

Tax Bulletin

May 2022

Foreword



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

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Karachi

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Income Tax Ordinance, 2001

A. SROs

i. SRO 548(I)/2022 dated April 23, 2022

Amendment in the SRO 345(I)/2022 dated March 2, 2022, relating to valuation of immovable properties

The Federal Board of Revenue (FBR) revised the value of immovable properties vide various SROs issued in March 2022. Through the issuance of the above-mentioned SRO, FBR has made certain changes in the SRO 345(I)/2022 dated March 2, 2022, wherein the valuation of immovable property located in Karachi was prescribed.

ii. SRO 549(I)/2022 dated April 23, 2022

Draft amendment in Rule 74- Service of Documents Electronically

FBR has proposed a draft amendment in sub-rule 2 of rule 74 of the Income Tax Rules, 2002 whereby a person who has provided an electronic address, the document required to be served on such person shall be considered sufficiently served, if it is sent to that address.

Through the proposed amendment, 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. Circular

Circular No. 13 of 2022

Explanation of Important Amendments Introduced in the Income Tax Ordinance, 2001, via the Income Tax (Amendment) Ordinance, 2022

Through the above-mentioned circular, the FBR has explained the provisions of the newly introduced sections 59C, 65H and 100F brought through the Income Tax (Amendment) Ordinance, 2022. A detailed explanation of the said sections has already been covered in our comments on the Income Tax (Amendment) Ordinance, 2022 dated March 3, 2022, which can be accessed through <https://www.yousufadil.com/comment-s-on-the-income-tax-ordinance/>.

C. Reported Decisions

i. 2022 PTD 413 Islamabad High Court Pakistan Oilfields Ltd. Vs Federation of Pakistan and Others

Sections: 122(4), 122(5), 122(5A), 122(5AA) of the Income Tax Ordinance, 2001 (the Ordinance)

Brief Facts

The writ petitions were filed by the taxpayer (the Appellant) before the High Court against the issuance of the show-cause notices dated May 24, 2011 (the notices) issued by the tax department for further amendment of assessment under section 122(5A) for the tax years 2005 and 2006 when the appeals on the same issue for these tax years were pending before the Appellate Tribunal Inland Revenue (ATIR).

The petitioner filed income tax returns for the above years, however, show-cause notices were issued on February 14, 2008,

with respect to the issue of depletion allowance, and later assessments for the tax years 2005 and 2006 were amended under section 122(5A) of the Ordinance. The petitioner, feeling aggrieved, filed appeals before the Commissioner (Appeals), which were turned down, and then appeals were filed by the taxpayer before the ATIR.

Learned counsel for the petitioner inter alia contended that a second show-cause notice, on the same subject, is not maintainable as the earlier notices issued and proceedings arising there-from, are still under adjudication before the ATIR.

Decision

The High Court **allowed** the petitions and impugned notices were **set aside** on the following basis.

- i. Where the subject matter is pending in appeal, the power of the Commissioner to amend or further amend an order under section 122 (5A) has been restricted as per section 122 (5AA) The impugned notices showed that the respondent had invoked the powers under section 122 (5A) of the Ordinance, seeking further amendment in the assessment orders with respect to the tax years 2005 and 2006.
- ii. In the case of the petitioner, with respect to the amendment made in the original assessment order, the matter is still pending before the ATIR, which fact has not been denied by learned counsel for the respondents; if such is the case, no notice for further amendment could have been issued and/or amendment made, as the same is barred under subsection (5AA) of section 122 of the Ordinance.

ii. 2022 PTD 420 Appellate Tribunal Inland Revenue (ATIR) Manzoor Ahmad Vs Commissioner Inland Revenue

Applicable Sections: 21(m), 111, 120, 122, 127, 131, 231A of the Income Tax Ordinance, 2001 (the Ordinance)

Brief Facts:

The appeal was filed by the taxpayer before the ATIR against the order of the Commissioner Inland Revenue Appeals (CIRA), whereby the appeal filed by the taxpayer was dismissed and the amendment made by the assessing officer was upheld on the basis of disallowance made under section 21(m) of the Ordinance.

The taxpayer in the appeal filed before the ATIR submitted that the Commissioner Appeals in the order confirmed the addition in total income on the basis of section 21(m) of the Ordinance, whereas, the assessing officer through the notice proposed addition under section 111(1)(b) of the Ordinance.

Decision:

The ATIR decided the case in **favor** of the taxpayer and deleted the additions made on the basis that the order shall not be passed regarding a matter not confronted in the show cause notice issued to the taxpayer. An equal opportunity should be provided to the taxpayers to defend the issues raised by tax officers in the notices issued. If the taxpayer did not know under what provision of law the addition in the income was going to be made, he would not be able to come up with his view as to the legality of jurisdiction and would not be able to make objections against the proposed action.

**iii. 2022 PTD 467
Sindh High Court
Commissioner (Legal
Division) Large Taxpayer
Unit, Karachi Vs Messrs
Brook Bond Pakistan
Limited, Karachi**

Applicable Sections: 50(4A), 52, 86, 136(1) of the Income Tax Ordinance, 1979 [the Repealed Ordinance]

Brief Facts:

The tax department found that the taxpayer has paid the commission to its distributors but has not deducted the tax therefrom, as required under section 50(4A) of the Repealed Ordinance. The Officer passed the assessment order under section 52 of the Repealed Ordinance, by treating the assessee in default which was turned down by both the Appellate Authorities. The tax department filed the reference application to adjudicate, inter alia, and distinguish the term 'discount' from 'commission' in the context of Principal and Distributor arrangement.

Decision:

The High Court **rejected** the department's reference and decided the case on the following grounds:

1. The agreement entered into between the parties i.e. company [the respondent] and its distributor is, in fact, a sale agreement through which products of the respondent were sold to its distributors as per the parameters specified under the Sale of Goods Act and the Contract Act.
2. It is a settled proposition of law that liability of tax depends upon the nature of the transaction irrespective of the name given to it.

3. The Appellate Authorities below the High Court level, being the fact finding authorities, have clearly spelled out on perusal of the agreement between the parties that the nature of the transactions between the company and distributor are that of a trade discount and not that of commission, therefore, the company was not obliged to deduct tax at source, on the payment so made to its distributor, under the provision of Section 50(4A) of the Repealed Ordinance.

Sales Tax Act, 1990

A. SROs

i. SRO. 489(I)/2022 – dated April 05, 2022

Through this SRO, FBR has revised minimum value of supply of locally produced steel goods as under:

S. No.	Description	Previous Values	Revised Values
1	Steel bars and other long profiles	153,000	164,037
2	Steel Billets	131,000	133,813
3	Steel Ingots/bala	126,000	126,000
4	Ship plates	126,000	129,584
5	Other re-roll able iron & steel scrap	119,000	125,688

ii. S.R.O. 500(1)/2022 - dated April 09, 2022 FORM STR-7

Through this SRO, the main/summary page of the existing sales tax return form (STR-7) has been substituted to incorporate serial 35a i.e. POS Service Fee at the rate of Rs. 1 charged on each sale invoice generated through integrated POS System of FBR by Tier-1 Retailer vide Notification of SRO No. 1006(I)/2021 to be deposited in IRS Common Pool Fund.

iii. SRO. 541(1)12022 – dated April 22, 2022

Through this SRO, FBR has added "steel sector" in the list of specified goods as mentioned in the rule 150ZF in Chapter XIV-B, which are subject to electronic monitoring, tracking and tracing, and licensing.

iv. S.R.O. 563 (1)/2022 dated April 29, 2022 Refund to Agricultural Tractor Manufacturers

Through this SRO, the Board has repealed Agricultural Tractor Manufacturers Rules, 2012 and introduced Chapter V-C to the Sales Tax Rules, 2006 for claiming refund by the manufacturer of agricultural tractors. The key features of the said rules are summarized as follows:

Application

The rules are applicable for existing and future refund claims by the registered agricultural tractor manufacturers engaged in supply of agricultural tractors only in cases where the incidence of tax sought to be refunded has not been passed on to the consumers.

A person eligible for claiming refund under these rules shall be a manufacturer of agricultural tractors who supplies tractors to a person holding a valid proof of landholding such as agriculture passbook and copy of record of rights of agricultural land duly verified from Provincial Land Revenue Authorities.

The restriction of section 8B(1) of the ST Act i.e. input tax adjustment up to 90% of output tax, is not applicable on refund claims of excess input tax filed under these rules.

Filing of refund application

The eligible person shall file a refund claim through STARR/RCPS system and refund application to the Commissioner Inland Revenue having jurisdiction, along with the following documents, namely:

- a) a copy of tax paid and e-filed sales tax return;

- b) an undertaking affirming the genuineness of refund as per ST Act and relevant rules made thereunder;
- c) a revolving bank guarantee valid for at least 120 days issued by a scheduled bank, to the satisfaction of the Commissioner Inland Revenue having jurisdiction of an amount not less than the average monthly refund claim during last 12 months; and
- d) name, CNIC of buyers along with valid proof of land holding, ledger of already purchased agricultural tractors against each buyer.

Audits

The refunds claimed under these rules shall be subjected to the following three types of audits:

- a) **Pre-refund Audit:** may be conducted by the processing office with the permission of Additional Commissioner which shall be completed within 30 days.
- b) **Post Refund Audit:** shall be conducted by the concerned division based on the documents submitted which shall be completed within 60 days.
- c) **Cost Audit:** shall be conducted annually by a cost accountant authorized by the Board, to determine that the incidence of excess input tax claimed as refund has not been passed on to the consumers.

Issuance of Refund

The admissible refund shall be issued:

- i. Within 7 days of completion of Pre refund audit, or;
- ii. Within 15 days of filing refund in case no Pre refund audit is conducted

In any case, such refund shall not be processed through FASTER module.

Amount if found inadmissible

In case any amount already sanctioned and paid is found inadmissible, the same shall be recovered within seven days of completion of audit proceedings through encashment of the bank guarantees to the extent of adjudged liabilities.

B. Sales Tax General Orders (STGOs)

i. STGO No. 11 of 2022, dated April 05, 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 03, 2021.

Vide the subject STGO, a list of further 185 identified Tier-1 Retailers, has been placed on FBR's web portal requiring them to integrate with FBR's system by April 10, 2022. In case of failure to make the requisite integration by such notified persons, their adjustable input tax for the month of March 2022 would be disallowed up to 60% as per sub-section (6) to 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 April 10, 2022 and the

Commissioner would decide in this regard by April 15, 2022.

**ii. STGO No. 12 of 2022,
dated April 07, 2022
Input Tax Adjustment to
Manufacturers of Oil &
Ghee and Steel Melters
and Re-Rollers**

In order to prevent claiming of input taxes which are not relevant to businesses of manufacturers in certain specified sectors, the FBR has published a list of 348 items for manufacturers in Oil and Ghee Sector and of 430 items for Steel Sector including services on which captioned manufacturers cannot claim input tax adjustment being not related to their business activity.

It has however been mentioned that any hardship caused by such STGO may be brought to the notice of the concerned Commissioner by the concerned manufacturers.

The above STGO would impact the claim of input tax adjustments by the manufacturers in the said sectors which may be challenged before the courts by the manufacturers in such sectors being discriminatory.

**iii. STGO No. 13 of 2022,
dated April 07, 2022
Purchases and Supplies
Made by Importers,
Wholesalers, Dealers and
Distributors in Sales Tax
Return**

To bring transparency in declaration of sales, FBR has directed importers, wholesalers, dealers and distributors of same state goods to select HS code in Annex-C of sales tax returns based on goods under the said HS Code as declared in Annex-A and Annex-B of sales tax returns by such persons.

**iv. STGO No. 14 of 2022,
dated April 16, 2022
Quota for Import of Raw
Materials for Industrial
Units Located in Erstwhile
FATA/PATA**

Import of plant and machinery and inputs by industrial undertakings located in erstwhile FATA/ PATA are exempt under S. No. 151 of Table-1 of Sixth Schedule to the Sales Tax Act, 1990 till June 30, 2023.

To prevent misuse of said exemption, it has been decided that industrial units located in erstwhile FATA/PATA shall be allocated import quota of raw materials as determined by Directorate General IOCO-IR in consultation with the RTO, Peshawar based on the installed capacity of these units. The STGO also specifies that the annual import quota shall be apportioned equally in 12 equal parts on monthly basis and that shall be duly entered in the WeBOC against each manufacturer/ industrial unit.

**v. STGO No. 15 of 2022,
dated April 26, 2022
Tracking and Tracing of
Fertilizers u/s 150ZF**

For the purpose of tracking and tracing fertilizer u/s 40C of the ST Act read with Rule 150ZF of the Sales Tax Rules, 2006, Fertilizer Bags shall be identified with Unique Identification Markings (UIMs) at factory premises or manufacturing plant or import station with effect from July 01, 2022. UIMs can be obtained from FBR's Licensee M/s AJCL/MITAS/Authentix Consortium.

C. Reported Decisions

i. 2022 PTD 447 Inland Revenue Appellate Tribunal Envicrete Limited Vs The Commissioner Inland Revenue, (WHT) Zone, RTO-I, Karachi

Applicable Provisions: Section 11 of the Sales Tax Act, 1990 (ST Act), Rule 2 of the Sales Tax Special Procedure (Withholding) Rules, 2007

Brief Facts of the Case:

The appellant being a withholding agent in terms of the Sales Tax Special Procedure (Withholding) Rules, 2007, was alleged to have failed to deduct and deposit withholding sales tax on purchases made from unregistered persons during the period from July 2013 to June 2014. The appellant was required to pay the amount of withholding sales tax at the rate of 17% on the purchases made prior to October 04, 2013 and 1% on value of purchases made after October 04, 2013 under S.R.O. 897(I)/2013 dated October 04, 2013 which was also confirmed by the CIRA.

Being aggrieved with the order of CIRA, the Appellant filed appeal with the Tribunal on the contention that the withholding sales tax was applicable at the time of payment not at the time of purchases, therefore, application of sales tax withholding at the rate of 17% should not apply on purchases made prior to October 04, 2013 against which payments were made after October 4, 2013 when the applicable withholding rate was reduced to 1% through S.R.O. 897(I)/2013.

Decision:

The ATIR upheld the order of CIRA on the matter of applicability of withholding rate at the time of transaction or payment, in the following manner:

- The contract/agreement or business or purchases or credit, all are agreed arrangements between the taxpayer and its suppliers and the department has nothing to do with this affair. The law requires the things should be done in a prescribed manner, they ought to do.
- For the business arrived between the taxpayer and its supplier before October 4, 2013, the applicable rate of withholding will be 17% and from October 4, 2013 the applicable withholding rate will be 1%.
- Accordingly, the impugned order does not require any interference and the same is upheld with above modifications.

ii. 2022 PTD 424 Lahore High Court Kamran Textile (Pvt.) Ltd Vs Commissioner Inland Revenue, Multan

Applicable Sections: 25, 72B of the ST Act

Brief facts:

The petitioner filed appeal against the validity of the notice for selection of audit for the tax period July 2017 to June 2018 by Federal Board of Revenue in exercise of powers conferred under Section 72B of the ST Act.

The petitioner contended that section 72B(2) refers to the audit procedure given in section 25 of the Act and as per section 25(2), audit shall be conducted only once in every three years*. Since the petitioner experienced audit for tax period July 2015 to June 2016, the petitioner contended that no audit can be conducted before the lapse of three years. The petitioner placed reliance on the decision of the case of Faisalabad Electric Supply Company Limited (FESCO) 2019 PTD 1780.

Decision:

The Court decided that section 25(2) uses the expression "audit under this section" which limits the applicability and scope of section 25 only and affirms independence of section 72B of the Act. Section 72B(2) of the ST Act cannot be taken in a manner to render section 72B(1) of the Act passive to proviso to section 25(2) of the Act or to limit the power of the Board.

The Court further stated that the selection of audit under section 72B was not an issue in case of Faisalabad Electric Supply Company Limited (FESCO) therefore the same is irrelevant.

The Court referred to discussion before learned Full Bench of Hon'ble Islamabad High Court Islamabad in the case of "Pakistan Telecommunication Company Ltd Vs Federation of Pakistan" (2016 PTD 1484) wherein it was held that section 25 and section 72B of the Act are independent of each other.

Additionally, it was also held by the Court that mere selection for audit does not cause to occur any prejudice, bias or any actionable injury to the taxpayer while placing reliance on the dictum laid in the case of "Commissioner Inland Revenue, Sialkot and others v. M/s Allah Din Steel and Rolling Mills and Others" (2018 SCMR 1328).

Therefore, the petition on the issue of claiming protection/immunity against selection for audit under section 72B in wake of proviso to sub-section (2) of section 25 of the ST Act, was dismissed by the Court.

** This proviso was inserted by Finance Act 2018 and omitted through Finance Act 2019*

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