on the subject transaction of investment but on the other hand, the same department is permitted to adopt a different view in the hand of the payer and recharacterize the transaction under the garb of section 161 of the Ordinance.

- The event of recharacterization of the transaction is incurred only while assessing/computing the normal income of the taxpayer and determining the tax liability thereon.

- The scope of proceedings under section 161 of the Ordinance is limited. It cannot be used to bypass the scheme of the law, particularly with respect to the re-characterization of transactions that come within the ambit of Chapter VIII (ANTI-AVOIDANCE) of the Ordinance. For this, a separate provision is found available in the shape of section 109 of the Ordinance. Thus, the entire proceedings instituted through the show cause are built on a weak superstructure.

- The reference is made to the decision of this Tribunal reported as 2003 PTD 1167 where it has been held that the provision of Section 161 is not a charging provision. This has nothing to do with the income or profit of the person, which is subject to a charge under the Ordinance.

- Reference is also made to the judgment of the Hon'ble High Court of Sindh in the case of Al-Haj Industries v. Collector of Customs, where it has been held that collection of tax and assessment of income are not one and the same.

7. RENTAL INCOME AND CAPITAL GAIN EARNED FROM UAE AND UK ARE NOT TAXABLE

ITA No. 2460/LB/2024
TAX YEAR 2022

APPELATE TRIBUNAL INLAND REVENUE

MR. M JAHANGIR MUGGO VS COMMISSIONER INLAND REVENUE, LAHORE

APPLICABLE SECTIONS: 122(9), 122(5A), 11(5), 107, 103 AND 111 OF THE INCOME TAX ORDINANCE, 2001

Brief Facts:

The Appellant, being an Individual, filed income tax return for the tax year 2022, which was taken as deemed assessment under section 120(1) of the Ordinance. Later on, Appellant was confronted through show cause notice 122(9) read with section 122(5A) of the Ordinance, wherein explanation was sought in respect of foreign source income, on account of rentals and capital gains, declared as exempt income in the Income Tax Return for the tax year under consideration. Subsequently, a notice us 111(1)(b) of the Ordinance was also issued, seeking explanation from the Appellant on issues under consideration. The Appellant responded to the contested issues on both the factual and legal ground through written and verbal arguments, however, the reply was found

unsatisfactory by the assessing officer and proceedings were culminated by passing the impugned order u/s 122(5A) of the Ordinance.

Feeling aggrieved, Appellant filed appeal before ATIR.

Arguments

The appellant argued that:

- The Order by the Officer was not issued within the time frame specified under subsection 122(9).
- The officer invoked the provision of section 122(5A) on the ground that deemed assessment was erroneous and prejudicial to revenue. However, proceedings for probing the matter were conducted in an audit-like manner which is beyond the scope of 122(5A).
- The officer improperly denied exemption for foreign source income by relying solely on section 11(5) of the Ordinance, ignoring the overriding agreements under section 107 for avoiding double taxation. The Appellant referred to various Articles of tax treaties of Pakistan with UK and UAE and explained that foreign source income comprised of property income, capital gain and interest income, which could only be taxed by foreign jurisdiction of source country.
- The issue under consideration with special reference to the overriding effect of tax treaties has already been elaborated on by the ATIR and placed reliance on identical case in ITA No. 4299/LB/2022.

The department argued that:

- The Order was passed within the lawfully extended time limitation, and no exemption was available or provided to the foreign source income arising in the UK and the UAE as per respective agreements for avoidance of double taxation and fiscal evasion with the said jurisdictions.
- It is the foreign tax credit and not the exemption from Pakistan tax which has been provided for under the treaties as well under the Ordinance.
- Reliance is placed on another case ITA No. 1524/IB/2021 wherein a different view has been taken by learned ATIR and the same precedent being later in time, ought to be followed.

Decision

The learned ATIR responded on these matter as under:

The Order was issued 273 days after the show cause notice, exceeding the allowed period under section 122(9) of the Ordinance. The extension order of the officer dated April 19, 2024, is found to be unlawful and having no legal consequence, therefore, the amendment order passed on May 24, 2024, is time barred as the time period of 180 plus 90 days period expired on April 15, 2024, with reference to show cause notice issued on August 25, 2023.

In respect of rental income and capital gains, the taxing right has been given only to that contracting state where the income has arisen, therefore, in the case of taxing right/jurisdiction in respect of rental income and capital gains have been given exclusively to the UK and UAE if income has arisen there.

The officer erred in understanding the phrase "may be taxed" used in the Article 6.1 and 14.1 of the treaty by completely taking it out of context due to lack of understanding of the principles of interpretation. The bare reading of articles makes it clear that the words "may be taxed" are used to cater the situations exactly like the case wherein the UAE had not levied tax on the rental income when the treaty was executed or even till date. The intention of the phrase means if at all taxpayers may be taxed in such situation, where the property from which income is being derived, is in one contracting state and the owner is a resident of another contracting state, it will be taxed in accordance with the law of the state in which the property is situated.

As far as two decisions of ATIR on same issues are concerned, it is an established principle that the decision of an earlier ATIR division bench (Arshad Gulzar vs the CIR Lahore in ITA No.4299/LB/2022) is binding on another ATIR division bench (ITA No.1524/IB/2021). In the case of earlier precedent reference application of the department was pending before LHC therefore,earlier precedent be followed until it is reversed by High Court (2016 PTD 722).

8. ONLY LEGAL REMEDY AVAILABLE TO THE SOES IS TO APPLY FOR THE FORMATION OF AN ADRC

2024 PTD 1571

SINDH HIGH COURT

TRADING CORPORATION OF PAKISTAN (PVT.) LTD. THROUGH AUTHORIZED OFFICER
VS
FEDERATION OF PAKISTAN THROUGH SECRETARY FINANCE DIVISION

APPLICABLE SECTIONS: SECTION 54 & 134A OF THE INCOME TAX ORDINANCE, 2001
AND SECTION 47A OF THE SALES TAX ACT, 1990

Brief Facts:

The petitioner, Trading Corporation of Pakistan, challenged the recovery notices issued by the Department. The core issue was that the notices were issued without constituting an Alternate Dispute Resolution Committee (ADRC), as required by recent amendments to the Ordinance, and other related fiscal laws. The petitioner argued that, due to these amendments, State-Owned Enterprises (SOEs) were entitled to apply for the constitution of ADRCs for resolving any disputes, and recovery notices should not be issued until this process was followed.

Courts Findings:

Legal Obligation to Constitute ADRCs:
The SHC found that, under the recent amendments to the Ordinance, SOEs were required to apply to the FBR for the constitution of an ADRC. This committee was the prescribed mechanism for resolving disputes involving tax matters related to these entities.

Inland Revenue's Obligations:
The SHC noted that, following the amendments, Inland Revenue officials were under a clear legal obligation to withdraw any and all recovery notices issued to SOEs related to tax matters, pending the constitution of the ADRC. The SHC Court emphasized that there was no other legal remedy available to the SOEs except to apply for the formation of an ADRC.

Decision

In light of these findings, the SHC directed that all recovery notices previously issued by the Income Tax Authorities to SOEs should be withdrawn, as the proper procedure for dispute resolution through ADRCs was not followed.

9. THE OFFICER CANNOT REJECT A REFUND APPLICATION SOLELY DUE TO THE EXISTENCE OF AN OUTSTANDING TAX LIABILITY.

ITA No.1826/IB/2024 (Tax year 2016)
ITA No.1827/IB/2024 (Tax year 2017)
ITA No.1828/IB/2024(Tax year 2018)
ITA No.1829/IB/2024(Tax year 2019)
ITA No.1830/IB/2024(Tax year 2020)
ITA No.1831/IB/2024(Tax year 2022)

APPELATE TRIBUNAL INLAND REVENUE, ISLAMABAD

M/S SHAHEEN FOUNDATION (PAF)
VS
THE DEPUTY COMMISSIONER INLAND REVENUE CTO, ISLAMABAD

Brief Facts:

The appellant submitted Refund applications on IRIS system, along with supporting documentary evidence. The assessing officer examined and verified the record submitted by the appellant. However, the refund applications were rejected solely on the basis of outstanding tax demands for the relevant years. Aggrieved by these orders, the appellant filed appeals with the learned CIRA, who subsequently transferred the appeals to ATIR under the newly introduced section 126A of the Ordinance.

Decision

ATIR allowed the appeal and held that:

- It was determined that the Commissioner/Assessing Officer cannot reject a refund application solely due to the existence of an outstanding tax liability.
- The Commissioner/Assessing Officer must:
  a) Verify whether an overpayment has been made.
  b) Apply the overpayment to any outstanding liabilities.
  c) Refund any remaining balance to the taxpayer
- Rejection of refund applications without verifying overpayment or adjusting liabilities contravenes both the procedural and substantive requirements of the law.

10. THE DEPARTMENT IS NOT VESTED WITH ANY STATUTORY AUTHORITY TO REJECT THE ESTIMATE FILED BY THE PETITIONER

WRIT PETITION NO. 181/2019, WRIT PETITION NO. 4497/2022 & WRIT PETITION NO. 4558/2022

ISLAMABAD HIGH COURT

PAKISTAN TELECOMMUNICATION AUTHORITY,
COMMUNICATOR"S GLOBE PRIVATE LIMITED AND
EXCEL LABS PRIVATE LIMITED
VS
FEDERATION OF PAKISTAN

APPLICABLE SECTIONS: SECTION 138, 140 AND 147 OF THE INCOME TAX ORDINANCE, 2001

Brief Facts:

WRIT PETITION NO. 181/2019

Notice was issued under section 147 of the Ordinance. The Department, without waiting for a response to the notice under section 147 or issuing any other notice under Section 137 or Section 138 of the Ordinance, issued a notice under Section 140 of the Ordinance and recovered the amount mentioned in the notice.

WRIT PETITION NO. 4497/2022 and WRIT PETITION NO. 4558/2022

In the second and third petitions, notices were issued under section 147, 138 and 140 of the Ordinance, pursuant to which the bank accounts of the petitioner were attached and the amount mentioned in the notices were recovered.

Arguments

WRIT PETITION NO. 181/2019

Petitioner argued that:

- There was no advance tax due to be collected from the petitioner under Section 147 of the Ordinance, as the tax return for the tax year 2018 reflected a refund due.
- A notice for payment of advance tax was issued without seeking to recover the amount or issuing of any notice under Sections 137 and 138 of the Ordinance.
- The demand notice itself reflects that it does not include any bar code and no notices were issued through the IRIS System.

The department argued that:

- The Department was under no obligation to issue notices under Sections 137 and 138 of the Income Tax Ordinance, where advance tax was liable to be paid under Section 147(1) of the Ordinance.
- The time for payment of advance tax was prescribed under Sections 147(5)(a) of the Ordinance and there was no need to issue any additional notice prior to affecting recoveries in exercise of authority under Section 140 of the Ordinance.
- Once the date for payment of advance tax had passed, the Department was under no obligation to notify the petitioner re satisfaction of the demand and it could simply recover the overdue liability in exercise of authority under Section 140 of the Ordinance.

WRIT PETITION NO. 4497/2022 AND WRIT PETITION NO. 4558/2022

The petitioner (4497/2022) argued that:

- They had filed a tax return for tax year 2021 in relation to which an order under Section 122(5A) of the Ordinance was issued. The said reassessment order was appealed before the CIRA, who annulled it by its order. They submitted that the Department has not filed any appeal against the order of the CIRA, which is still in the field.

- The advance tax is calculated on the basis of the assessed income of the petitioner and the advance tax was consequently calculated in relation to tax year 2022 on the basis of additional demand generated by the Department pursuant to its order under Section 122(5A) of the Ordinance.

- Notice under Section 147 was issued on September 21, 2022 and the additional demand generated pursuant to the order passed under section 122(5A) of the Ordinance was annulled on September 27, 2022. The Department, however, continued to insist on payment of the demand.

- No advance tax was payable as the case of the petitioner fell under Section 147(1)(d) of the Ordinance and its tax was deducted at source under Division III of the Ordinance and no advance tax had previously been paid by the petitioner either.

- Section 147 , which creates a requirement to pay advance tax, does not provide that penal proceedings in relation to advance tax can be undertaken under Section 138 of the Ordinance or that accounts can be coercively attached in exercise of authority under Section 140 of the Ordinance.

- The entire sequences of events leading to coercive recovery were based on *malafide* and devoid of legal authority.

The petitioner (4558/2022) argued that:

- The Department has no authority to seek recovery pursuant to Section 140 of the 2001 Ordinance in relation to advance tax where the petitioner had filed an estimate for purposes of Section 147(6) of the Ordinance, as for tax year 2021 there was no authority vested in the Department to reject an estimate filed by the petitioner.

- The petitioner relied on 2011 PTD 1996, 2018 PTD 719 and 2022 PTD 1763.

Department argued in Writ Petitions No.4497 and 4558 of 2022:

- In the said cases, notices had been issued under Section 138 of the Ordinance prior to affecting coercive recovery under Section 140 of the Ordinance.

- A notice under Section 147 of the Ordinance to pay advance tax was similar to issuance of a notice under Section 137 of the Ordinance and there was thus no requirement to issue a repeat notice under Section 137.

- To the extent that additional advance tax had been recovered from the petitioners, the same could be refunded in accordance with Section 170 of the Ordinance that provided for refunds.

Decision:

IHC decided the matter as under:

- The Department simply elected to issue a notice under Section 140 of the Ordinance to the bank with which the petitioner was maintaining an account and coercively recovered the advance tax demand from the petitioner's bank account. Such recovery was illegal for having been undertaken in breach of due process requirements prescribed under Section 147(7) read with Sections 137 and 138 of the Ordinance and is therefore declared to be without legal authority.

- The Department coercively affected recovery of advance tax computed on the basis of an annulled reassessment order. Such action was taken by the Department in full view of the fact that the reassessment order stood annulled. The said recovery notices are therefore declared to be illegal along with the recovery coercively made from the petitioner.

- The department was vested with no statutory authority to reject the estimate filed by the petitioner. However, notwithstanding the filing of such estimate, which the department had no authority to reject or disregard, notices under Sections 138 and 140 of the Ordinance were issued.

    - These recovery notices could not have been issued after the filing of an estimate by the petitioner and are therefore declared to be illegal and without lawful authority.

- The department shall decide the refund application within 60 days from the announcement of this judgment and will also pass an appropriate order for purpose of Section 171 of the Ordinance to consider any additional payment due by the Department to the petitioners for delayed refund.

11. CLAUSE (45A) ALLOWED FOR CONCESSIONAL RATES FOR CALCULATING MINIMUM TAX LIABILITY

99 = (2024) 130 TAX 613

LAHORE HIGH COURT

COMMISSIONER INLAND REVENUE, RTO, LYALPUR ZONE, FAISALABAD VS M.M. ENTERPRISES (MUNIR AHMAD), FAISALABAD

APPLICABLE SECTIONS: SECTION 113 AND 133(1) OF THE INCOME TAX ORDINANCE, 2001

Brief Facts:

The respondent the taxpayer claimed minimum tax at a concessional rate of 0.1% of annual turnover, which was applicable under Clause (45A) for traders of yarn and maintained compliance with Section 113, asserting that the required minimum tax had been paid based on the concessional rate allowed by the SRO.333(I)/2011.

The Taxpayer contended that no withholding tax deductions were required on its transactions under Section 153(1)(a), as explicitly excluded by Clause (45A).

ATIR decided the matter in favour of taxpayer. The Department, being aggrieved from the decision of ATIR, filed an appeal before LHC and raised following questions:

1. Whether on the facts and under the circumstances of the case, the learned ATIR has not erred in law by vacating the orders of lower fora wrongly relying on SRO333(I)/2011 and Clause (45A) of Part IV of 2nd Schedule, ignoring the legal provision contained in Section 113 of the Ordinance?

2. Whether on the facts and circumstances of the case, the learned ATIR was justified to allow the appeal of the Taxpayer ignoring the fact that the Taxpayer admittedly did not fulfill the criteria given in SRO 333(I) of 2011 by not filling tax withholding statements and not paying tax @ 1% on monthly basis?

3. Whether on the facts and under the circumstances of the case, the ATIR has not erred in law by blending two different provisions of law having different scope i.e. Minimum Tax payable under section 113 and Minimum Tax payable by virtue of Clause (45A) which can't be interchanged with each other?

4. Whether the learned ATIR has not erred in law by equating "Minimum Tax" as mentioned in clause (45A) of Part II of the Second Schedule to

Ordinance with the "Minimum Tax" payable under section 113 of the Ordinance ignoring the fact that "Minimum Tax" under various provisions of the Ordinance, such as sections 113, 153 and section 148, have different meanings, interpretations and scope?

Argument:

The appellant department argued that:

- That concessions claimed in terms of clause (45A) of Part IV of Second Schedule of the Ordinance, as amended through SRO No.333(I)/2011 dated 2nd May 2011, simply relate to concessional rates for withholding tax deductions in terms of subsection (1) of section 153 of Ordinance, which concessional rates have neither substituted rate applicable qua minimum tax liability, and nor any deduction otherwise made for withholding purposes was available for claiming adjustment of minimum tax liability, latter being determinable independently under section 113 of the Ordinance.

- Where exemptions / concessional rates for the purposes of section 113 of the Ordinance were intended, such intent was specifically manifested in clauses (11A), (16) and (19) of Part IV of the Second Schedule; however, no such intent was intended or embodied in clause (45A), thereof.

- Circular No.06/2011 provided requisite conditionality of necessary registration, before June 30, 2011, which requirement remained unfulfilled, hence, the respondent taxpayer is not entitled to claim any concession qua concessional rates.

Decision

LHC decided the matter in favour of the respondent the taxpayer as follows:

- Section 153(1)(a) specifically excludes certain instances of withholding tax deductions, meaning no deductions were allowed in the given circumstances. Consequently, the issue of classifying such deductions as final tax under Section 153(3) did not arise.

- The respondent's income streams were covered under both normal and final tax regimes. LHC emphasized that deduction of withholding tax under Section 153(1)(a) and claiming the benefit of the proviso to Clause (45A) were mutually exclusive.

- The ATIR correctly applied Clause (45A), which allowed for concessional rates for calculating minimum tax liability. The LHC found that the ATIR did not overlook Section 113.

- ATIR properly interpreted the provisions of the Ordinance and the relevant SRO, concluding that no illegality or error had been committed.

12. LEGISLATIVE AMENDMENTS CAN REVOKE VESTED RIGHTS UNLESS EXPLICITLY BARRED BY THE CONSTITUTION

(2024) 130 TAX 487

SUPREME COURT OF PAKISTAN

THE COMMISSIONER INLAND REVENUE
VS
MEKOTEX (PVT) LIMITED & OTHERS

APPLICABLE SECTIONS: SECTION 65B OF THE INCOME TAX ORDINANCE, 2001, SECTION 107 OF THE INCOME TAX ORDINANCE, 1979, SECTION 6 OF THE GENERAL CLAUSES (AMENDMENT) ACT, 1997 AND ARTICLES 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 142 OF THE CONSTITUTION OF PAKISTAN

Brief Facts:

This case involved a challenge to the amendments made to Section 65B of the Income Tax Ordinance, 2001 (ITO) by the Finance Act, 2019, which altered the tax credit benefit for companies investing in industrial plant and machinery.

Section 65B allowed a 10% tax credit for companies investing in plant and machinery for industrial purposes. The eligible period was extended multiple times by successive Finance Acts, culminating in an ending date of 30 June 2021.

Through Finance Act, 2019, rate for the tax credit reduced from 10% to 5% for the tax year 2019 and moved the ending date for eligibility back to 30 June 2019.

Appellants with investments made before 30 June 2019, but installed by 30 June 2021, argued that the amendments violated their vested rights and fundamental rights under the Constitution.

Two categories of appellants were identified:

First Category: The appellants that completed both the purchase and installation of plant and machinery before June 30, 2019.

Second Category: The appellants that purchased machinery by June 30, 2019, and completed installation by June 30, 2021.

The taxpayers challenged the constitutionality thereof by filing the writ jurisdiction before the SHC. The SHC concluded that two categories of taxpayer companies had protected vested rights that could not be vitiated by the 2019 amendments. Consequently, the SHC allowed the writ petitions, declaring that for these two categories of taxpayer companies, the amended provisions of subsection (2) of Section 65B should be "read to reflect that the provisions of subsection (1) shall apply if the plant and machinery was purchased before June 30, 2019 and installed before June 30, 2021". SHC struck down the proviso added to subsection (1), which had reduced the rate of tax credit from 10% to 5% for the tax year 2019.

Being aggrieved, the tax department filed petition before the SC and raised following:

- Did the amendments violate vested rights?
- Did the second category of taxpayers have vested rights to the tax credit?
- Were transactions of the first category "past and closed"?
- Did the amendments infringe upon fundamental rights under Articles 18, 23, 24, and 25 of the Constitution?

Decision

The appeals were partly allowed, and the SHC's decision was modified accordingly as follows:

- The SHC erred in holding that vested rights cannot be vitiated by retrospective amendments. Legislative amendments can revoke vested rights unless explicitly barred by the Constitution.
- The respondents in the second category did not acquire vested rights because the benefit was conferred through legislation, and amendments were also made legislatively. The doctrine of promissory estoppel was inapplicable since it does not operate against legislative actions.
- Tax credit transactions for the first category were not "past and closed" as the legislative intent to reduce the rate was clear in the 2019 amendments. The proviso expressly reduced the tax credit rate from 10% to 5% for 2019.
- The proviso reducing the tax credit infringed the right to equality (Article 25) of the first category of respondents, as it discriminated against them. However, the amendments to the ending year (sub-section 2) did not violate the fundamental rights of the second category of the respondents.
- The proviso to subsection (1) of Section 65B (reducing the tax credit rate to 5%) was struck down for violating Article 25.

- The amendments to subsection (2) (changing the ending year) were upheld as constitutional and applicable to the second category of respondents.

13. TAX AUTHORITIES MUST STRICTLY ADHERE TO STATUTORY REQUIREMENTS WHEN ISSUING NOTICES UNDER THE ORDINANCE.

2023 PTD 505 = (2024) 130 TAX 629

ISLAMABAD HIGH COURT

PAKISTAN OILFIELDS LIMITED THROUGH MANAGING DIRECTOR V/S FEDERATION OF PAKISTAN THROUGH MINISTRY OF FINANCE, ISLAMABAD AND OTHERS

APPLICABLE SECTIONS: SECTOIN 122(5A) & (9) OF THE INCOME TAX ORDINANCE, 2001; ARTICLES 199 OF THE CONSTITUTION OF PAKISTAN, 1973

Brief Facts:

The petitioner, engaged in petroleum exploration and production, filed its income tax return for Tax Year 2016. The return was deemed as an assessment order under Section 120 of the Ordinance.

A show-cause notice was issued under Section 122(9), read with Section 122(5A) of the Ordinance, alleging that the assessment was erroneous and prejudicial to the interest of revenue. The notice identified several discrepancies.

The petitioner challenged the validity of the notice through a constitutional petition under Article 199 of the Constitution of Pakistan, arguing that the notice failed to meet the statutory requirements provided under Section 122(5A) of the Ordinance.

Argument:

Portioner argued that:

- It is sine qua non for issuance of an amended assessment under subsection (5A) of section 122 of the Ordinance that assessment order is erroneous and is prejudicial to the interest of the revenue.
- Where there are two interpretations possible, the matter cannot be termed as erroneous so as to be prejudicial to the interest of the revenue.
- The term erroneous and prejudicial to the interest of revenue was elaborated by the SHC in case reported as 2004 PTD 330. It was submitted that on the touchstone of the interpretation handed down in the said judgment, the assessment order in case of petitioner cannot be termed as erroneous so as to be prejudicial to the interest of the revenue.
- Reliance placed on reported judgement as 1992 PTD 932 that mere erroneous order without causing any prejudice to the interest of the revenue does not attract subsection (5A) of section 122 of the Ordinance.
- Reliance was also placed on the decision reported as 2022 PTD 413, it was contended that before issuance of notice, the relevant officer was required to apply mind and decide that assessment order is erroneous, hence prejudicial to the interest of revenue, which is not borne out from the show-cause notice.

The department argued that:

- The instant petition is not maintainable in as much as it impugns a show cause notice, which is nothing but merely a notice to explain the position and no prejudice has been caused to the petitioner by issuance of the notice, hence petition be accordingly dismissed. In support of its contention, the department placed reliance on judgement reported as 2022 SCMR 92.

Decision

IHC decided the matter as follows:

- The phrase ”prejudicial to the interests of the revenue” has to be read in conjunction with an

erroneous order passed by the Officer. Every loss of revenue as a consequence of an order of the Officer cannot be treated as prejudice to the interests of the revenue.

- The notice did not comply with the mandatory requirements of Section 122(5A) and was therefore invalid.
- The matter was remanded back to the officer to reassess whether the assessment order was erroneous and caused prejudice to the revenue. The authority was directed to proceed only if these conditions were met.
- Tax authorities must strictly adhere to statutory requirements when issuing notices under the Ordinance. It also underscores the limited but essential role of constitutional courts in ensuring that statutory powers are exercised lawfully.

Sales Tax Act, 1990

A. Notifications:

1. S.R.O. 2082(1)/2024 dated December 31, 2024

In 2020, Chapter XIV-BA was introduced to the Sales Tax Rules, 2006 (ST Rules) to provide a mechanism for video surveillance for electronic monitoring of production in real time for Third Schedule goods or any other goods notified by the Board through a specific order.

Through the instant notification, FBR has made amendments in the aforesaid chapter to the ST Rules to incorporate the innovative Digital Eye system. The updated provisions now provide that electronic monitoring of production of goods by FBR will now utilize a combination of video surveillance, video analytics, and digital eye technologies.

Multiple rules have been updated to exclude Digital Eye procurement from routine vendor authorization and approval procedures as applicable for other surveillance tools, ensuring its swift and efficient implementation.

These changes aim to prioritize the integration of Digital Eye without delays. The FBR's decision to integrate the Digital Eye system reflects its commitment to adopting innovative technologies for efficient tax administration. These amendments to the Sales Tax Rules, 2006, create a robust framework for monitoring and enforcing compliance.

As per news sources, these amendments have been brought mainly to monitor production of all sugar mills and that after installation of digital eye solution at all sugar mills, the FBR, directorate of intelligence and respective fax office can monitor and record production at their offices through video surveillance .

B. Reported Decisions

1. THE HIGH COURT ALLOWED THE PETITIONER'S CLAIM FOR TAX EXEMPTION BASED ON COMPLIANCE WITH CGO NO.8/2021.

2024 PTD 1501
PESHAWAR HIGH COURT

M/S AITIMAD POLYMA PIPE
VS
CHIEF COMMISSIONER AND OTHERS

Applicable provisions: Entry no 151 of Sixth Schedule to the Sales Tax Act, 1990 (the Act)

Brief facts:

Messrs. Aitimad Polyma Pipe is a small industrialist operating a small plastic manufacturing unit at Bara Khyber District, formerly part of the Federally Administered Tribal Areas (FATA). The petitioner imported raw materials for its manufacturing processes having annual imports below Rs. 200 million. As per the 25th Constitutional Amendment, the Economic Coordination Committee (ECC) approved tax exemptions and incentives for businesses operating in the erstwhile FATA for a period of five years. Businesses were required to register with the Federal Board of Revenue by September 30, 2018, to avail these benefits.

Notifications were issued by the FBR, particularly SRO No. 1212(I)/2018, exempting certain goods from sales tax until June 30, 2023. FBR also issued Customs General Order (CGO) No. 08/2021, which allowed small manufacturers with annual imports under Rs. 200 million to clear their consignments at customs ports. Despite meeting the stipulated criteria and expressing willingness to comply with all relevant conditions, the petitioner faced refusal from the authorities to release its imported raw materials, which led to the filing of the writ petition before the High Court.

The petitioner inter alia contended that respondents are required to clear the consignments of raw material against post dated cheques in terms of entry No.151 of Sixth Schedule to the Sales Tax Act, 1990, to ensure the delivery of the imported raw materials consignments at the unit of petitioner at Bara Khyber District and finally to issue consumption certificate by RTO, Peshawar as laid and enumerated in the judgment of this honourable Court upheld by the apex Supreme Court of Pakistan.

Decision:

The Peshawar High Court disposed of the writ petition in favour of the petitioner, facilitating the release of the stuck consignment.

The Court reaffirmed the FBR's jurisdiction to issue CGOs and emphasized the need for fair implementation of tax exemption policies. The Court noted that the petitioner qualified as a small industrialist under the relevant regulations and had adhered to the necessary compliance requirements.

The Court held the refusal of the authorities to release the petitioner's consignment as unlawful and discriminatory, based on the clear policy framework set forth by the FBR for businesses in the erstwhile FATA. Consequently, the High Court directed the authorities to release the petitioner's raw material consignment, contingent upon the petitioner meeting all specified conditions in the CGO and related circulars.

Sindh Sales Tax Special Procedure (Withholding) Rules, 2014

A. Notifications

1. No. SRB-3-4/70/2024 dated December 19, 2024

Previously, as per clause (f) of sub-rule (1) of Rule 1 read with sub-rule (5) of Rule 3 to the Sindh Sales Tax On Services Special Procedure (Withholding) Rules, 2014, certain services were subject to 100% sales tax withholding by any recipient of service including advertisement, renting of immovable property, auctioneers, services of transportation or carriage of goods by road under tariff heading 9838.0000 excluding transportation services rendered through pipelines, specialized car carriers, or logistic providers with fleets of 25 or more vehicles, even where the service provider is registered and charges sales tax through valid sales tax invoice.

As a result of amendments introduced in the above said rules vide the instant notification, transportation services provided by registered service providers are no longer subject to specific 100% withholding. As a result, such services are now subject to general 20% withholding as applicable on other services.

2. No. SRB-3-4/71/2024 dated December 19, 2024

Through the aforesaid notification, SRB has prescribed rules which are introduced as the Sindh Sales Tax Special Procedure (Collection Agent) Rules, 2024 effective from January 01, 2025.

These regulations shall apply in relation to collection and payment of sales tax on the specified services for which recipient of the service based in the Province of Sindh, makes payment through a 'collection agent'.

a. Specification of services and collection agents

The specified services, collection agents and applicable rates for collection of tax are mentioned as under:

Description of Service	Collection Agent	Tariff Heading	Rate of Tax	Collection Rate
Services provided or rendered by restaurants (including home chefs) registered under section 24, 24A or 24B of the Act.	Food delivery platforms/third party food delivery service providers	9801.2000 9801.6000	(a) 8% without input tax adjustment where payment against tax invoice for the services is received through debit or credit card, mobile wallets or QR code scanning; (b) 15% for others	50% of the amount of sales tax as payable at the rates specified in precedent column
Services provided or rendered by restaurants (including home chefs) not registered under section 24, 24A or 24B of the Act.			15%	1% of the amount of sales tax as payable at the rates specified in precedent column

b. Registration of collection agent

The collection agent, if not already registered, shall obtain registration under the Act.

c. Mode and manner of collection, reporting and deposit of sales tax

The collecting agent shall charge and collect the sales tax, from recipient of aforesaid specified services including any applicable commission, at applicable rate as specified above on the gross value of specified services.

The tax so collected shall be reported by collection agent in its Annexure C of its sales tax return for respective tax period as an output tax indicating the relevant tariff heading of the specified service. The amount of tax so involved shall be declared in row `14b' of monthly return and shall be deposited by the collection agent, without any adjustment or deduction in Government head by 15th of the month following the month in which the amount of tax is collected.

Service providers through the collection agents shall file their tax returns as prescribed in Chapter III of the Sindh Sales Tax on Services Rules, 2011. In their tax returns, they should declare the total sales value excluding tax in Annex-C, attributed to the collection agent, and report the amount withheld at source per the collection rate outlined.

d. Application of other provisions

All the provisions of the Act, rules and notifications made thereunder shall apply *mutatis mutandis* in relation to payment of tax, short payment of tax, assessment of tax, recovery of tax, e-filing of returns, maintenance of records, imposition of penalty and default surcharge.

3. No. SRB-3-4/71/2024 dated December 19, 2024

Through the notification, SRB has made amendments in the special procedure rules specified for Customs Agents under Rule 37 of the Sindh Sales Tax on Services Rules, 2011.

The amendment provides for specification of minimum value of taxable service in relation to the services provided by Customs Agents for filing the customs-related documents as mentioned in the table below detailing the minimum benchmark value per document:

S No.	Document	Minimum Value of Taxable Services
1	Goods Declaration, other than the Declaration specified at S. No. 5 below, filed for home consumption or into-bonding in terms of section 79 of the Customs Act.1969	Rs.8,500
2	Goods Declaration, other than the Declaration specified at S. No. 5 below, filed for ex-bonding in terms of section 104 of the Customs Act,1969	Rs.1,750
3	Goods Declaration, other than the Declaration specified at S. No. 5 below, filed for export in terns of sections 105 or 131 of the Customs Act.1969	Rs. 2,500
4	Application filed for issuance of permit for transshipment or transit of goods in terms of sections 121 and 127, respectively, of the Customs Act, 1969	Rs.1,750
5	Goods Declaration filed under sections 79, 104, 105, 131 or 139 of the Customs Act, 1969 in relation to import or export or clearance of goods or of un-accompanied baggage through Air Freight Unit (AFU) at any customs airport	Rs.I,750
6	Rebate or duty drawback claims filed at any customs station in relation to export of goods.	0.25% of the amount of relation to export of goods rebate/duty drawback claimed

Punjab Sales Tax on Services Act, 2012

A. Reported Decisions

1. LHC ANNULLED THE ATIR'S UNJUST CONDITION FOR DEPOSITING ONE-THIRD OF TAX, CONSIDERING IT ARBITRARY AND WITHOUT AUTHORITY, WHILE REINFORCING THE RIGHT TO CONSTITUTIONAL PETITIONS AGAINST INTERLOCUTORY ORDERS.

2024 PTD 1469
LAHORE HIGH COURT

M/S. FAISALABAD ELECTRIC SUPPLY COMPANY LTD
VS
THE CHAIRMAN PUNJAB REVENUE AUTHORITY AND OTHERS

Applicable provisions: Section 67(3), 67A and 68 of the Punjab Sales Tax on Services Act, 2012 (the Act)

Brief facts:

In the instant case, Faisalabad Electric Supply Company Ltd (FESCO) filed a Writ Petition against a condition imposed by the Appellate Tribunal of the Punjab Revenue Authority. The Tribunal's order required the petitioner to deposit one-third of the disputed withholding tax amount within 30 days in order to stay the recovery of the remaining tax. The petitioner challenged the legality of this condition with the contention that the ATIR had acted outside its powers by imposing such an arbitrary and unjustifiable requirement. The petitioner emphasized that under section 67 of the Punjab Sales Tax on Services Act, 2012, the Tribunal has the authority to grant a stay without imposing deposit conditions.

Conversely, the respondents contended that the Writ Petition was not maintainable, asserting that the petitioner had an alternative remedy available through a tax reference as per Section 67A of the Punjab Sales Tax on Services Act. They maintained that since the order in question was interlocutory, it could not be challenged under Article 199 of the Constitution. The respondents also defended the ATIR’s discretion to impose conditions for stay as a reasonable exercise of judicial authority.

Decision:

The Court held that the reference filed under Section 67A was not maintainable due to the ATIR's failure to communicate its order, which is a requirement of the law. Furthermore, the Court also clarified the issue of the maintainability of constitutional petitions against interlocutory orders. It was determined that while there is no absolute bar against such petitions, they are permissible primarily in cases where the order is made without jurisdiction or in violation of fundamental rights. The Court noted that in instances where the ATIR’s actions might constitute a flagrant violation of law or manifest injustice, a constitutional petition could be justified.

On the substantive issue of the imposed condition, the Court found the imposed condition to be arbitrary and lacking justification, as it failed to explain the basis for requiring the deposit of one-third of the disputed tax. Hence, the condition was set aside as being imposed without lawful authority. The Court directed the Appellate Tribunal to decide the appeal within ninety days as stipulated in Section 67(3) of the Punjab Sales Tax on Services Act.

The Court concluded with no order as to costs, reflecting a commitment to uphold the principles of justice and ensure effective access to legal recourse for the petitioner.

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