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Tax Bulletin

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Tax

Foreword

This publication contains brief commentary on Circulars and SROs issued during May 2023 and important reported decisions.

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Karachi
June 22, 2023

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Sales Tax Act, 1990

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A. SROs

1. S.R.O. 745(I)/2023 dated June 19, 2023

Individual's return forms for Tax Year 2023

Through this SRO, FBR has proposed draft return forms for individuals deriving income under any other head other than salary / business.

2. S.R.O. 746(I)/2023 dated June 19, 2023

Companies' return forms for Tax Year 2023

Through this SRO, amendment in Rules is proposed and electronic return forms have been introduced for companies for Tax Year 2023.

3. S.R.O. 747(I)/2023 dated June 19, 2023

Foreign income and assets statement forms for Tax Year 2023

Through this SRO, amendment in Rules is proposed and forms for foreign income and assets statement have been introduced for Tax Year 2023.

B. Direct Tax – Case Laws

1. ONLY AN APPARENT MISTAKE OF FACT CAN BE RECTIFIED UNDER SECTION 221

2023 PTD 390
ISLAMABAD HIGH COURT

COMMISSIONER INLAND REVENUE, ISLAMABAD
VS
MESSRS INTERNATIONAL WIRELESS COMMUNICATION PAKISTAN LTD.

APPLICABLE SECTIONS: 221 OF THE INCOME TAX ORDINANCE, 2001 (THE ORDINANCE)

Brief facts:

The respondent taxpayer in the instant case had made payment of royalty and fee for technical services to a Mauritian Company. Commissioner Inland Revenue – Peshawar on December 1, 2014 issued exemption from withholding of tax under section 152(5A) of the Ordinance. On the contrary, Commissioner Inland Revenue, Islamabad on June 30, 2006 issued an order under section 221 of the Ordinance, holding that the payment made by the respondent to the Mauritian Company was liable to tax withholding as the expenses were incurred and paid in Pakistan.

Subsequently, Commissioner Appeals passed order annulling the order of CIR, Islamabad on the basis that the order constitutes change of opinion involving interpretation of law instead of rectification of an apparent mistake that is required under section 221. Against the order of Commissioner Appeals, tax department filed appeal before the Appellate Tribunal which upheld the decision of Commissioner Appeals on the same grounds. Thereafter, the department filed appeal before the Islamabad High Court (IHC).

Decision:

IHC decided the matter in favour of the respondent taxpayer on the basis that section 221 does not vest power to CIR to undertake review of its previous order retrospectively

and that is too after four years of passing of order and after payment being made to the foreign company. Further, the case is of mere difference in interpretation of law and not rectification of an apparent mistake.

2. COMMISSIONER CAN DELEGATE HIS POWER UNDER SECTION 210(1) TO OTHER TAXATION OFFICER TO AMEND OR FURTHER AMEND THE ORDER UNDER SECTION 122(5A) OF THE ORDINANCE.

2023 PTD 411
LAHORE HIGH COURT

ALLIED BANK LIMITED
VS
APPELLATE TRIBUNAL INLAND REVENUE, LAHORE & OTHERS

APPLICABLE SECTIONS: 122, 122(5A), 122(9), 133, 210(1), 2010(1A) AND 211 OF THE INCOME TAX ORDINANCE, 2001 (THE ORDINANCE)
SECTIONS: 62, 65 AND 66AOF THE INCOME TAX ORDINANCE, 1979

Brief Facts:

The taxpayer filed a petition in the LHC on the following question of law:

Whether Commissioner Inland Revenue can delegate, under Section 210, his powers to amend or further amend, under Section 122(5A) of the Ordinance, when the law envisages consideration by the Commissioner?

The taxpayer contended that consideration is required to be made by the Commissioner himself, therefore, powers to amend or further amend under section 122(5A) cannot be delegated by the Commissioner under section 210 of the Ordinance.

Decision:

LHC decided the case against the taxpayer. The decision was made on the basis that:

- As per section 210(1), the Commissioner can delegate all his powers and functions to any other taxation officer other than the power of delegation.
- By virtue of section 211, the powers exercised by the other taxation officer shall be deemed to be exercised by the Commissioner. The conclusion would be that when Commissioner delegates powers to amend the assessment to the other taxation officer; the said powers include the functions of the Commissioner i.e. scrutiny of the assessment, proper application of mind and then amending the Assessment Order. Reference in this regard was placed on judgments in the case of (2013) 107 TAX 29 and 2013 PTD 1012.
- It was further held that powers under Section 122(5A) cannot be divided; Word "power" used in subsection (1) includes functions, as well, as practically it would be difficult that in each case, two orders would be passed; one by the Commissioner of its consideration and then matter would be delegated for passing a final order. If mind has already been applied to determine erroneousness and prejudice to revenue by the Commissioner, then there would be no need to delegate the matter for passing final order.

3. SELECTION OF CASES FOR AUDIT SHALL REFLECT PROPER APPLICATION OF MIND, MEANINGFUL IN NATURE, CLEAR AND DEFINITE PERSPECTIVE RATHER THAN BEING GENERIC IN NATURE.

2023 PTD 649
SINDH HIGH COURT

MESSRS ZAM ZAM LPG (PRIVATE) LIMITED
VS
FEDERATION OF PAKISTAN

APPLICABLE SECTIONS: 177 OF THE INCOME TAX ORDINANCE, 2001 (THE ORFDINANCE)

Brief Facts:

The petitioner a regular taxpayer, received a notice from the department that its case was selected for audit, without assigning any persuasive reasons. Being aggrieved, the petitioner approached the Sindh High Court [the SHC] through a Writ Petition by taking plea on the premise of well settled proposition of law that while selecting a case for audit, specific reasons for the same have to be given but in the instant matter, no such reasons were given. The Petitioner also contended that the action of the department is also clear violation of section 24A of the General Clauses Act, 1987.

The Petitioner referred various decisions of the appellate authorities wherein it has been held that where a superstructure is based on illegality, the same is bound to collapse.

Decision:

The SHC allowed the Petition and vacated the notices issued to the petitioner and held the following:

- Reasons for selection of case for audit shall be demonstrated to show that these are proper application of mind, meaningful in nature, clear and definite, rather than being generic in nature.

- If there is no independent application of mind in giving reasons to select a taxpayer for an audit under section 177 of the Ordinance, then the purpose of section 177 is not achieved and it could not be said to be an exercise undertaken by the Commissioner under section 177.

- As per section 24A of the General Clauses Act, where an authority is burdened with the responsibility of exercising discretion, the said action shall be carried out fairly and justly in the manner prescribed under the books whereas any violation of this principle is liable to be struck down.

4. CLAIM OF CAPITAL GAIN ON SALE OF LAND AS EXEMPT INCOME DURING WINDING UP PROCESS IS NOT JUSTIFIED, WHERE THERE ARE EVIDENCE OF TRADE TO EARN PROFIT OR GAIN

2023 PTD 689
SINDH HIGH COURT

MESSRS MODERN TEXTILE MILLS LIMITED
VS
COMMISSIONER INLAND REVENUE

APPLICABLE SECTIONS: 18, 79, 122, 133 AND 166 OF THE INCOME TAX ORDINANCE, 2001 (THE ORDINANCE)

Brief Facts:

The Petitioner (the company), was a limited company engaged in the business of weaving of textiles and due to continuous losses followed the voluntary winding up process before the competent authority. The return of income for the year under consideration was filed by declaring 'Nil' income; however, an amount was claimed as exempt under section 79(1)(e) of the Ordinance on account of sale of land by the company to its shareholders in the event of liquidation.

The concerned Additional Commissioner Inland Revenue proceeded to amend the deemed assessment order by requesting details form the company with regard to the claim of exempt income. On submission of requisite details, the amendment proceedings were dropped vide order under section 122(5A) of the Ordinance. Later on, the case of the company was selected for audit and again the company submitted the various details, inter alia, claim of exempt income. While concluding the audit proceedings, the concerned Taxation Officer (TO) contended that income declared by the company does not enjoy exemption and treated the same as income from business and taxed the amount accordingly through the amended assessment order. The TO also treated the distribution of profits from sale of land as dividend under section 2(19)(c) of the

Ordinance, subject to withholding tax under section 150 of the Ordinance.

Being aggrieved by the decision of the ACIR, the company filed appeal before the Commissioner Appeals, who dismissed the appeal. The company then preferred an appeal before the Appellate Tribunal Inland Revenue (the ATIR) who also dismissed the same. Subsequently, the company filed income tax reference application before the Sindh High Court (the SHC) by raising following questions of law:

i) Whether on the facts and circumstances of the case, the learned Appellate Tribunal Inland Revenue was justified in holding that there was no claim under Section 79(1)(e) of the Income Tax Ordinance, 2001 in the earlier round of proceedings initiated under section122(5A) of the Income Tax Ordinance for the same tax year, therefore, additional assessment made under Section 122(5A) Income Tax Ordinance, 2001 was justified under the facts and circumstances.

ii) Whether on the facts and the circumstances of the case, the learned Appellate Tribunal Inland Revenue was justified in holding that the surplus from the sale of property distributed to the shareholders being payment made to shareholders on liquidation of the company does not fall within the definition of Section 79(1) of the Income Tax Ordinance,2001?

iii) Whether on the facts and the circumstances of the case, the learned Appellate Tribunal Inland Revenue was justified in holding that the definition of disposal of assets undersection 75 of the Income Tax Ordinance, 2001 does not apply in cases of liquidation under section 79(1)(e) of the Income Tax Ordinance, 2001?

(iv) Whether on the facts and the circumstances of the case, the learned Appellate Tribunal Inland Revenue was justified in treating the payment made to the shareholders during liquidation as dividend and liable to withholding tax?

Decision:

The SHC dismissed the reference application and held that all the three authorities below i.e. Taxation Officer, Commissioner (Appeals) and the ATIR were justified in reaching to the conclusion that the exemption claimed by the company is not applicable for the case in hand due to the following reasons:

- It has been observed that conflicting factual submissions made by the company during audit and assessment proceedings contrary to the third party information available that amounted to conclude that the land was not disposed on "as is where is basis" rather it was sold with an intention to make some profit or gain by having some development work and building of housing society.

  The manner and method in which the plot of land was sold [construction of roads, plotting of land into commercial and residential plots and thereafter selling out the same to a housing society] could be termed as an "adventure in the nature of trade" which is taxable in the hands of the company and not exempt as being claimed by the company. The intention of a person in selling out any asset depends upon the conduct of the said person and the circumstances of the case. Now if the facts of the present case are examined it would reveal that the manner and method in which the land was sold out clearly fall under adventure in the nature of trade and thus, in our view, is taxable in the hands of the company and not exempt, as claimed by the company under Section 79(1)(e) of the Ordinance.

- As regards, confrontation of same issue under assessment proceedings and thereafter under audit proceedings, it cannot be termed as change of opinion nor it could be said that it was past and closed transaction, because issue was not carried out earlier in the manner it was probed later on.

5. CLAIM OF INCOME TAX EXEMPTION IS PERPETUAL PROCESS WHERE THE ENTITY CHANGES ITS NAME AND STYLE UNDER THE APPLICABLE LAWS AND RULES

(2023) 127 TAX 596
ISLAMABAD HIGH COURT

COMMISSIONER INLAND REVENUE (APPEALS-II)
VS
MESSRS PAK TELECOMMUNICATION EMPLOYEES TRUST

APPLICABLE SECTIONS: Section 2(4), 21(e), 53(1)(a), 57(3)(ii), 120(1), 122 AND 159 OF THE INCOME TAX ORDINANCE, 2001 (THE ORDINANCE)

Brief Facts:

By virtue of provisions of The Pakistan Telecommunication Corporation Act, 1991 (the 1991 Act), the employees of the Pakistan Telegraph and Telephone Department, Government of Pakistan (T&T Department) were transferred to the Pakistan Telecommunication Corporation (PTC) on the same terms and conditions to which they were entitled immediately before such transfer.

Moreover, the Trust Deed of the Pakistan Telecommunication Corporation Employees Pension Fund (PTCEPF), a superannuation fund, provided that "all departmental employees transferred to the Corporation as defined in Section 9 of the 1991 Act shall be entitled to benefits as defined under the Federal Government (the FG) Pension Rules as applicable to such employees before the formation of PTC.

Subsequently, The Pakistan Telecommunication (Re-organization) Act, 1996 (the 1996 Act) was enacted wherein it was provided, inter alia, that the FG shall establish a company to be known as Pakistan Telecommunication Company, limited by shares (the PTCL) and cause it to be incorporated under the erstwhile Companies Ordinance, 1984 and also employees of PTC shall be transferred to PTCL. Further, through notification, the FG all properties and assets of the PTCEPF shall vest and become the assets, properties, rights and liabilities of the Pakistan Telecommunication Employees Trust (the PTET).

Accordingly, the PTET applied for and obtained income tax exemption certificates under the repealed Income Tax Ordinance, 1979 and the Ordinance respectively on year on year basis. Going forward, in 2016, the Commissioner Inland Revenue (the CIR) turned down the exemption application. Being aggrieved the PTET filed appeals before CIRA who dismissed the appeals stating, inter alia, that PTET was not an approved superannuation fund and being a trust, the PTET is first required to obtain the status of non-profit organization and only after such approval it can claim exemption from tax under the Ordinance. The PTET preferred appeal before ATIR who allowed the petition in favor of PTET. However, the department filed writ petition before the Islamabad High Court (the IHC) by raising the question of law that claim of exemption is in continuation of older entity (PTCEPF), whereas the case in hand relates to newly established fund (PTET).

Decision:

The IHC answered the question of department in negative i.e. in favor of taxpayer and held that it has been the officers of the Inland Revenue who were granting exemptions under the repealed Ordinance 1979 and under the Ordinance for sixteen consecutive years so apparently there is no change in status of the PTET, being a superannuation fund, in continuation of its previous style and new name as PTCEPF.

Further, it was held that it is a matter of fact that officers were supposed to be knowledgeable about the issuance of notifications and enactments of Acts by the FG for the purpose of transfer of assets, liabilities and other ancillary matters of PTCEPF to PTET.

Thus the CIR has been directed to issue exemption certificate in favour of the taxpayer which would remain valid till the recognition of the Fund has not been withdrawn in the manner prescribed under the Ordinance.

6. GROSS SALES CANNOT BE TREATED AS INCOME AND CANNOT BE SUBJECTED TO TAX U/S 111(1)(D)

2023 PTD 435
SUPREME COURT OF PAKISTAN

COMMISSIONER INLAND REVENUE, ZONE-II, REGIONAL TAX OFFICE, (RTO) LAHORE
VS
MIAN LIAQAT ALI PROPRIETOR, LIAQAT HOSPITAL, LAHORE

APPLICABLE SECTIONS: 39, 111, 111(1)(D), 122, 122(5), 122(8), 122(9) OF THE INCOME TAX ORDINANCE, 2001

Brief facts:

The tax department issued notices under section 122(5) read with section 111(1)(d) of the Ordinance to the respondent whereby it was alleged that certain amount of sales were concealed by the respondent which attracted section 111(1)(d) of the Ordinance and no deduction of expense was to be allowed thereagainst. Accordingly, the deemed assessment order was amended by the tax officer which was also confirmed by the CIRA. The ATIR decided the issue in favour of the taxpayer while holding that sales alone cannot be treated as 'income' without considering purchases, such an action was illegal and baseless and did not warrant addition u/s 111(1)(d) of ITO, 2001. The Honorable Lahore High court also upheld the view of the ATIR.

Feeling aggrieved the tax department sought leave to appeal from the Honorable Supreme Court of Pakistan (SCP) on following question of law:

a) *Whether, in the facts and circumstances of the case, the Commissioner has properly interpreted and applied s. 111(1)(d) of the Ordinance?"*

Decision:

The Honorable SCP decided the case in favour of the respondent held that:

a) Section 122(5) of the Ordinance is applicable on the situations where any income chargeable to tax has escaped assessment. Therefore, the "net income" instead of "gross receipts" or "gross income" can only brought to tax under the said provision.

b) Similarly, if Section 111(1)(d) is to be applied as per the understanding by the tax department i.e. on "gross" amount, i.e., the whole of the production or sales suppressed, could be subjected to tax under the Ordinance. The tax liability determined under the two provisions would be different, and the gap could be quite significant, depending on the facts and circumstances of the case.

While there is a five year time limit within which an assessment order can be amended under s. 122(5), there now appears to be no such constraint in respect of s. 111(1)(d). There continues to be a complete lack of guidance or any standard by which the tax officer is to be guided as to which of the two provisions is to be applied, and in what circumstances. In order to further align the two provisions with the principles enunciated in Waris Meah's judgement given by the Supreme Court of Pakistan, we hereby direct the Federal Board of Revenue, to forthwith issue appropriate guidance and provide the necessary yardstick, measure, guidelines and standard to the tax authorities, consistent with this judgment, inter alia as to when and how, and in which circumstances and against what taxpayers, action can be initiated under the first clause of section 122(5) on the one hand, or the two sub-clauses of clause (d) of section 111(1) of the other. In issuing such guidelines, the FBR must take into account, and appropriately incorporate therein, the following points:

a) If the tax authorities intend to take action against a person within the time period permissible under s. 122, then such action must ordinarily be taken in terms of subsection (5) (or any other applicable subsection, as the case may be) thereof and in a manner compliant therewith, rather than under s. 111 (1)(d). If at all during the said period the OIR nonetheless intends to proceed

under the latter provision then clear reasons must be given why this is being done.

b) If the tax authorities intend to take action under s. 111 (1)(d) against a person beyond or after the time period stipulated under s. 122, and the taxpayer shows that the information on which such action is based was, or ought reasonably to be regarded either as being or such as could have been, in the knowledge of the tax authorities within the said time period, then the tax authorities will have to give reasons as to why action was not taken under s. 122.

It may be noted, as to point (a) above, and in respect of the reasons to be given, that the onus will lie on the tax authorities to justify such action and the threshold will be a high one. Furthermore, the reasons will be subject to judicial scrutiny in terms, inter alia, of the hierarchy of remedies provided by and under the Ordinance. As regards point (b) (the purpose of which is to prevent the tax authorities from, as it were, simply running down the clock), the reasons to be given by the OIR if the taxpayer meets the initial burden cast upon him will be subject to judicial scrutiny in terms as just stated.

7. PROCEEDINGS UNDER SECTION 161 ARE TO BE CONDUCTED WITHIN THE PERIOD PRESCRIBED UNDER SECTION 174 OF THE ORDINANCE

8.

2023 PTD 569
ISLAMABAD HIGH COURT

COMMISSIONER INLAND REVENUE
VS
ISLAMABAD ELECTRIC SUPPLY COMPANY LIMITED, ISLAMABAD (IESCO)

APPLICABLE SECTIONS: 133, 161, 174 OF THE INCOME TAX ORDINANCE, 2001

Brief facts:

The instant reference was filed under section 133 of the Ordinance emanates from the judgment of the learned ATIR whereby the appeal of the respondent taxpayer was accepted on the basis that the demand created by the tax department (for the tax year 2007) was barred by time and dismissed the cross appeals filed by the tax department. Following questions of law were put before the High Court (IHC):

i) Whether the ATIR was justified to hold the recovery order as time barred whereas the issue of time limitation had already been thrashed out by the Honorable IHC and Honorable SCP while clearly holding that there is no time limitation involved in invoking section 52/86 of the repealed Ordinance, 1979, which is pari materia to section 161 of the Ordinance?

ii) Whether the learned ATIR was justified in dismissing the department's appeal on the grounds of time limitation; whereas, no such time frame is envisaged under section 161 of the Ordinance?

Decision:

The Honorable IHC decided the case in favour of the taxpayer and held that:

a) The learned Lahore High Court (LHC) in case of Maple Leaf Cement held that from a combined reading of subsections (1) and (3) of section 174 reflects that there is no obligation on the taxpayer to maintain such accounts beyond the prescribed period of five years. Assumption that the legislature intended the taxpayer to maintain record for all times may leave the sub-section (3) of section 174 redundant. Same question came under consideration before the Honorable SCP in case of M/s. Panther sports and it was held by the court that section 174(3) of the Ordinance read with Rule 29(4) of the Rules is clear and

leaves no room for any such departmental justification, which in any case cannot deprive the taxpayer of the statutory protection under section 174(3) of the Ordinance.

b) Article 4(2)(C) of the Constitution provides that, "no person shall be compelled to do something which the law does not require him to do". Article 24 of the Constitution guarantees that no person shall be deprived of property in accordance with law. Further, the Article 10-A of the Constitution promises that civil rights and obligations are to be adjudicated fairly through due process and any such false presumption and consequent action taken against the taxpayer shall be equal to infringement of fundamental rights under the said Article.

c) Tax demand generated under Section 161 of the Ordinance on account of failure of the taxpayer to produce record beyond the prescribed period for preservation of such records under Section 174 of the Ordinance, is not backed by any legal authority.

d) Therefore, we answer the questions raised for our consideration accordingly.

Sales Tax Act, 1990

A. Sales Tax General Orders (STGOs)

STGO No. 11 of 2023, DATED May 25, 2023

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 as defined in section 2(43A) of Sales Tax Act, 1990 (ST Act).

Vide the subject STGO, a list of further 64 persons identified as Tier-1 Retailers, has been placed on FBR's web portal requiring them to integrate with FBR's system by May 31, 2023. In case of failure to make the requisite integration by such notified persons, their adjustable input tax for the month of May 2023 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 retailers 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.

B. Reported Decisions

1. THE REFUND CLAIMED MUST BE PROCESSED WITHIN THE FRAMEWORK OF LAW

2023 PTD 332
APPELLATE TRIBUNAL INLAND REVENUE, ISLAMABAD

COMMISSIONER INLAND REVENUE, RTO, PESHAWAR
Vs
M/S. PESHAWAR ELECRIC SUPPLY COMPANY (PESCO) [Cross Appeals]

Applicable Provisions: Sections 10(3) and Rule 29(3) and (3) of Sales Tax Rules, 2006 (STR)

Brief Facts:

Through this order, total five appeals, (three filed by the Registered Person and two filed by the Department) were disposed of by the ATIR as common/identical questions of law and facts were involved therein and the parties of appeals were same.

The Peshawar Electric Supply Company (PESCO) claimed a refund of input tax paid in excess of its output tax, but the refund claims were rejected by the Assessing Officer on the premise that the claimant failed to substantiate its claim and provide the required record. The PESCO argued that the prescribed procedure of law for processing refund claims through CREST (Computerized Risk-Based Evaluation of Sales Tax) was not followed by the Department, which renders the proceedings void.

The PESCO also argued that they had complied with the rules regarding record-keeping on computers and had provided soft copies of the data instead of individual sales invoices. They claimed that producing hard copies of the record would be impractical due to the large volume of records involved.

The PESCO further contended that the proceedings against them should have been completed within sixty days as required by Section 10(3) of the Sales Tax Act, 1990

failing which the refund claim should have been sanctioned and the proceedings be declared time-barred.

The Department contended the PESCO's claims stating that the PESCO failed to substantiate its claim and provide the required record. They argued that the PESCO did not produce the necessary record before the assessing officer or the Commissioner Inland Revenue Appeals (CIRA).

The Department further contended that the CIRA remanded the cases to the Department with directions to process the refund claims based on a scrutiny of the record and analysis report of CREST which is violation of the provisions of Section 45B(3) of the ST Act as per which the CIRA may not "remand the case for de-novo consideration". Therefore, the impugned order is liable to be set-aside on this score alone.

Decision

ATIR in its decision held that it is well settled proposition of law that a thing required by law to be done in a certain manner must be done in the same manner as prescribed by law. ATIR acknowledged the validity of the submissions regarding Sections 10(3), 11, and 36 of the Sales Tax Act, 1990, which pertain to the time limit for completing proceedings and the consequences of exceeding the time limit.

However, the Tibunalt also emphasized the importance of following the prescribed procedure for processing refund claims, as outlined in the Sales Tax Rules, 2006. Rule 29(2) and (3) specifically require the use of CREST to cross-match data and generate an analysis report for further processing. The Court remanded back for processing the same under Rule 29(2) of the ST Rules within a period of thirty days from the date of receipt of this order subject to following directions:

- The hard copies of the computerized record maintained by the PESCO shall not be insisted and soft copies would be sufficient as provided under Rules 17(3) of the Sales Tax Special Procedure Rules, 2007, Rule 29(2) of the Sales Tax Rules, 2006 etc.
- input tax relating to transmission & distribution losses would be treated as admissible as already decided earlier in 2015 PTD (Trib.) 1112 and 2014 PTD (Trib.) 1629.

2. CIRA IS BOUND TO OBEY THE LAW DECLARED BY THE TRIBUNAL

2023 PTD 344
APPELLATE TRIBUNAL INLAND REVENUE, LAHORE

M/S ATLAS POWER LIMITED
Vs
COMMISSIONER INLAND REVENUE, ZONE-II, LTU, LAHORE

Applicable Provisions: Sections 45B, 46, 131 and 132 of the Sales Tax Act, 1990(ST Act)

Brief Facts:

The Appellant filed the appeal against order-in-original directly before the learned ATIR under section 46(1)(b). However, ATIR in another case came up with a question whether the appeal can be filed at first instant under section 45B of the ST Act against the order passed under section 11. Further, ATIR referred an earlier judgement wherein it was held that the order passed by the Commissioner Inland Revenue under section 11 of the Act is appealable under section 45B of the Act. Consequently, despite of pending appeal before the ATIR, the appellant immediately filed appeal before learned CIRA against the same order of Commissioner. However, the CIRA rejected the appeal on premise that the appeal does not lie with CIRA. Feeling aggrieved, the appellant preferred appeal before ATIR.

The appellant contended that the learned CIRA has erred in law for not considering the judgment of ATIR as the instant case was elaborately discussed and decided by the Division bench of the Tribunal and held that a person aggrieved by an order passed under section 11 of the Act by the Commissioner Inland Revenue may file an appeal before the CIRA having concurrent jurisdiction under section 45B.

Decision:

The Tribunal decided the matter in favour of the appellant and held that all subordinate authorities within the territorial jurisdiction of this Tribunal and subject to the appellate jurisdiction of this Tribunal are bound by it and must scrupulously follow the said decision in letter and spirit. Consequently, the Tribunal set aside the order of the Commissioner and directed him to decide the appeal on its own merits, following the principle laid down by the Tribunal.

3. LOWER FORUM CANNOT RECTIFY THE ORDER ATTAINING FINALITY IN HIGHER FORUM

2023 PTD 430
LAHORE HIGH COURT

COMMISSIONER INLAND REVENUE, LYALLPUR ZONE, RTO, FAISALABAD
Vs
M/S IDEAL SWEETS, BAKERS AND NIMKO, FAISALABAD

Applicable Provisions: Sections 47, 57 Of the Sales Tax Act, 1990(ST Act)

Brief Facts:

The Department filed appeal against the order of ATIR, wherein the ATIR rectified its earlier order which had already attained finality and got merged into the judgment by Divisional Bench of the Lahore High Court.

The Department raised following legal questions

i) Whether rectification jurisdiction extended to the Appellate Tribunal Inland Revenue on July 01, 2013 under Section 57 of the Sales Tax Act, 1990, could be exercised retrospectively i.e., for an order passed on July 19, 2012?

ii) Was the Appellate Tribunal justified in re-deciding on grounds that were not considered in the earlier order through a rectification application, without providing reasons for identifying the alleged mistake of facts?

iii) Was the Appellate Tribunal justified in deciding the main case in a miscellaneous application that had merged with the decision of the High Court in the Reference jurisdiction?

Decision:

The matter was decided by the Court in favour of the tax department on the following basis;

- The case had already been decided by a Division Bench of the High Court in reference jurisdiction under Section 47 of the Act. The Appellate Tribunal, however, reviewed and amended the earlier order, which had attained finality and merged into the judgment by the Division Bench.

- The court emphasizes that rectification jurisdiction was not available at the time of passing the original order, as Section 57 of the Act, allowing rectification, was substituted through the Finance Act, 2013. The court concluded that rectification cannot be applied retrospectively.

The Court determined that the Appellate Tribunal did not have the jurisdiction to re-decide on grounds not attended in the earlier order, through a rectification application. The Appellate Tribunal's decision to decide the main case in a miscellaneous application, which had already merged with the High Court's decision in the reference jurisdiction, is also held to be unjustified.

4. TIME LIMIT U/S 11(5)

(2023) 127 TAX 92
THE APPELLATE TRIBUNAL INLAND REVENUE (ATIR)
M/S PREPAC PAKISTAN (PVT) LTD
Vs
COMMISSIONER INLAND REVENUE, ZONE-II, RTO, QUETTA

Applicable Provisions: Sections 11, 11(4), 11(5) & 36(3)

Brief Facts:

The registered person issued with order in original for the year 2001-2002 on the grounds that erroneous rate of sales tax was applied instead of correct rate i.e. 20% on Coextruded multilayer plastic for packaging of ghee and oil which falls within SRO 389(I)/2001 dated June 18, 2001. The ATIR remanded back the case to the adjudicating officer vide order dated April 30, 2012 with the directions to provide proper opportunity of hearing to the Appellant and appreciating the evidences produced by the Appellant.

Thereafter, the adjudicating officer passed the order on November 08, 2016. The Appellant challenged the order on the ground that after the matter was remanded back by the Tribunal, the order was required to be passed in 120 days as per section 11(5) of the ST Act. The Department contended that the order was not in its knowledge; therefore, the days should be counted from October 28, 2015, when it came to its knowledge.

The CIRA decided appeal against the Appellant through OIA dated November 22, 2018.

Being aggrieved by the order of CIRA, the Appellant filed appeal before ATIR

Decision:

The matter was decided by the Tribunal in favour of the Appellant Company with following observations.

- The Tribunal observed that the date of knowledge is only relevant when aggrieved person was not party to the proceedings; but this is not the case here;

- The Tribunal also observed that the CIRA was not justified in confirming the order-in-original, as the impugned order was passed after expiry of the time limitation prescribed under section 11(5) of the ST Act, hence, time-barred.

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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.