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Tax Bulletin

June 2022

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Foreword

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

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Karachi
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Income Tax Ordinance, 2001

A. SROs

i. SRO. 588(I)/2022 dated May 10, 2022

Amendment Proposed in sub-rule 23 for clause (dd) of Rule 13N of the Income Tax Rules, 2002 (the Rules)

Determination of cost of acquisition of securities

Under existing Rule 13N(23)(dd) of the Rules, where unlisted securities are converted into listed securities, the acquisition cost of such securities shall be equal to the market price at which the security is listed on the stock exchange and the date of acquisition shall be the date as available with CDC. The existing rules provide that in the case of securities acquired through book building process or Initial Public Offer (IPO), the cost of acquisition of such securities will be IPO price.

The Federal Board of Revenue (FBR) has proposed to substitute sub-rule 23(dd) of Rule 13N. The substituted rule provides that where securities of the unlisted company are converted into electronic form, the cost of acquisition of such securities shall be the face value and the date of acquisition shall be the date of acquisition as available with CDC. No change is proposed in the cost of acquisition for securities acquired through IPO.

The above substitution only caters to the conversion of unlisted securities into electronic form and does not cater to the conversion of unlisted securities to listed securities, as covered under the existing rule. It is likely that this may be covered in the notified Rule.

ii. SRO 593(I)/2022 dated May 14, 2022

Amendment in the SRO 337(I)/2022 dated March 2, 2022

Through the above SRO, the FBR has amended the SRO 337(I)/2022, whereby the valuation of immovable property located in the Defense Housing Authority Gujranwala has been further amended. For further details, please refer to the SRO available at the FBR's website https://www.fbr.gov.pk/ShowSROs?Department=Income%20Tax

iii. SRO 597(I)/2022 dated May 19, 2022

Amendment in Rule 74 of the Rules

Service of Documents Electronically

Existing Rule 74 of the Rules provides that where a person has notified Commissioner in writing an electronic address for service of documents under the Ordinance or rules, the document required to be served on such person by the Commissioner or Chief Commissioner shall be considered sufficiently served if it is sent to that address.

Through the captioned SRO, Rule 74(2) is substituted, whereby where a person has provided an electronic address, the document required to be served on the person shall be considered sufficiently served if sent to that address. From the amendment, it appears that FBR intends to treat any provided electronic address, whether or not provided for the specific purpose of communication of documents or notices, as the valid

address for the service of any document.

B. Circulars

Circular No.01 of 2021-22 dated May 31, 2022

Extension in the filing of the statement required under section 165B of the Ordinance read with Rule 78L Chapter XIIA of the Income Tax Rules, 2002

FBR vide Circular No.01 of 2021-22 — International Taxes extended the deadline till June 15, 2022 (from May 31, 2022) for the filing of the statement by financial institutions. According to the circular, such extension is granted due to various issues faced by Reporting Financial Institutions in filing the statement required under section 165B of the Ordinance read with Rule 78L Chapter XIIA of the Income Tax Rules, 2002.

As per section 165B, every financial institution shall make arrangements to provide information regarding non-residents or any other reportable persons to the Board in the prescribed form and manner for automatic exchange of information under a bilateral agreement or multilateral convention.

C. Reported Decisions

i. 122 TAX 102 = 2022 PTD 599

Appellate Tribunal Inland Revenue

Indus Pencil Industries (Pvt.) Limited VS Commissioner Inland Revenue

Applicable Sections: 113, 122, 122(1) & 122(5A) of the Income Tax Ordinance, 2001 (the Ordinance)

Brief Facts:

The deemed assessment order for the tax year 2013 was amended by the Deputy Commissioner Inland Revenue (DCIR). In the amended assessment order, the DCIR allowed the adjustment of the excess amount of minimum tax paid under section 113 of the Ordinance in the tax years 2010 and 2011 against the tax liability of the tax year 2013.

Subsequently, the Additional Commissioner Inland Revenue (ADCIR) amended the assessment order passed by the DCIR whereby the minimum tax adjustment allowed by the DCIR was rendered erroneous and restricted to the difference between the minimum tax liability under section 113 of the year and the normal tax liability for the year calculated at the corporate tax rate of 35%. The treatment of the ADCIR was later confirmed by the Commissioner Appeals (CIRA). The taxpayer being aggrieved by the order of the CIRA filed an appeal before the Appellate Tribunal (ATIR).

Decision:

The ATIR decided the matter in **favor** of the taxpayer and held that the adjustment of the carried forward excess amount is available under section 113 (2)(c) of the Ordinance as it provides for the carry forward of the excess amount of tax paid in terms of section 113 for adjustment against the tax liability under Part I of the First Schedule. The said adjustment is not restricted to the difference between minimum tax liability under section 113 and normal tax liability computed at the corporate tax rate for the subsequent tax year.

Further, it was held by the ATIR that the entire action of the ADCIR was based upon misreading and misinterpretation of the statutory provision in hand. It is a cardinal

principle of the interpretation of a statute that the courts are merely supposed to interpret the law as it is and have no authority to add, delete or subtract any word in or from the language used by the legislature and in a taxing statute a tax on any person is to be levied by clear and unambiguous word and the expression used in the charging sections are not to be stretched by any process of interpretation, as to bring a person within the tax net not falling under the clear and plain language of the statute

ii. 2022 PTD 618

Sindh High Court
Commissioner Inland Revenue Vs New Jubilee Insurance Co. Limited

Applicable Sections: 26(a), 99, 108, 122(5A), 133 and Fourth Schedule of the Income Tax Ordinance, 2001.

Brief Facts:

The appellant is engaged in the business of Insurance and is liable to be taxed under the provisions of the 4th Schedule to the Ordinance.

The Assessing Officer while amending the assessment alleged that the assessee [an insurance company] has given an undue advantage to its associated company by investing in its share capital and thus was liable to be taxed under Section 108 of the Ordinance. The officer invoked section 108 on the ground that section 108 does not start either with any non-obstante clause or with the term subject to this Ordinance, hence, the provisions of section 108 of the Ordinance are to be considered as fully applicable to the insurance business. Further, he contended that the tax officer has the authority under Rule 5(a) of the 4th Schedule to make certain adjustments, which he considers to be reasonable.

The Appeal, at the ATIR level, was decided in favour of the appellant. Thereafter, the Officer filed the reference before the High Court of Sindh to adjudicate the applicability of section 108 for the determination of the profits and gains of an insurance company in the presence of the Fourth Schedule providing specifically for the taxation of an insurance business.

Decision:

The High Court **rejected** the department's appeal and deleted the addition made under section 108 on the following grounds:

1. 4th Schedule to the Ordinance squarely applies to the taxpayer and that clearly stipulates that while computing the profits and gains of an insurance company, only the rules as provided therein would be applicable in their strict sense.

2. Investing in the share capital could be an investment but how could it be termed to be giving an advantage to the associate concern remained an unexplained answer on the part of the department.

3. Other provisions of the Ordinance including section 108 shall not be considered while computing the profits and gains of an insurance business because section 99 read with the 4th Schedule of the Ordinance being special in nature overrides the normal provisions of the Ordinance over insurance businesses.

iii. 2022 PTD 645

APPELLATE TRIBUNAL INLAND REVENUE
Syed Hassan Askari, Vs Commissioner Inland Revenue

Sections: 111, 111(1), 120(1), 122(5A), 122(9) of the Income Tax Ordinance, 2001.

Brief Facts:

The Assessing Officer found the deemed assessment order passed under Section 120 of the Ordinance as erroneous in so far as prejudicial to the revenue as the appellant declared agricultural income and claimed it as exempt from tax in the absence of any proof regarding the payment of agricultural income tax to the relevant authority. Consequently, the assessment was amended under section 122(5A) of the Ordinance by invoking Section 111 of the Ordinance therein. The taxpayer being aggrieved filed an appeal before the Commissioner Inland Revenue (Appeals), who rejected the appeal. The taxpayer then filed an appeal before the ATIR to adjudicate on the legal infirmities of the notice issued to the Appellant.

Decision:

The ATIR **accepted** the appeal and vacate the orders passed by the CIRA and the Assessing Officer. The ATIR held that in order to invoke Section 111 of the Ordinance a separate and proper notice is required to be issued duly confronting the assessee with the specific additions or unexplained subject matter information, otherwise, the whole assessment proceedings built would not be construed as tenable in the eyes of law.

The above decision is related to the tax years 2016 and 2017. It is to be noted that through the Finance Act, 2021, an explanation was inserted in section 111, whereby it is stated that a separate notice under this section is not required to be issued if the explanation regarding the nature and sources of the amount credited or the investment of money, valuable article, or the funds from which expenditure was made has been confronted to the taxpayer through a notice under sub-section (9) of section 122 of this Ordinance. Considering such an explanation, no separate notice is now required to be issued after July 1, 2021, if the matter related to additions under section 111 is covered in the amendment notice.

iv. 2022 PTCL 346 = (2022)125 TAX 277

Supreme Court Of Pakistan (SCP)
Commissioner Inland Revenue Vs 585 Taxpayers
Applicable Law: Income Support Levy Act, 2013

Brief Facts:

Through this judgment, the Revenue sought leave to appeal against the judgment of the Division Bench of the High Court of Sindh whereby 585 petitions were decided in favour of the taxpayers. Earlier the respondents (taxpayers) had challenged the Income Support Levy Act, 2013 ('the Act') and the Levy under the Act before the Sindh High Court, which sought to be recovered by the tax department under the Act.

Decision:

The SCP **declined to grant leave to appeal** and consequently, the petitions are **dismissed** on various grounds including:

i. Neither the Act itself states that the Income Support Levy was or constituted a tax or taxation nor its provisions make it clear that it came within the definition of taxation.

ii. The Act was social legislation with the declared objective of poverty alleviation. Since the Act does not fall within the definition of a Money Bill therefore it had to be passed by both the Houses, as provided by Article 70 of the Constitution, failing which it could not have become a law.

iii. The Act did not constitute a Money Bill, it had to be transmitted to the Senate to vote on the Act. But as this was not done, so the Act never became a law.

iv. The tax department could not take action under the Act which was not a law and nor anyone is liable to pay the levy under the Act.

v. Citation (2022) 125 TAX 312

Lahore High Court
Muhammad Munir Piracha Vs Deputy Commissioner Inland Revenue
Sections 120, 122, 176 of the Income Tax Ordinance, 2001

Brief Facts:

Brief facts for the disposal of the petition are that the Petitioner, who is an advocate by profession, filed his income tax returns for the Tax Years 2010 and 2011 along with wealth statements as per applicable provisions of the Ordinance. He received the notices under section 176 demanding information related to the business capital, the break-up of his profit and loss expenses etc.

It was contended by the Petitioner that he was a practicing advocate of the Supreme Court and has been submitting complete tax returns regularly. Hence issuance of notice under section 176 by the Respondent, without fulfilling the legal requirements of section 122(1), is against the scheme of the Ordinance. He explains that returns filed in the Financial Years 2010 and 2011 have attained the status of assessment order under 120(1) of the Ordinance. He further stated that an assessment order under section 120 can only be interfered with under section 122 of the Ordinance.

Decision:

The High Court **allowed the petition and set aside** the impugned notice issued by the tax department on the following grounds.

i. The Court has already observed in Reliance Commodities (Private) Ltd. v. Federation of Pakistan and others (PLD 2020 Lahore 632), that when a show-cause notice is based on mala fide intention or has been issued by an incompetent authority, the writ is not maintainable.

ii. The Additional Commissioner, present in the Court, when confronted about the information sought through the impugned notice regarding Business capital, profit and loss, etc. of the taxpayer (lawyer by profession), states that the notice has been issued inadvertently and such information cannot be sought under section 176 of the Ordinance.

vi. Citation 128 TAX 132

Appellate Tribunal Inland Revenue
Packages Limited, Karachi Vs Commissioner Inland Revenue

Sections: 37, 74(3), 97, 108, 109, 113, 120(1)(b), 122(1), 122(9), 177 & 214C of the Income Tax Ordinance, 2001.

Brief Facts

The appellant (taxpayer) is a public listed limited company engaged in the business of manufacturing and sale of paper, packaging materials and tissue products.

The taxpayer with an objective to introduce a business partner in its Paper, Paperboard and Corrugated business, carved out the Paper Board & Corrugated business from the company's umbrella and the related assets were transferred to a separate wholly-owned subsidiary, followed by equity participation by the then foreign partner, who would, in addition to equity injection also bring technical expertise to transform this business segment into a profitable and a viable venture.

The appellant filed its income tax return for the tax year 2014 and the above transfer of the assets was claimed as a non-taxable event under section 97 of the Ordinance. The Assessing Officer proceeded to pass the amendment order in respect of the above as well as other issues. The Assessing Officer misconceived and misconstrued the above transaction under section 109 (1)(b) as a tax avoidance scheme. Against the order,

the appellant preferred an appeal before the CIRA. Feeling aggrieved with the CIRA's order on certain issues including section 109, the appellant filed the appeal before the Tribunal.

Decision

The ATIR **deleted** the addition made under section 109 based on various grounds. The ATIR held as follows:

a) We concur with the taxpayer that the purpose of the transaction was nothing but business / economic consideration ultimately aimed at enrichment of business and shareholder value and was not meant wholly and exclusively for the avoidance of any tax.

b) Only such transactions can attract the General Anti Avoidance Rule application, whose main objective is avoidance of tax, which ATIR could not find in the case.

c) ATIR held that the claim of tax neutrality under section 97 of the Ordinance, it is apt to be noted, was only, at best, 'incidental' to the achievement of the appellant's main business purpose. Accordingly, this transaction, holistically speaking, is not hit by the mischief of section 109 of the Ordinance.

d) Every action by taxpayers to undertake a business /reorganization or to make them eligible for any tax concession, mitigation, etc., could not be dragged into the scope of section 109 of the Ordinance, until and unless the analysis and underlying objectives indicate that the main objective thereof is tax avoidance.

e) The initial burden to prove that the purpose behind the transfer of the assets by the appellant was avoidance of tax is on the Revenue, which they failed to prove in the case.

vii. Citation 125 TAX 166

Appellate Tribunal Inland Revenue,
Muhammad Younas *Vs* The Commissioner Inland Revenue

Sections: 8(1), 111 (1)(d), 122 of the Income Tax Ordinance, 2001

Brief Facts:

The taxpayer (individual) also having 80% share in an AOP failed to file the return of the AOP and did not disclose the share of income from the AOP in his tax returns.

He also carried on the business of retail sales. According to the AR, due to some misunderstanding between the appellant and his AR, neither the Returns of income of the AOP were filed nor he disclose the share of his income from the AOP in his tax returns.

The Officer disregarded the submissions made by the Appellant and amended the return of income by making additions under section 111(1)(d) in respect of the credit entries appearing in the Bank account. The officer passed the order without following the legal and mandatory requirements of issuing the notice. The CIRA upheld the actions of the officer. Being dissatisfied the instant appeal was filed by the taxpayer before the ATIR.

Decision

The ATIR decided the case in **favour** of the taxpayer on the following grounds

i. We have held in a number of cases that section 111 (1)(d) does not warrant taxation of the whole of the credit entries/deposits in a bank account, as the same are not to be treated as "net income" chargeable to tax. Only that part of the "bank deposits/credit entries" is chargeable to tax, which can be termed as "total income" and not the whole of the "credit entries/deposits" in a bank

account run by a businessman can be his "total income".

ii. Non-issuance of the notices under sections 122(5) and 111(1)(d) and non-confrontation of the details/material facts renders the whole super-structure of the amended assessment to be void ab initio, illegal and without lawful authority, which is liable to fall on the ground.

iii. No unexplained income/assets can be brought to tax as "Income from other Sources'' without mentioning the relevant charging sections i.e. 111 and 39 of the Ordinance.

Sales Tax Act, 1990

A. SROs

i. SRO. 587(I)/2022 – dated May 10, 2022

Through this SRO, FBR has revised value of supply of CNG as under:

S. No.	Description	Previous Rate/kg	Revised Rate/kg
1	For Region-I	134.57	140
2	For Region-II	128.11	133

Region-I: Khyber Pakhtunkhwa, Baluchistan, and Potohar Region (Islamabad, Rawalpindi, and Gujar Khan)

Region-II: Sindh and Punjab excluding Potohar Region.

B. Sales Tax General Orders (STGOs)

i. STGO No. 16 of 2022, dated May 06, 2022

Tier-I 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 291 persons identified as Tier-1 Retailers, has been placed on FBR's web portal requiring them to integrate with FBR's system by May 10, 2022. In case of failure to make the requisite integration by such notified persons, their adjustable input tax for the month of April 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.

If any of notified retailer claims that it is wrongly notified as Tier-1 Retailer, then the person should apply to the concerned Commissioner for excluding its name from the list by May 10, 2022 and the Commissioner would decide in this regard by May 15, 2022.

ii. STGO No. 17 of 2022, dated May 13, 2022

Tier-1 Retailers — Integration with FBR's POS System — Amendment of STGO 01 of 2022

Through this STGO, the procedure for reversal of bar on adjustment of 60% input tax as per sub-section (6) to section 8B of the ST Act as explained in STGO 1 of 2022 dated August 3, 2021, has been automated. The procedure is effective from May 10, 2022 and summarized as follows:

1. Online application shall be filed on IRIS by selecting the relevant reason for exclusion from the purview of the said section [i.e. section 8B(6)] along with evidence in support.

2. Concerned Commissioner, after examining submitted evidences and making necessary inquiries will dispose of the application in either of the following manners:

- **Acceptance of application (Exclusion allowed):** on account of:
  - **Integration with POS:** Input tax adjustment shall be restored w.e.f. the tax period next following the tax period during which the Tier-1 retailer remained non-integrated.
  - **Registered person wrongly identified as Tier-1 Retailer:** The bar on input tax shall be reversed w.e.f. date on which it was placed, effectively, there will be no loss of input tax in such case.
- **Rejection of Application (Exclusion disallowed):** Disallowance shall continue in all subsequent tax periods as before.

C. Circular

i. Clarification on Further Tax C. No 1(4) ST-L&P/Misc/2020 dated May 17, 2022

Through this circular, FBR provided clarification in response to the letter from Health Care Devices Association of Pakistan on chargeability of further tax u/s 3(1A) of the ST Act read with SRO 648(I)2013 dated July 09, 2013, which provides exclusion from applicability of further tax in certain cases.

This circular clarifies that all taxable supplies made to persons including private hospitals/NGOs, who are not registered under the ST Act, shall be subject to further tax other than supplies made to government, semi-government and statutory regulatory bodies which have been specifically covered in SRO 648(I)/2013.

We understand that this clarification is in contravention to the judgment of the Lahore High Court reported as 2021 PTD 1608 on the matter of charging further tax on supplies made to a person who is engaged in making exempt supplies. In the said judgment, the Honorable High Court has held that further tax should not apply on supplies made to persons who are not engaged in making taxable supplies and therefore have no obligation to obtain registration under the ST Act. In instant case, if the private hospitals/NGOs are not making taxable supplies and are therefore not required to obtain registration under the ST Act, further tax should not be charged on taxable supplies made to such hospitals/NGOs. Accordingly, the instant clarification is likely to be challenged before the court of law.

Sindh Sales Tax on Services Act, 2011 (SSTSA)

A. Reported Decisions

1. (2022)125 TAX 319 Sindh High Court All Pakistan Security Agencies Association VS Sindh

Applicable Provision: Rule 42(D) and 42(E) of Sindh Sales Tax on Services Rules, 2011 (SST Rules)

Section 4(3)(a) of Sindh Sales Tax on Services Act, 2011 (SST Act)

Brief Facts

The petitioners in this case were security guard service providers who filed petition to challenge the vires of Rule 42D of the SST Rules. The petitioner argued that the provisions of Rule 42D ultra vires to the various provisions of SST Act and that no sales tax is payable on reimbursement of salaries and allowances, which are being paid to the security guards posted or placed on disposal of the service recipient by the petitioner company.

The petitioner relied on an earlier decision of the Sindh High Court (SHC) dated November 17, 2020, reported as 2021 PTD 731, in case of Labour and Manpower services, wherein the court has decided this issue in favor of the taxpayer while interpreting the Rule 42E(3), which is *pari materia* to Rule 42D and the ratio of the said judgement squarely applies to the case of petitioner which according to the SRB authorities was distinguishable to these circumstances.

Decision

Considering the following facts and the prior decision of the Court in Rule 42E which is pari materia to the rule in question i.e. 42D; the Court decided the matter in favour of the petitioners in the following manner:

i. The impugned action and interpretation arrived at by SRB were contrary to the SST Act itself. It is only the quantum and value of service which is taxable in these cases and not the amount being reimbursed by the service recipient.

ii. The court observed that the sales tax chargeability is provided in section 3 of the SSTA i.e. the taxable service provided by the registered person in the course of an economic activity, whereas as per section 4(3)(a) economic activity explicitly excludes the activities of an employee providing services in that capacity to an employer.

iii. The SHC held that the controversy in respect of the above rule has already been decided by this court, which is *pari materia* to the Rule in question, therefore allowed petition on the same terms.

2. 2022 PTD 576 Sindh High Court M/S. IMS Health Pakistan (Pvt) Ltd. VS Commissioner -III, Sindh Revenue Board (SRB).

Applicable Sections: 3,5,8,44,47,63 of the Sindh Sales Tax on Services Act, 2011 (SSTSA)

Brief Facts

The applicant company was engaged in the business of collection of data, statistics and information of all kinds for preparing publications and selling market research reports. The SRB authorities contented that

the services of the Company are taxable under the tariff heading 9805.9200 (Business support service) as provided in the Second Schedule of SSTSA instead of non-taxable tariff heading 9824.0000 (Data processing and provision of information service) under First Schedule to the SSTSA as claimed by the applicant.

The SRB authorities also concluded that the sales tax shall be charged on the entire invoice amount including reimbursement which is recoverable along with default surcharge and penalty. The matter was challenged before the appellate forums wherein the order of the Department was upheld up to the level of SRB Tribunal.

Being aggrieved, the Company approached the Honorable High Court.

The following questions of law were proposed before the High Court for consideration:

A) Is the applicant engaged in the provision of "Business support services" under the Tariff Heading 9805.9200 of the Second Schedule of the Act?

B) Is the entire value of the applicant's invoices taxable even though only one component of such invoice related to fee for provision of services?

C) Is the applicant liable to pay default surcharge and penalty if the principal amount was not paid expeditiously where the key element of mens rea was missing and that there was a contest between the parties in respect of classification of services?

Decision

The High Court decided the case as follows:

i. Applicability of the appropriate tariff heading of business activities of the Company are covered under the tariff heading 9805.9200 (Business support service).

ii. The Honorable Court disagreed with the interpretation of lower appellate forums and directed that the sales tax shall be charged on the quantum and value of service and not the reimbursed amount.

iii. The Court held that Section 5 itself is clear that it is for the value of the service which is taxable; the reimbursed part of the invoice may or may not be of the goods which have been separately subjected to tax and the provincial Act itself would then not come into play for the entire invoice.

iv. The Court also placed reliance on the SHC's judgment in case of Sami Pharmaceuticals reported as 2021 PTD 731 wherein it was held that it is only the quantum and value of service which is taxable and not the amount being reimbursed by the service recipient.

v. Holding the services liable to tax under the heading 'Business Support Services' the Court ordered that payment of sales tax on the value of service shall be made within 30 days and only in case of failure thereof, default surcharge and penalty shall then be liable to be paid and recovered.

Above decision would lead to settlement of the dispute regarding levy of service sales tax on expenses reimbursement like in case of income tax law, wherein the apex courts have already held that reimbursement of expenses not being service income, is not liable to withholding tax subject to the pertinent conditions that such reimbursement is substantiated with proper documentary evidences and tax is deducted on the original transaction.

Punjab Sales Tax on Services Act, 2012 (PSTSA)

Reported Decision

2022 PTD 630

Punjab Revenue Appellate Tribunal Khayal & Sons (Minara Residence) Vs Additional Commissioner PRA. Rawalpindi

Applicable Sections:: 3, Sr. No 15 & 32 Second Schedule, Punjab Sales Tax on Services Act, 2012 (PSTSA)

Brief Facts of the Case:

The appellant was compulsorily registered by PRA authorities for services specified under serial no. 32 of the Second Schedule of PSTSA viz. Services provided by property dealers, and accordingly continued discharging sales tax at 5% without input tax adjustment. The PRA officer after considering the record and activities of the appellant, claimed that the appellant was engaged in building and promoting "Minara Residence" at GT Road Rawalpindi and that the appellant provided taxable services under serial No. 15 of the Second Schedule of PSTSA as Services provided by property developers, builders and promoters which was subject to sales tax at fixed rate of Rs.50 per square feet. Accordingly, the officer computed sales tax of Rs.14,539,050 along with penalty and default surcharge using such fixed rate of Rs.50 per square feet.

Being aggrieved, the order was challenged before the Commissioner Appeals (CIRA) contending that since the appellant was compulsorily registered by the department under the serial no. 32 so the appellant cannot be taxed on the basis of the serial no. 15. The order of the assessing officer was modified by CIRA to the extent of deleting penalty for lack of mens rea.

Feeling aggrieved, the appellant filed an appeal before Appellate Tribunal.

Decision:

The Tribunal dismissed the appeal on the following premises:

- the argument/contention of the Appellant that he was forcibly registered as property dealer has no weight because the appellant could have easily got himself de-registered from the said category or could have agitated the said issue before any competent forum, but he did not do so;
- the taxable service is, the actual activity of the taxpayer and not the nature of business for which the appellant got himself registered.
- the construction of plaza/building and its development as residences/offices etc., with the intention of selling it out and then selling the same is enough proof of the activities of the appellant as falling under entry no. 15 of the Second Schedule of PSTA.

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