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Tax Bulletin

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Tax

Foreword

This publication contains brief commentary on Circulars, SROs and decisions of the adjudicating authorities issued during November 2023.

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Karachi
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Income Tax Ordinance, 2001

A. Reported Decisions:

1. THE ASSESSMENT ORDER CAN BE RECTIFIED UNDER SECTION 221 OF THE ORDINANCE AND CAN BE APPLIED RETROSPECTIVELY.

(2023) PTD 1158
LAHORE HIGH COURT

PAK ARAB REFINERY LIMITED, LAHORE
VS
COMMISSIONER OF INCOME TAX/WEALTH TAX, ZONE-I, LAHORE

APPLICABLE SECTIONS: 122(5A) AND 221 OF THE INCOME TAX ORDINANCES, 2001
80D and 62 OF THE REPEALED INCOME TAX ORDINANCE, 1979

Brief Facts:

Original Assessment was finalized on September 28, 2002 under section 62 of the repealed Income Tax Ordinance, 1979 and same was rectified later as incorrect calculation of tax under Section 80D of the repealed Ordinance was made in the Original Order.

Show Cause notices under section 122(5A) of the Ordinance were issued dated March 24 2003 and May 29, 2005 followed by rectification notice issued under section 221 Ordinance, dated May 24, 2005.

In the said notice under section 221 of the Ordinance, it was alleged that initial depreciation on buildings and plant machinery was wrongly allowed. Since, as per Rule 5 of the Third Schedule to the Ordinance of 1979, initial depreciation was allowable only if buildings and plant machinery were installed by June 30, 2002, whereas additions were made after the said date, hence the Assessing Officer passed the rectified Order under section 221 of the Ordinance by disallowing initial depreciation.

Being aggrieved by the decision, the taxpayer filed an appeal before the CIRA, who vide Order dated October 6, 2005 declared the rectification Order as null and void. Feeling dissatisfied, tax department filed an appeal before ATIR, which was allowed vide Order dated May 27, 2006.

Being aggrieved from the above decision of ATIR, appeal was filed by the taxpayer, before the LHC on following grounds:

- impugned Order is absolutely illegal and without any lawful authority as impugned notice dated May 24, 2005 and the impugned Order passed by ATIR amount to "change of opinion" from the Assessment Order dated September 28, 2002.
- Appellate Tribunal was not justified in treating notice under Section 221 of the Ordinance of 2001 as valid, without taking into account the pendency / disposal of earlier two different proceedings initiated by the Assessing Officer under section 122(5A) dated March 24, 2003 and May 29, 2005.
- Taxpayer also raised question on retrospective application of section 221 to an Assessment made prior to June 30, 2003.

Decision:

The LHC decide the matter in favour of Assessing Officer as under:

1. It is evident from available record that initial depreciation was never claimed by the applicant. The depreciation having been wrongly allowed under Rule

5(1)(cc) of the Third Schedule to the Ordinance of 1979, had to be rectified because the relevant provision was Rule 5(1) of the said Schedule and its requirement had to be satisfied for allowing initial depreciation. An incorrect statement of law is always open to rectification and penitence as held by Hon'ble Apex Court reported as 2005 PTD 2131.

2. The controversy, whether the Assessment Order could be rectified and whether Section 221 could be applied retrospectively to an assessment made prior to June 30 2023 has been well answered by the Supreme Court in its judgement reported as 2018 SCMR 1131and held that rectification application under section 221 of the Ordinance can be applied retrospectively to an assessment order passed under the repealed Ordinance.

3. For section 122(5A), the Order has to be erroneous insofar as prejudicial to the interest of revenue, whereas Section 221 empowers the Assessing Officer to amend the Order to the extent of rectifying the legal or factual mistake apparent from the face of the Assessment Order if mistake is apparent, obvious and floating on the surface of Order and can be rectified without long drawn arguments and proceedings for appreciating facts and interpretation of provisions of law. There is no involvement of any fresh investigation. Mistake was apparent on the basis of facts floating on record and the applicable law.

4. It is well-settled that the findings of facts given by ATIR are not open to further scrutiny by this Court in reference jurisdiction when the same have not been shown to be either perverse or against record and this Court has to give opinion in advisory jurisdiction, on the basis of facts as determined by ATIR.

5. Applicant has argued that two previous notices dated March 24, 2003 and May 29, 2005 were issued but not finalized. No adjudication on merits was made on the said notices, therefore, doctrine of res judicata is not applicable to the present case as mere issuance of notice does not bar the authority from either issuing fresh notice or to exercise the power of rectification within the scope of Section 221 of the Ordinance ibid. Reference can be made to judgement reported as 2018 PTD 657 and PLD 1987 Supreme Court 145.

2. COMMISSIONER'S BEST JUDGEMENT ASSESSMENT DECLARED VOID DUE TO LACK OF DEFINITE INFORMATION

2023 PTD 1237
APPELLATE TRIBUNAL INLAND REVENUE

RIZWAN ANWAR
VS
THE COMMISSIONER INLAND REVENUE, RTO, FAISALABAD

APPLICABLE SECTIONS: 121, 122 AND 177 OF THE INCOME TAX ORDINANCE, 2001 (THE ORDINANCE)

Brief Facts:

The taxpayer in the instant case filed return of income declaring income of Rs. 534,400 which was deemed as assessment order under section 120(1) of the Ordinance. The taxpayer's case was selected for audit and notice was issued under section 177 of the Ordinance requiring the taxpayer to furnish evidences. The taxpayer furnished partial information and evidently no books of accounts were provided to the assessing officer.

After examination of information provided by the taxpayer, show-cause notice was issued under section 122(9) of the Ordinance for amendment of assessment under sub-section (1) of section 122 of the Ordinance. After non-compliance of the notice by the taxpayer, the assessing officer passed order under section 122 read with section 177(10) of the Ordinance creating tax demand of Rs. 7,806,109. Being aggrieved, the taxpayer filed appeal before the Commissioner Appeals, who confirmed the treatment of the assessing officer. Hence, the taxpayer filed second appeal before the ATIR arguing that the order should have been passed under section 121 of the Ordinance in the absence of documentary evidences instead of under section 122 of the Ordinance.

Decision:

The appeal was decided in favor of the taxpayer, based on the interpretation that section 177(10) of the Ordinance stipulates that if a person fails to provide the Commissioner with necessary accounts, documents, and records required under section 174 of the Ordinance for auditing or income and tax determination, the Commissioner can proceed to make a best judgment assessment under section 121 of the Ordinance. In such cases, any assessment based on the taxpayer's return or revised return is considered legally void from the beginning. Therefore, the order issued under section 122 of the Ordinance is fundamentally invalid and lacks jurisdiction.

3. ADVANCE TAX COLLECION ON COMMISSION EARNED BY TRAVEL AGENTS WAS TREATED UNDER PRESUMPTIVE TAX REGIME FOR TAX YEAR 2005

2023 PTD 1342
LAHORE HIGH COURT

COMMISSIONER OF INCOME TAX
VS
MESSRS PAK LAND TRAVELS (PVT.) LTD., FAISALABAD

APPLICABLE SECTIONS: 133, 115(4), 169(1)(b) 233(3) OF THE INCOME TAX ORDINANCE, 2001 (THE ORDINANCE)

Brief Facts:

The taxpayer in the instant case is a travel agent deriving income from sale of air tickets. The taxpayer filed return of income declaring net loss of Rs. 503,326 which was deemed to be assessed under section 120 of the Ordinance. The assessing officer considered the deemed income as erroneous and prejudicial to the interest of the revenue on the basis that commission earned by the travel agent falls within the purview of Presumptive Tax Regime (PTR) under the provisions of section 169(1)(b) read with sub sections (3) and (4) of section 233 of the Ordinance and passed amendment of assessment order under section 122(5A) of the Ordinance.

Being aggrieved, the taxpayer filed appeal before the Commissioner Appeals who also decided the case in favor of the assessing officer. Resultantly, taxpayer filed appeal before the Appellate Tribunal Inland Revenue (ATIR) which was decided in favor of the taxpayer. Hence, the tax department preferred to file reference application before the Lahore High Court (LHC) wherein the following questions of law were to be decided:

1. Whether the ATIR was justified to hold that the commission received by the Travel Agents and insurance Agents does not fall in the purview of the Presumptive Tax Regime for the Tax Year 2005?

2. Whether under the facts and in the circumstances of the case, the learned ATIR was justified to vacate the orders of the authorities below by ignoring subsections (3) and (4) of section 233 and subsection (l)(b) of section 169 as it stood amended through Finance Act, 2004 and was applicable to Tax Year 2005?

Decision:

The reference application was decided in favor of the applicant department. It was held that the findings of the ATIR were not in conformity with the provisions of law. Through the Finance Act, 2004, applicable from Tax Year 2005, commission paid to travel agents are subject to advance tax collection under sub-section (3) of section 233 of the Ordinance. Whereas, sub-section (4) of the section 233 renders the tax collection as final tax. It was also held that changes were made in section 115 of the Ordinance that absolves the Travel and Insurance Agents from the responsibility to file return of income since their income is subject to final tax.

Circular no. 7 of 2004 further clarifies that such deduction of tax on commission income would be final tax for tax year 2005 and onwards.

4. COMMISSIONER APPEALS CAN EXAMINE INFORMATION PROVIDED IN REMAND BACK PROCEEDINGS NOT PROVIDED AT AN EARLIER STAGE OF PROCEEDINGS CONDUCTED BY THE ASSESSING OFFICER

2023 PTD 1347
APPELLATE TRIBUNAL INLAND REVENUE

COMMISSIONER INLAND REVENUE, RTO, LAHORE
VS
MESSRS HAQ BAHU SUGAR MILLS (PVT.) LTD., LAHORE

APPLICABLE SECTIONS: 131, 128(5), 161, 205, 236-G 236-11 OF THE INCOME TAX ORDINANCE, 2001 (THE ORDINANCE)

Brief Facts:

Respondent in the instant case is a sugar manufacturer, liable to collect advance tax on sales made to retailers, distributors, dealers and wholesalers under sections 236G and 236H of the Ordinance. As per the assessing officer, the respondent failed to collect advance tax under the above-mentioned sections on sales made for the tax periods from July 2013 to March 2014 as no corresponding statements of withholding tax were filed in this regard. Consequently, the officer initiated monitoring proceedings under sections 161/205 of the Ordinance and also passed order creating tax demand of Rs. 6,306,897.

The taxpayer feeling aggrieved by the decision, filed appeal before the Commissioner Inland Revenue Appeals (CIRA) who confirmed the order passed by the assessing officer. Later, the taxpayer filed appeal before the Appellate Tribunal Inland Revenue (ATIR), which remanded back the case for verification of sales to retailers/un-registered persons and pass a speaking order after providing adequate opportunity of being heard to the parties.

The CIRA as directed initiated remand back proceedings. The taxpayer asserted that being a sugar mill, it did not make any sales to retailers rather the entire sales were made to dealers, wholesalers, distributors and Trading Corporation of Pakistan (TCP). The stance of the taxpayer was opposed by the tax department, however, the CIRA after examining the record provided to him observed that none of the sales were made to retailers and the assessing officer on his own bifurcated the sales between retailers and wholesalers just to charge tax in terms of sections 236G and 236H of the Ordinance.

Being aggrieved by the decision of CIRA, the tax department filed appeal before the ATIR on the ground that the CIRA cannot entertain the evidence, not provided at the adjudication stage.

Decision:

The case was decided against the tax department and CIRA's order was upheld on the following basis:

- Firstly, the matter was remanded back by the ATIR and the CIRA could only verify the contentions of the taxpayer after examining the relevant record, so no illegality has been committed by the CIRA. Reliance in this regard is placed on the decision of the Honorable Lahore High Court in a case PTR No.222/2011 titled as The CIR v. Malik Auto and Agriculture Industries where it was held as under:

  "It would be a travesty of the proceedings before the Commissioner to urge that the Commissioner is entirely powerless in allowing documents to be produced if they are necessary for the controversy to be decided. This power is ancillary to the main power to decide an appeal. This argument offends against the rule of administration of justice and due process. Moreover, we have already held that such a course is open to be adopted by the Commissioner (Appeals) and this is not a question which entitles a party to maintain a reference application

  Hence, the ground raised by the department regarding reliance of evidence by the CIR(A) not provided at the adjudication stage fails."

Secondly, the tax department failed to put forth any plausible rebuttal against the order of the CIRA and to place any material on record before the ATIR in both rounds of litigation to justify the bifurcation of sales made to retailers and distributors.

5. SCP HELD THAT DOUBLE TAX TREATIES REQUIRED TO BE EXPLORED SPECIFICALLY IN RESPECT OF MATTERS DULY COVERED UNDER THE TREARTY

(2023) 128 TAX 193
SUPREME COURT OF PAKISTAN

COMMISSIONER INCOME TAX
VS
M/S INTER QUEST INFORMATICS SERVICES

APPLICABLE SECTIONS: 107 OF THE INCOME TAX ORDINANCE, 2001 (THE ORDINANCE) ARTICLE 7, 8(3), 12 AND 24 OF THE AGREEMENT FOR AVOIDANCE OF DOUBLE TAXATIONA BETWEEN PAKISTAN AND NETHERLAND 1986

Brief Facts:

The taxpayer (the respondent) is a company, incorporated in and having its principal place of business in the Netherlands, with no place of business in Pakistan. The respondent filed its income tax returns in Pakistan and claimed exemption in respect of its receipts in respect of rental from Lease FLIC Software computer program, by contending the same being its business profits, which were exempt under Article 7 of the Agreement for Avoidance of Double Taxation (the DTT) between Pakistan and Netherlands. However, the Assessing Officer (the AO) did not accept the respondent's contention, and was of the opinion that, such income constitutes royalty and is assessable under Article 12-3(a) (b) of the DTT between Pakistan and Netherlands, and called upon the respondent to explain why the same may not be taxed as royalty income at 15%. Consequently, assessment orders were passed by the AO.

The respondent challenged the assessment orders before the Commissioner Inland Revenue-Appeals (the CIRA) but these appeals were dismissed and assessment orders issued by the AO were maintained. Being aggrieved, the CIRA order was challenged before the Appellate Tribunal Inland Revenue (the ATIR) but with no success. Consequently, the respondent filed the reference application before the High Court and raised the question that whether the said payment receipts were either business profits under Article 7 of the DTT or royalties under Article 12 of the DTT. The High Court decided the questions in favor of the respondent, and held that the amounts received by the respondent did not constitute royalties.

The judgments of the High Court were challenged before the Supreme Court of Pakistan by the tax department (the appellant) and leave to petition was granted.

Decision:

The SCP dismissed the appeal filed by the appellant (the tax department) and adjudicated the following aspects:

- The High Court overlooked the fact that the High Court's jurisdiction under section 136(1) of the ITO 1979 and section 133(1) of the ITO 2001 was limited to considering and deciding questions of law, however, the instant cases were filed to overturn the factual determination made by three qualified forums which had determined that the receipts were royalties in terms of Article 12 of the Convention.

- Convention Agreement for avoidance of Double Taxation is a complete document, each term whereof has to be considered in length with considering precedents and textbook explanations of general terms which are not so used in the Convention.

- There is distinction between the use of copyright and the use of copyright product. No copyrights were leased out to the respondent which merely acquired software programs for its operations which did not involve payments made for the use of or the right to use secret formula or process, or information concerning industrial, commercial or scientific experience (basic pre requisite for amount to be determined a royalty). Thus, the income resulting from the lease of software programs amounts to

business profits and cannot be treated as income arising from royalties which has rightly been contended by the respondents.

6. MERE FACT OF PENDING PROCEEDINGS AGAINST THE REFUND ORDER DOES NOT SUFFICE TO SUSPEND THE OBLIGATION TO REFUND

(2023) 128 TAX 273
ISLAMABAD HIGH COURT

COMMISSIONER INLAND REVENUE
VS
PRESIDENT OF ISLAMIC REPUBLIC OF PAKISTAN THROUGH SECRETARY AND OTHERS

APPLICABLE SECTIONS: 114, 127, 131, 153 AND 171 OF THE INCOME TAX ORDINANCE, 2001 (THE ORDINANCE)

Brief Facts:

The relevant facts of the case are that the taxpayer deriving income from manufacturing of medicine filed Income Tax Returns under Section 114 of the Ordinance for the year 2010-11 claiming tax refund. The refund applications were processed and partial amount of tax refunds were allowed vide the refund orders by the tax authority.

The taxpayer filed appeal against the said Order before the CIRA who rejected the appeal and upheld the order. Being aggrieved, the taxpayer preferred appeal before the ATIR which was allowed and ATIR deleted the orders of the authorities below. The tax department (the petitioner) filed income tax reference application (the ITRs) against the ATIR order.

The taxpayer approached the Federal Tax Ombudsman (the FTO) in terms of section 10(1) of the Federal Tax Ombudsman Ordinance, 2000 (the FTO Ordinance) for issuance of subject refunds determined by the ATIR Order. Notices were issued and comments were filed by the petitioner department before FTO. The prime question that was raised by the petitioner before the FTO was that of lack of jurisdiction in view of Section 9(2) of the FTO Ordinance.

FTO decided the case against the petitioner and directed to pay the refunds. However, the petitioner preferred representation before the President of Islamic Republic of Pakistan which also met the same fate. Hence the writ petition in pursuance thereof filed before Islamabad High Court (the IHC) to whom ITRs were filed earlier.

Decision:

The IHC dismissed the instant writ petition by taking cognizance of the following aspect associated with the matter under consideration:

- Mere pendency of Income Tax References filed before the Court would not be sufficient to suspend the obligation of tax refund decided by the appellate fora, so effectively the refund orders are in field and, therefore, liable to be implemented.

7. TAX CASES SHALL BE PURSUED IN THE PRESCRIBED MANNER WITHIN THE TAX JURISDICTION WHERE THE TAXPAYER IS REGISTERED FOR TAX PURPOSES UNDER THE ORDINANCE

(2023) 128 TAX 288

ISLAMABAD HIGH COURT

MESSRS MIAN AMJAD SAEED
VS
FEDERATION OF PAKISTAN

APPLICABLE SECTIONS: 138 OF THE INCOME TAX ORDINANCE, 2001 (THE ORDINANCE) ARTICLE 199 OF THE CONSTITUTION OF PAKISTAN 1973

Brief Facts:

The petitioner is a retired employee of Pakistan Tobacco Company Limited. Since he was employee of the referred Company, therefore, for the registration of tax purpose, he was registered with Karachi region, however, after the retirement, he settled in Islamabad and continued paying tax through the electronic system from there.

However, audit proceedings were initiated by the Karachi Tax Office which remained unattended and, accordingly, recovery notice was issued to the petitioner under section 138 of the Ordinance. Being aggrieved, the petitioner filed writ petition before IHC on the premise that the Karachi Tax Office has no jurisdiction in the matter, hence the audit proceedings and recovery are without lawful authority.

The tax department (the respondent) argued the maintainability of the petition on the ground that an alternate and adequate remedy is available to the petitioner by way of an appeal. It was also contended that there is nothing on record that the petitioner made a request for transfer of the jurisdiction from Karachi to Islamabad.

Decision:

The IHC dismissed the petition being devoid of any substance and pronounced the following:

- The petitioner has an alternate remedy before the Appellate Tribunal which is adequate and efficacious. The fact that the appeal shall lie before Karachi Registry of the Appellate forum is no reason for not availing the statutory remedy. Hence this Court has no territorial jurisdiction and the dominant cause accrued at Karachi.
- It seems that no serious effort has been made by the petitioner for transfer of the jurisdiction and the prayer has only been made just to seek a direction and make the matter fall within the jurisdiction of this Court.
- The petitioner may approach the competent authority for transfer of the jurisdiction for future purpose if not already done and as and when such application or request is made the same shall be decided in accordance with law expeditiously.

Sales Tax Act, 1990

A. Reported Decisions

1. TO AVAIL CONCESSIONAL TREATMENT UNDER ANY LAW, THE CLAIMANT MUST ESTABLISH THAT THEIR CASE FULLY FALLS WITHIN THE SCOPE OF THE CONCESSIONAL REGIME

2023 PTD 1292
SINDH HIGH COURT

THE DEPUTY COMMISSIONER INLAND REVENUE SERVICES & OTHERS
Vs
M/S CLARIANT PAKISTAN LIMITED

Applicable Provisions: Section 11 & 51 of the ST Act

Brief Facts:

The plaintiff claimed to be engaged in the business of manufacturing and import of chemicals including coloring and preparation of textile pigment used in Master batches, a highly concentrated pigment classified under the HS Code 3206.4910 which was declared by the plaintiff as zero-rated in terms of entry No. 66 of the SRO 509(I)/2007 dated June 09, 2007 for the purpose of levy of sales tax.

The plaintiff was confronted for mis-declaring goods under HS Code 3206.4900 instead of 3206.4910 (which classification was removed from zero-rating vide SRO 1059(I)/2007) and therefore causing alleged loss to the national exchequer. Being aggrieved, the plaintiff filed a suit before the High Court where the learned Single bench ordered the suit in favour of the plaintiff and directed the defendants to consider the refund claim of the plaintiff within the parameter of law.

Being aggrieved, the department challenged the decision of the single bench before the Divisional Bench on the grounds that the contention of the respondent that their master batches, falling under PCT heading No. 3206.4900 are zero rated, was incorrect as the PCT applicable on the goods of the respondent is 3206.4910 and the legal position was changed by SRO 1059(I)/2007, which substituted PCT heading No. 3206.4910 with 3206.4990 with retrospective effect, which excluded registered persons' goods from the zero-rated regime. Subsequently, another SRO 163(I)/2011 substituted heading 3206.4900 with 3206.4990 but did not reinsert or resubstitute the main PCT heading of 3206.4910.

The appellant further contended that the judgment went beyond the scope of the prayers as there was no mention of the order for refund of earlier claims and the respondent's suit was also allegedly not maintainable without a deposit of 50% of the calculated tax, as per Supreme Court judgment in case of Searle IV Solution (Pvt.) Ltd.

Decision:

The Division Bench of the High Court allowed the intra-court appeal holding that to avail concessional treatment under any law, the claimant must establish that their case fully falls within the scope of the concessional regime. The HS Code in question of 3206.4910 was changed in the zero rating SRO with the aim of excluding master batches from the concessional regime.

The DB set aside the decree passed by the Single Bench, remanding the suit for a fresh decision by taking the view that the suit having no trailable issues was not inherently maintainable, coupled with the fact that such type of suit is not included in the 49 types of suits specifically outlined in Appendix A(3) titled "Plaints" of the Code of Civil Procedure, 1908.

2. FTO ORDER ON A MATTER SHOULD NOT HAVE ANY BEARING ON THE FATE OF THE APPEAL PENDING BEFORE APPELLATE AUTHORITY

2023 PTD 1371
APPELLATE TRIBUNAL INLAND REVENUE

MUHAMMAD NADEEM
Vs
COMMISSIONER INLAND REVENUE

Applicable Provisions: 3, 46 & 45B of the ST Act, 1990.

Brief Facts:

The Appellant was involved in catering supplying food at different premises and was liable to pay sales tax @ 15% and 16% of the supplies under section 3 of ST Act read with Sr. 1(d) of schedule to the Punjab Sales Tax Ordinance, 2000. The appellant was issued a show cause notice confronting failure to file sales tax returns and to charge sales tax /special excise duty despite being actively reporting turnover in income tax returns. Proceedings were carried out and the appellant was held liable to pay sales tax along with different penalties and default surcharge.

Being aggrieved, the appellant filed appeal before the Commissioner Appeals and simultaneously also filed a complaint before the Federal Tax Ombudsman (FTO). While disposing of the complaint file, following directions / recommendations were made by the FTO to the FBR:

i. Invoke revisionary jurisdiction under section 45A of Sales Tax Act, 1990 as per law within 21 days.

ii. Address the issue of limitation and pecuniary jurisdiction clearly and cogently, and

iii. Report compliance within 07 days thereafter.

Whereas the CIRA dismissed the appeal on the premise that FTO has already provided relief to the appellant. However, the appellant filed second appeal before the Tribunal.

Decision:

The Appellate Tribunal, without touching the legality of FTO order, remanded back the matter to CIRA for decision afresh after giving adequate opportunity of hearing to the parties on the following grounds:

- The CIRA failed to apply his judicial mind while deciding the appeal, and dismissed it in a cyclostyle manner. The observations made by the CIRA that the appellant had already obtained relief from the FTO, therefore, no further grievance was left, were not understandable.

- FTO order should not have any bearing on the fate of the first appeal filed before the CIRA. The FTO's scope and jurisdiction are confined to questions relating to maladministration, while the CIRA is the competent authority to adjudicate all questions decided in the assessment order.

3. INPUT TAX ADJUSTMENT ALLOWED ON PRUCHASE OF COMPUTERS AND ALLIED STATIONERY ITEMS

2023 PTD 1358
APPELLATE TRIBUNAL INLAND REVENUE

FAISALABAD ELECTRIC SUPPLY COMPANY LTD
VS
THE COMMISSIONER INLAND REVENUE

Applicable Sections: 7, 8, 8(1)(a), 8(1)(b), 8(1)(h), 8(1)(i) of the ST Act.

Brief Facts:

The department disallowed the input tax adjustment claimed by the appellant under various provisions of section 8 on purchase of computers and office supplies, such as toners, ribbons, and printers, which were used by the appellant for their statutory duty of printing bills and managing complaints.

Being aggrieved, the appellant filed appeal before CIRA who remanded the matter back to the Officer and re-assessment was conducted. in the second round of proceedings, an ex parte order was passed after the appellant failed to appear in the hearings.

The CIRA rejected the appellant's claim for input tax on the ground that the appellant has failed to provide evidence of purchase and usage of goods relevant to taxable activity.

Being dissatisfied, the appellant filed appeal before the Tribunal on the ground that such items were purchased for the purpose of making taxable supplies, accordingly, it is legally entitled to claim the input tax in terms of sections 7 and 8 of the ST Act. The Appellant also placed reliance on the judgements 2005 PTD 2012 and 2007 PTD (Trib.) 2391.

Decision:

The Tribunal allowed the appeal with the observation that printing of bills, online complaint redressal, and maintaining uninterrupted electricity supply is the statutory and contractual obligation of the appellant. Therefore, disallowance of input tax paid on the purchase of computers and allied stationery items, and their maintenance by the CIRA under section 8(1)(h) and (i) of the ST Act combined with SRO 490(I)/2004 as amended by SRO 450(I)/2013 is not aligned with the text, context, and purpose of these provisions of the law.

The Tribunal stated that the appellant cannot complete its taxable activity of supplying electricity without computers and the allied stationery items. Therefore, the input tax paid on the purchase of these goods is admissible under section 7 as the appellant is a government-owned company, none of such goods can be assumed to have been used for any purpose other than making taxable supplies.

4. BUYER WILL NOT BE DEPRIVED OF INPUT TAX CLAIMED ON INVOICES PRIOR TO BLACKLISTING OF SUPPLIER UNLESS THE SALES TAX INVOLVES REMIANS UNPAID WITH THE EXCHEQUER

128 TAX 265
LAHORE IGH COURT

THE COMMISSIONER INLAND REVENUE
Vs
M/S RAFAQAT MARKETING LAHORE & ANOTHER

Applicable Sections: Section 21(3) of the ST Act, 1990

Brief Facts:

In the instant case, the respondent taxpayer was issued with show cause notices for several tax periods whereby order was passed and refund claims were rejected on the ground that input invoices were issued by blacklisted suppliers or such supplier who were non-existent with registration suspended status. Feeling aggrieved, the registered person challenged the order before the Commissioner Appeals and then before the Tribunal. The appeal before the Tribunal was accepted and both lower forums' orders were set-aside.

However, being dissatisfied the department filed reference application before the High Court with the following question of law;

- Whether Taxation Officer was justified to invoke the provisions of Section 21(3) of the Sales Tax Act, 1990 or Rule 12(5) of the Sales Tax Rules, 2006 for not entertaining invoices, issued prior to blacklisting of supplier, for tax credit or refund, without establishing, through self-speaking order, that the invoices were fake or flying because the claimed tax was not deposited in National Exchequer?

Decision:

The Court answered the question in negative i.e. in favour of the respondent taxpayer and held that the suppliers subsequently blacklisted does not necessarily mean that the buyer should be deprived of their legitimate right to claim input tax for purchases made during the period when the supplier was still active and registered. The Court further added that if the tax against the disputed invoices is found to have not been deposited in the National Exchequer, the burden can be shifted to the registered person claiming a refund or adjustment of input tax and in such case, the department is obliged to process the refund claim or adjustment of input tax.

The Court also held that the Tribunal had made factual findings in this case based on relevant documents produced by the taxpayer, including invoices, proof of purchases, and payments through banks and it has not been shown that the findings of facts are either perverse or contrary to the record.

5. WITHHOLDING TAX PROVISIONS DO NOT APPLY TO PURCHASES MADE FROM TRIBAL AREAS

128 TAX 167
APPELLATE TRIBUNAL INLAND REVENUE

M/S TERBELLA STEEL RE-ROLLING MILLS (PVT) LTD
VS
THE COMMISSIONER INLAND REVENUE

Applicable Sections: 33(5) & 34 of the ST Act, 1990.

Brief Facts:

In the instant case, the appellant was selected for audit proceedings for the tax periods from 2014 to 2016 and 2018 wherein it was alleged that the appellant has made domestic purchases of taxable goods from un-registered persons and being a withholding agent, the appellant was required to withhold and deposit 1% withholding sales tax on the value of taxable purchases made under Rule 2(3)(ii) of the Sales Ta Special Procedure (Withholding) Rules, 2007.

In response, the appellant submitted that for tax periods from 2014 to 2016 tax has already been paid and the issue is pending before the Hon'ble Peshawar High Court whereby the assessing officer was directed not to pass the final order. For tax period 2018, it was submitted that purchases were made from FATA tribal areas where the ST Act has not been extended. The department was not satisfied with the submissions and created sales tax demand along-with default surcharge and penalty.

Being aggrieved, the appellant filed appeal before the Commissioner appeals who upheld the department's order. However, being dissatisfied by the decision, the appellant filed second appeal before the Tribunal.

Decision:

The ATIR allowed the appeal on the ground that the ST Act has not yet been extended to either FATA or PATA within the meaning of Article 247(3) of the Constitution. Therefore, the appellant is not required to deduct tax from purchases made from individuals who are located in FATA or PATA.

The ATIR held that Public officials, such as the Assessing Officer, are not permitted to disregard the due process of law or the orders of higher authorities as it will result in disorder and undermine the principles of the rule of law, fair play, and natural justice.

Sindh Sales Tax on Services Act, 2011

Notifications:

1. Public Notice for Sindh Sales Tax SWWF/SWPPF Payments dated October 11, 2023

in order to ensure uniformity and convenience, SRB, through its public notice dated October 11, 2023, has announced that all the sales tax/SWWF and SWPPF payments shall now be made through Alternative Delivery Channel (ADC 1-Bill) only and all other payments options are being discontinued.

ADC 1-Bill payment can be made through PSID created in the same manner as currently in practice with any other payment mode i.e. online cheque/pay order or cash for making payment through any bank.

2. Restoration of non-applicability of Sales tax withholding for all categories of insurance services - SRB-3-4/52/2023, dated October 26, 2023

Earlier in 2020, the general exclusion provided under rule 3(1) of the Sindh Sales Tax Special Procedures (Withholding) Rules, 2014 from applicability of sales tax withholding to invoices issued by insurance companies, was restricted to the extent of payments against invoices issued in relation to services of life insurance and health insurance of individual persons.

Through this notification, the scope of such exclusion from applicability of sales tax withholding has been restored back to include all categories of insurance services invoices issued by insurance companies.

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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.