YOUSUF ADIL

Tax Bulletin

July 2022

50 Years
1972 ~ 2022
PACE ALIGNED...

Foreword

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

This publication 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
July 15, 2022

Contents

Income Tax Ordinance, 2001

Direct Tax

A. SROs/Notification

Income Tax Return Forms

SRO. 820/(I)/2022 dated June 21, 2022, and SRO. 978/(I)/2022 dated June 30, 2022

The draft forms of return of income for Tax Year 2022 were issued through the SRO. 820/(I)/2022 dated June 21, 2022, for salaried individuals, Association of Persons, Business Individuals, and Companies which were later finalized through the SRO.978/(I)/2022 dated June 30, 2022.

B. Reported Decisions

i. (2022) 125 TAX 223
Appellate Tribunal Inland Revenue
Soneri Bank Limited Vs Commissioner Inland Revenue

Applicable Sections: Sections 34, 67, 122(5A) and Rule 1(c) of the Seventh Schedule to the Income Tax Ordinance, 2001 (the Ordinance)

Brief Facts:

The taxpayer is a scheduled bank registered under the Banking Companies Ordinance, 1962, and working under the rules and regulations framed by the State Bank of Pakistan. The assessing officer passed the orders under section 122(5A) of the Ordinance for Tax Years 2011 and 2012 against which appeals were filed by the Bank before the CIRA. Being dissatisfied with CIRA's orders, cross-appeals were filed by the taxpayer and the department before the ATIR on the below issues.

- Reversal of provision against non-performing advances for creating provision under Rule 1(c);
- Allowable limit of 'provision against non-performing advances' under Rule 1(c), i.e. Net advances vs the gross amount of advances to be considered for creating provision under rule 1(c) of the Seventh Schedule;
- Disallowance of expenses claimed on account of 'Provision for diminution in the value of investment' and 'Provision against other assets';
- Allocation of expenses to income derived from 'Capital Gains and Dividend Income' treating these sources distinct from income from business.
- Disallowance of expense claimed under the head of 'Charge for Defined Benefit Plan'.

Decision:

The ATIR decided the above issues as follows:

- The ATIR held that the provision against non-performing advances is to be made without taking into account the reversal of the provision against non-performing loans and advances. Earlier the officer allowed the deduction on account of the provision against non-performing advances in terms of Rule 1 (c) of the Seventh Schedule on the basis of net provision i.e. net of related reversals against the admissible limit. The CIRA endorsed the departmental position on the matter and upheld the addition.

  Moreover, the officer applied the law retrospectively to the years under consideration as through the Finance Act, 2019, an explanation was inserted to the Rule 1(c) whereby it was

clarified that provision for advance and off balance sheet items allowed under this clause shall be exclusive of reversals of such provisions. The ATIR rejected the retrospective application of the law.

- The ATIR decided the matter for allowability of 'provision against non-performing advances' in terms of Rule 1(c) in **favor** of the taxpayer and held that, the figure of total gross advances is to be adopted. A similar order was passed in the case of the taxpayer reported as 2013 PTD 1429. Earlier, the Bank adopted the gross advances for the allowable limit of 'provision against non-performing advances' for Rule 1(c), whereas the officer had reworked the provision while adopting the figure of advances net of provision.

- The ATIR held that provision for diminution in the value of the investment is a quantified provision with no corresponding payables, therefore, provisions of section 34(3) specifically relating to the payables are not attracted in the instant case. The ATIR, therefore, deleted the additions.

- The ATIR agreed with the stance of the taxpayer that the apportionment of expenses to capital gains and dividend income in the case of the bank was not applicable in the particular tax years as the rules 6(A) and 6(B), relating to such apportionment, were introduced in the law through the Finance Act 2014 and were omitted through the Finance Act, 2015. Earlier the CIRA while disposing the appeal relating to the tax year 2011, restricted such allocation to financial charges only, whereas, in the case of tax year 2012, decided the matter in favour of the Bank.

- The ATIR remanded back the matter of the defined benefit plan whereby the assessing officer disallowed the expense on the basis that the same does not meet the criteria of section 34(3) of the Ordinance. The matter was remanded back with the direction to assess whether the provision recognized is in line with the calculation carried out by the actuary. Earlier the CIRA had deleted the addition made by the officer.

ii. 125 TAX 237
Appellate Tribunal Inland Revenue
M/s Jahangir Siddiqui & Sons VS Commissioner Inland Revenue

Applicable Sections: Sections 4, 113, 120, 121, and 122 of the Ordinance

Brief Facts:

The assessment order was passed by the assessing officer (ADCIR) by charging Super Tax under section 4B and Alternate Corporate Tax (ACT) under section 113C of the Ordinance on reversal of the impairment in the value of an investment.

The Appellant filed an appeal against the order of the ADCIR which was remanded back by the CIRA. In the remand back proceedings the ADCIR, after considering the replies submitted by the Appellant, concluded that the income of the Appellant was less than the threshold specified for levy of super tax under the Ordinance. However, he proceeded to charge ACT. Being aggrieved by the decision of the ADCIR, the Appellant filed an appeal before the CIRA, who maintained the decision of the ADCIR.

Decision:

The ATIR decided the matter of chargeability of under section 113C of the Ordinance in favor of the Appellant on the basis that reversal of impairment on the value of investments is neither income nor accounting profit within the parameters of Section 113C, therefore, action taken through the amended assessment proceedings is illegal and without jurisdiction.

It was held by the ATIR that the figure representing reversal of impairment in the value of the investment is nothing but a notional figure and therefore, should not be treated as capital gain or income in any way for levying super tax. The ATIR further observed that no loss was claimed by the appellant in the tax years when the impairment was provided, therefore, it should not be treated as income in the year of its reversal.

iii. 125 TAX 277 Appellate Tribunal Inland Revenue M/s Coca Cola Export Corporation Pakistan Branch VS Commissioner Inland Revenue (CIR)

Applicable Sections: Sections 67, 105, 120, 122(5A), 148, 154 and 169 of the Ordinance Rule 13 of the Income Tax Rules, 2002 (the Rules)

Brief Facts:

The order passed by the ADCIR under section 122(5A) of the Ordinance was challenged before the CIRA by the Appellant. Later being aggrieved by the decision of the CIRA, the tax department and the taxpayer filed cross appeals before the ATIR.

Following issues were taken up and decided in the order of the ATIR:

- Disallowance of apportionment of expenses made by the taxpayer on the basis of gross profit instead of gross receipts. The CIRA upheld the decision of the ADCIR.

- Whether or not the taxpayer was required to offer export sales to tax in terms of section 154 especially in the circumstances that taxpayer had already discharged the related tax liability at the time of import under section 148 of the Ordinance. The ADCIR rejected the stance of the taxpayer which was also upheld by the learned CIRA.

- Exchange loss suffered by the taxpayer during the year was disallowed by the ADCIR and subsequently confirmed by the CIRA.

- Disallowance by the ADCIR of head office/pro-rata expenses claimed by the taxpayer. The disallowance was made on the grounds that the head office/pro rata expenses include expenses which are not in the nature of 'general administration' or 'executive expenditure' as allowed under section 105(3) of the Ordinance. Decision of ADCIR was upheld by the learned CIRA.

- Disallowance of marketing expense claimed by the taxpayer on the ground that same were of enduring nature and hence were required to be amortized in terms of provisions of section 24 of the Ordinance and be allowed in the subsequent years. The CIRA decided the matter in favour of the taxpayer.

Decision:

The issues specified above are decided by the ATIR in the manner discussed below:

- The ATIR decided the matter related to apportionment of expenses in favour of the taxpayer by following its earlier judgment decided in the taxpayer's own case for the Tax Years 2003, 2006 and 2011. Earlier the ATIR held that the basis adopted by the taxpayer for apportionment of expenses i.e. on the basis of gross profit cannot be questioned unless the tax authorities conclude that the basis adopted by the taxpayer is not reasonable.

- The ATIR held that the export sales are subject to final tax under section 154 of the Ordinance and tax collected thereunder cannot be claimed as advance tax /refundable. The ATIR further held that there is no question

of double taxation of the same income as both import and export represent separate and distinct transactions and likewise, for apportionment purposes, the related export revenues cannot be included under 'imported sales', the same being not in accordance with section 67 read with Rule 13 of the Income Tax Rules, 2002.

- The ATIR allowed the exchange loss on mercantile basis in the light of its earlier decisions in taxpayer's own case for the tax years 2008 and 2011 and vacated the orders of Taxation Officer and CIRA. The ATIR accepted the appellant's argument that since the subject exchange loss admittedly relates to liabilities on account of revenue expenditure i.e. import of raw material, therefore, there was no justification to disallow the same. ATIR further held that the disallowance of exchange loss merely on the ground that the same is notional would actually frustrate the accrual based accounting system which the authority cannot endorse.

- The ATIR upheld the actions of the CIRA and the ADCIR in a summary manner (without discussing the matter at length) and confirmed the disallowance of the head office expenses.

- In respect of amortization of marketing expense, the ATIR decided the issue in favor of the taxpayer i.e. upheld the decision of the CIRA and followed its earlier judgment decided in favour of the taxpayer for the tax year 2008. The ATIR stated that no justification was given by the ADCIR for disallowing the marketing expense and rather suggesting amortization of marketing expenses and held that the action was based on mere assumptions so could not sustained in the eyes of law.

iv. 125 TAX 403 Appellate Tribunal Inland Revenue M/s Tariq Food VS Commissioner Inland Revenue

Applicable Sections: Sections 121, 122, 127, 131, 214C and 221 of the Ordinance.

Brief Facts:

The taxpayer's case for the Tax Year 2012 was selected for an audit under section 214C of the Ordinance. The assessing officer passed an order by alleging that no response was submitted by the taxpayer and, therefore, assessed the income of the taxpayer, disallowed purchases, and partly disallowed traveling and other expenses claimed.

The department filed an appeal before the ATIR and subsequently also filed rectification application under section 221 of the Ordinance before the CIRA.

The question as raised by the appellant and decided in the appeal by the ATIR was that whether two parallel remedies could be availed by the department simultaneously on the same cause against the impugned order?

Decision:

The ATIR held that it is an established principle of law that when an appeal is pending before a superior forum, an application for rectification on the same subject at the same time cannot be entertained by a subordinate forum. The Department nor the CIRA clarified that an appeal is pending before the ATIR with regard to the same subject matter nor informed the ATIR that the rectification application was decided by the CIRA. Since the matter was pending before the ATIR, therefore, the order of the CIRA under section 221 of the Ordinance was dismissed by the ATIR and held that two parallel remedies cannot be availed for the same relief.

v. 125 TAX 354 Appellate Tribunal Inland Revenue M/S Brand Activate (Private) Limited Vs Commissioner Inland Revenue

Applicable Sections: 114, 114(6A), 122, 122(1), 122(5), 122(9), 174, 177, 177(3), 177(5), 177(6) & 177(6A) of the Ordinance

Brief Facts:

The appeal was filed before the ATIR by the taxpayer on the following grounds, inter alia, including that:

i. Opportunity of depositing the amount of tax was not given to the taxpayer during audit proceedings and, therefore, it was seriously deprived of the statutory right provided in the proviso to section 114(6A) of the Ordinance.

ii. The DCIR failed to issue an audit report under section 177(6) of the Ordinance, after concluding audit proceedings initiated under section 177 Ordinance.

Decision:

The ATIR decided the appeal in **favor** of the taxpayer and vacated the Order of the DCIR and CIRA on legal grounds only, without adjudicating the factual grounds, and held as follows:

i. It is clear that no proceedings for amendment of deemed assessment can be initiated without obtaining the taxpayer's explanation on the Audit Observations. The department is under legal and statutory obligation, prior to further proceeding with the amendment process contemplated under section 122 of the Ordinance to obtain explanation /clarifications on all the issues raised during the audit from the taxpayer which in the instant case was not done.

ii. Opportunity of depositing the amount of tax, if not given to the axpayer during audit proceedings, or before the issuance of notice under section 122(9) of the Ordinance, it would seriously deprive it of its statutory right enshrined in the proviso to section 114(6A), which is not permissible under any canon of interpretation.

iii. Recourse available to the officer is to proceed under section 177(6), which has not been done in the instant proceedings.

vi. (2022)125 TAX 344 Supreme Court of Pakistan Commissioner Income Tax Vs M/S. Askari Bank Limited

Applicable Sections: 23(1) & 23(5) of the Ordinance

Brief Facts:

The question of law before the Supreme Court was related to the claim of initial allowance on the previously used building. The department filed the petition before the Supreme Court arguing that the phrase "for the first time in a tax year" means the use of the building for the first time in Pakistan meaning thereby if the building has been previously used in Pakistan by someone else, the other subsequent users would not be entitled to claim the initial allowance on the Building.

Decision:

The Supreme Court **dismissed** the petition of the department and upheld the judgment of the Islamabad High Court that earlier held that the building is entitled to an initial allowance, irrespective of its previous use in Pakistan by other users. The reference of the phrase in section 23 "for the first time in a tax year" means the first time usage of the building by the taxpayer and not the first time usage in Pakistan.

Note: It may be noted that through Finance Act, 2019, initial allowance in respect of building was omitted from the Third Schedule where rates of initial allowance are specified. In order to harmonize the law, through the Finance Act 2022, immovable property and any alteration made thereto have also been included in the negative list of assets on which initial allowance would not be allowed.

vii. 125 TAX 341
Appellate Tribunal Inland Revenue M/S. Syed Tariq Ayub Bukhari Vs Commissioner Inland Revenue

Applicable Sections: 3, 9, 11, 39, 39(3), 120, 122(5A), 122(9) & 129(1) of the Ordinance - Circular No. 7(2) DT - 14/94, dated 01.02.1994

Brief Facts:

An appeal was filed by the taxpayer (the Appellant) before the Appellate Tribunal Inland Revenue (the ATIR) against the order of the Commissioner Inland Revenue Appeals (CIRA) whereby the earlier order passed by the Additional Commissioner Inland Revenue (the ACIR) under section 122(5) of the Ordinance was confirmed.

The appeal was filed by the taxpayer on the following grounds including that:

i. The ACIR was not justified to treat receipt of payment from State Life Insurance on maturity as income from other sources.

ii. The ACIR did not take cognizance of the fact that the gifts received under consideration were genuine and made from known sources by the donors.

iii. The ACIR erred in passing order on matters which were not mentioned in the show-cause notice.

Decision:

The ATIR decided the appeal in **favour of the taxpayer**, vacated the Order of the ACIR and held as follows:

i. Tax shall be imposed on the taxable income earned in a year by a person. Taxable income is defined as total income earned in a year reduced by the deductible allowances and total income is defined as a person's income under all heads of income for the year. For an income to be taxable, it must fall under the five heads of income i.e. Salary, income from property, income from a business, capital gains, and income from other sources. If the income cannot be classified under any of the five heads, then such income could not be taxed under the Ordinance.

There is a long list of incomes from other sources defined in section 39 of the Ordinance and after careful perusal of the said section it is held that receipt of payment from State Life Insurance is not included in the list mentioned therein, therefore, it is concluded that the ACIR was not justified to treat this receipt as income from other sources.

ii. Based on a perusal of available records, gifts through cheques are in compliance with Section 39(3) of the Ordinance. Whereas, cash gifts between the family members is a common practice between family members especially those who are living under a single roof to give each other cash gifts, and the concept of oral gifts is also duly recognized in our legal system.

iii. It is a settled law that any order of adjudication passed on a ground that was not mentioned in the show-cause notice is palpably illegal and void on the face of it and, therefore, the impugned order of the ACIR is annulled on this score and respective additions are deleted.

Sales Tax Act, 1990

A. SRO

i. SRO. 729(I)/2022 – dated June 02, 2022

Through this SRO, the Federal Government, using its power conferred under section 13(2)(a) of the Sales Tax Act, 1990 (ST Act), has provided retrospective exemption from applicability of sales tax on import of following goods used for medical purposes, with effect from November 09, 2021 till June 30, 2022:

S. No.	Description
1	Oxygen gas
2	Cylinders (for oxygen gas)
3	Cryogenic tanks (for oxygen gas)

B. Sales Tax General Orders (STGOs)

i. STGO No. 18 of 2022, dated June 04, 2022

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

FBR has adopted practice of notifying retailers (who have not yet integrated with FBR's system) as Tier-1 Retailer [2(43A) of Sales Tax Act, 1990] through STGO. This STGO is issued every month in the first 5 days of the calendar month with effect from August 3, 2021.

Vide the subject STGO, a list of further 131 persons identified as Tier-1 Retailers, has been placed on FBR's web portal requiring them to integrate with FBR's system by June 10, 2022. In case of failure to make the requisite integration by such notified persons, their adjustable input tax for the month of May 2022 would be disallowed up to 60% as per sub-section (6) of section 8B of the ST Act, without any further notice or proceedings, thus creating tax demand by the same amount.

Any of the notified retailer who claims itself to have been wrongly notified as Tier-1 Retailer and whose input tax adjustment has been reduced by 60%, may file online application on IRIS portal for removal of this restriction following the procedure laid down in STGO No. 17 of 2022, dated May 13, 2022 and the Commissioner would decide the case in this regard.

ii. STGO No. 19 of 2022, dated June 27, 2022

Implementation of Track and Trace System – Cement Bags

Through this SRO, FBR using powers conferred under section 40C(2) of the ST Act read with Rule 150ZF of the Sales Tax Rules, 2006 (ST Rule), has required manufacturers or importers of cement to affix stamps/Unique Identification Markings (UIMs) with cement bags, which are to be obtained from FBR's licensee M/s. AJCL/MITAS/Authentix Consortium, with effect from October 01, 2022.

C. Reported Decisions

(2022)125 TAX 340
Supreme Court
Commissioner Inland Revenue V/S Sarghoda Spinning Mills Limited

Applicable Sections: 2(14), 7, 8, 8A, 10, 22, 26, 36, 46, 47, 47(1) of ST Act

Brief Facts:

Officer Inland Revenue deferred the sales tax refund claimed by the Respondent for the tax period of December 2005 on the plea that such invoices were issued by the Black Listed Suppliers and no sales tax was deposited into the government treasury, therefore, the refunds cannot be allowed.

Commissioner Appeals maintained the order of the Department. After dismissal of appeal by the Commissioner Appeals, the Company filed appeal before Appellate Tribunal who passed the judgment in favor of the taxpayer on the ground that the department failed to refer or produce any document or evidence to establish the fact that the invoices issued by the suppliers were fake or forged.

The Department filed a sales tax reference before the High Court to decide the question of law that "*could the Tribunal allow refund based on invoices where sales tax was not deposited in the government treasury by the respective supplier".*

The High Court declined the reference on following grounds:

i. The Tribunal is final fact finding body and its findings are conclusive. The High Court can not interfere unless it is shown that there was no evidence relied upon by the Appellant;

ii. As per section 47(1) of the ST Act, the question of law must arise from the decision of the Appellate Tribunal otherwise any such reference is not maintainable; and

iii. In the instant case, no question of law arises as the Tribunal passed the order on failure of the department to prove that tax invoices from suppliers were illegal.

Review petition was filed before Supreme Court against the said judgment of High Court.

Decision:

The Supreme Court took the same view as of the High Court and dismissed the petition.

(2022)125 TAX 426
Lahore High Court
Muhammad Arif Ice Factory V/S Federation of Pakistan

Applicable Sections: 3, 3(1A), 3(2), 3(5), 3(6), 14, 14(1) of ST Act

Brief Facts:

The petitioner was engaged in production of Ice, which is exempt under section 13 read with Serial No. 27 of the Sixth Schedule to the ST Act.

Lahore Electric Supply Company (LESCO) and Sui Northern Gas Pipelines Limited (SNGPL) charged further tax at the rate of 3% under section 3(1A) of the ST Act and extra tax at the rate of 5% in pursuance of SRO No. 509(I)/2013, dated: June 12, 2013 issued under section 3(5) of the ST Act, on account of petitioner's non-registration for sales tax under the ST Act.

The petitioner challenged both taxes in the Lahore High Court claiming that it is engaged in supply of exempt goods only and not the taxable goods therefore it is not required to be registered under the ST Act and accordingly is not liable to pay further sales tax or extra sales tax.

Decision:

The matter is decided in favor of the Petitioner with following observations:

i. Further tax or extra tax is not intended to apply on the persons who are engaged in making only exempt supplies and are therefore not liable to obtain registration under the ST Act.

ii. Purpose of levying extra tax is to charge tax on those persons who are liable to be registered under the ST Act but have failed to do so.

iii. Levying such taxes on the person, who is not liable to be registered, is in violation of Article 25 of the Constitution of the Islamic Republic of Pakistan.

(2022)125 TAX 377
Lahore High Court
Commissioner Inland Revenue
V/S Nishat Chunian Power Limited

Applicable Provisions:
Section 8(2), 47 of ST Act

Rule 13(3) of Sales Tax Special Procedure Rules, 2007 (STSP Rules)

Brief Facts:

The Commissioner filed Reference Application under section 47 of the ST Act against order dated September 11, 2018 passed by the Appellate Tribunal Inland Revenue, Lahore Bench ("Appellate Tribunal")

The matter in the instant case was that the Commissioner apportioned input tax to capacity purchase price (CPP) and disallowed same considering CPP as non-taxable supplies as per section 8(2) of the ST Act.

The learned counsel of the Applicant argued that energy purchase price (EPP) and CPP are two different component of supplies made to WAPDA. EPP relates to the actual supply whereas CPP charges are paid to the respondent for maintaining a specified capacity for production of electricity which is not a taxable supply, therefore, input tax on CPP should be disallowed as per section 8(2) of the ST Act.

The learned counsel of taxpayer opposed the Applicant and submitted the issue is already settled through the Judgement of the Lahore High Court in the case of Pak Gen reported as (2017 PTD 495), which states that CPP and Energy Purchase Price (EPP) are part of single supply i.e. Electricity; accordingly, CPP is not exclusive of EPP and therefore the question of apportionment does not arise.

Decision:

The High Court in its decision, restricted itself from giving any final opinion on the issue, except for holding that:

- amount received on account of CPP would not be part of supply under Rule 13(3) of the STSP Rules; and

- section 8(2) of the ST Act deals with a situation where taxable and non-taxable supplies are clearly identifiable and input tax attributable to non-taxable supply is not adjustable.

The High Court set aside the judgement of the Appellate Tribunal and remanded the case with the directions to determine whether the payment made against CPP, constitute a taxable supply or non-taxable supply and treat the input tax adjustment accordingly.

Federal Excise Act, 2005

A. Reported Decision

1. (2022)125 TAX 269
Appellate Tribunal Inland Revenue (ATIR)
The CIR, Zone-I, LTU, Lahore
V/s M/s Allied Bank Limited

Applicable Provisions:
Section 3, 7, 14 and 33 along with entry 8 of Table-II of the First Schedule to the of the Federal Excise Act, 2005 (FE Act)

Rule 40A of the Federal Excise Rules, 2005

Brief Facts:

The appellant Bank was issued a show cause notice alleging short payment of FED during the calendar year 2011. The proceedings were concluded through order creating FED demand of Rs.79.542 million on certain issues including 'Income from dealing in foreign currency', 'Rebate from State Bank of Pakistan' and 'reimbursement of godown expenses'. When challenged before CIRA, demand on the first two matters were deleted whereas the third issue was remanded back. The Department filed appeal before ATIR against the order of CIRA.

Decision:

The petition was decided in the following manner:

Income from dealing in foreign currency:

The ATIR observed that the components of Bank's income from dealing in foreign currency consist of revaluation of foreign currency, purchase and sale of foreign currency and hedging transactions. None of which falls under the category of "Service" upon which FED may be applied. Based on this observation and while placing reliance on earlier decision of the same court in a similar case, the ATIR maintained the decision of the CIRA.

Rebate from State Bank of Pakistan (SBP):

The ATIR mentioned in its findings that the rebate from SBP is not charges against an excisable service, rather it is a reimbursement of expenses by the SBP to the Bank on account of telex/swift charges as an incentive to encourage inward foreign remittances through authorized dealers rather than using illegal means. Based on this and earlier decisions of Sindh High Court and Supreme Court in the similar case, the ATIR maintained the decision of CIRA on this matter.

Reimbursement of Godown expenses:

While deliberating the issue under reference, the ATIR observed that the tax officer in his order charged FED on the receipt of reimbursement by the Bank from its customers considering it as an income against provision of service without subtracting the reimbursement of expenses paid by the Bank on behalf of its customers to the godown owners for stock pledged. The ATIR further observed that CIRA has already remanded back the issue with specific instructions to the department to ensure whether these expenses are reimbursed on actual basis or there is an element of profit included. Based on this, the ATIR maintained the decision of CIRA.

Punjab Sales Tax on Services Act, 2012

A. Reported Decision

1. (2022)125 TAX 394 Lahore High Court M/s Prix Pharmaceutical (Pvt) Ltd. VS Appellate Tribunal Revenue Authority and others

Applicable Sections: Section 48, 49, 52, & 67(A) of Punjab Sales Tax Act on Services (PST Act)
Rule 2(f) Punjab Sales Tax on Services (Withholding) Rules, 2015 (PSTWH Rules)
Section 5 of the Limitation Act 1908

Brief Facts:

The Applicant enrolled as withholding agent under Rule 2(f) of the PSTWH Rules, was issued order creating demand of Rs.2,547,908 for alleged short withholding of Punjab sales tax. The Petitioner filed appeal before Commissioner Inland Revenue Appeals (CIRA) consequent to which the demand was reduced to Rs.855,877. The Petitioner then filed an appeal before Appellate Tribunal Punjab Revenue Authority Lahore whereby the decision of the CIRA was upheld; however the order of the ATIR dated October 16, 2019 could not reach the office of the Petitioner and after 691 days (almost 2 years) the Petitioner was provided the copy of the order on request. The Petitioner could not file an appeal before Lahore High Court (LHC) on time and therefore filed an application with PRA for granting condonation of time for filing of appeal before the LHC and simultaneously filed petition before the LHC against the ATIR's order.

Decision:

Petition was dismissed on following grounds:

- The High Court observed that it was not contended in the application for condonation of time that the order was reserved or was kept in wait, neither any effort was made to ensure whether the order has been passed by ATIR, nor any document has been produced by the Petitioner to show that the copy of impugned order was not sent to it.
- The High Court in its order stated that as per Section 5 of Limitation Act, 1908, the party seeking extension in time, must satisfy the Court that it had not been negligent and had been following the case with due diligence and care. Negligence does not constitute sufficient cause to overlook delay.

The appeal before High Court against the order of ATIR was dismissed being time barred.

Contact us

For more information you may contact

Atif Mufassir
Partner - National Leader Tax & Legal
Email: amufassir@yousufadil.com

Zubair Abdul Sattar
Partner Tax & Legal
Karachi office
Email: zsattar@yousufadil.com

Rana Muhammad 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
Director Tax & Legal
Islamabad office
Email: sufianhabib@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 (51) 8350602
Email: shahzad@yousufadil.com

Lahore
134-A, Abubakar Block
New Garden Town, Lahore, Pakistan
Phones: + 92 (42) 35913595-7, 35440520
Fax: + 92 (42) 35440521
Email: rmukhan@yousufadil.com

Multan
4th Floor Mehr Fatima Tower,
Opposite High Court,
Multan Cantt, Multan, Pakistan
Phones: + 92 (61) 4571131-2
Fax: + 92 (61) 4571134
Email: rmukhan@yousufadil.com

About Yousuf Adil

Yousuf Adil, Chartered Accountants provides Audit & Assurance, Consulting, Risk Advisory, Financial Advisory and Tax & Legal services, through nearly 550 professionals in four cities across Pakistan. For more information, please visit our website at www.yousufadil.com.