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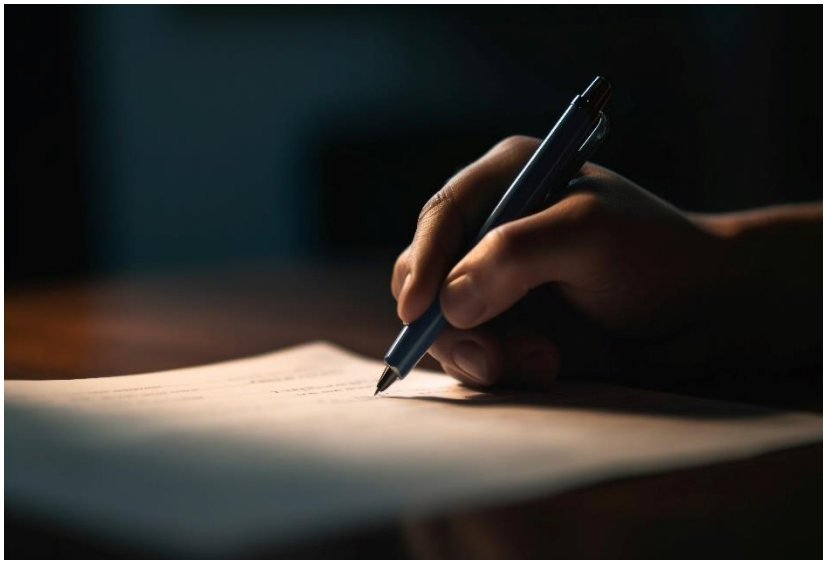
Tax Bulletin

OCTOBER 2024

Tax

Foreword



This publication contains brief commentary on Circulars, SROs and decisions of the adjudicating authorities issued during September 2024.

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Karachi
October 22, 2024

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3	**SRO No. 1513(I)/2024 dated September 26, 2024**	FBR has updated the procedures for prize scheme by amending Rules 150ZEL and 150ZEM of the ST Rules. Under the revised scheme, customers who report unverified invoices from integrated tier-1 retailers can qualify for prizes related to their purchases. To report an unverified invoice, customers are required to submit certain details through a designated application or WhatsApp. It's important to note that customers who do not provide proof of digital payment will lose their right to claim a prize.	24
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S.No.	Reference	Summary / Gist	Page No.
2	**2024 PTD 1174** **Peshawar High Court**	**PHC ALLOWED PESCO TO CLIAM INPUT TAX ADJUSTMENTS RELATED TO ITS OPERATIONS EVEN IN THE FACE OF LOSSES FROM THEFT OR PILFERAGE.** PHC has held that losses from electricity transmission and distribution were deemed part of PESCO's operational activities, facilitating their right to input tax adjustments related to these losses, which are connected to their taxable supplies.	25
3	**2024 TAX 357** **(Sindh High Court)**	**NOTICE ISSUED UNDER SECTION 37 OF THE ACT IN THE ABSENCE OF ANY INQUIRY PENDING BEFORE THE OFFICER, IS NOT SUSTAINABLE** SHC held that section 37 of the ST Act empowers a designated officer to summon person to give evidence and produce documents in any inquiry pending before the respective officer. In the absence of any reference to ongoing inquiry, notice issued under section 37 of the Act appears to be an abuse of process and manifestly unjust / prejudicial to the taxpayer. Therefore, it is not sustainable.	25
4	**2024 TAX 292** **(Peshawar High Court)**	**WIHTHOLDING AGENT CANNOT BE HELD PERSONALY LIABLE TO PAY TAX IN CASE OF FAILURE TO WITHHOLD TAX PRIOR TO July 01, 2016** PHC has dismissed the sales tax reference, reiterating the principle that taxes cannot be applied retrospectively unless the statute explicitly states such intention. Through the Finance Act, 2016, sub-section (4A) of section 11 of the ST Act was inserted to make withholding agent personally liable to pay tax in case of failure to withhold tax. Since the liability was established through the Finance Act, 2016 and it does not apply retrospectively, the tax demand of the revenue authority prior to enactment of the Finance Act, 2016 is without lawful authority.	26

Income Tax Ordinance, 2001

A. Notification:

1. S.R.O. 1448(I)/2024 DATED SEPTEMBER 18, 2024

Through this SRO, FBR has proposed following draft amendments in Rule 81B of the Income Tax Rules, 2002 (the Rules):

Existing	Proposed
Sub-rule (1) prescribes that Rule 81B of the Rules shall apply for the purpose of clauses (23A) and (35C) of section 2 and section 181A of the Ordinance).	The proposed amendment prescribes that Rule 81B of the Rules shall apply for the purpose of publishing Active Taxpayers' List (ATL) under section 181A of the Ordinance.
Sub-rule (2) prescribes that the Board shall publish ATL comprising persons who meet the criteria as laid down in sub-rule (4) that shall be made available online on March 1st.	The SRO proposes substitution of existing sub-rule (2). The proposed sub-rule prescribes that a person's name shall be included in the ATL, if he files return of income for the latest tax year, by the due date specified in section 118 or by the due date as extended by the Commissioner under section 119 or by the due date as extended by the Board under section 214A of the Ordinance.
-	A new sub-rule (2A) is proposed which states that in case a person files his income tax return for the latest tax year, after the due date or extended due date as mentioned in sub-rule (1), his name shall be included in the ATL, when he pays surcharge as specified in proviso to clause (a) of sub-section (1) of section 182A of the Ordinance.
Currently sub-rule (3) prescribes that the ATL shall remain valid till the last day of February next following the year in which it was published.	The SRO proposes an amendment which provides that the ATL shall remain valid on the next day after the due date or extended due date as mentioned in sub-rule (1).
The existing sub-rule (4) prescribes that ATL shall be updated on every Sunday at 24:00 hours, referred to as updation date.	As per the proposed amendments, the ATL shall be updated on daily basis.
Existing sub-rule (5) prescribes that a person's name shall be included in the ATL, if the person has filed a return under section 114 or a statement under section 115 for the tax year for which the last date as specified in section 118 of the Ordinance falls during immediately preceding twelve month.	The SRO proposes substitution of sub-rule (5) along with the proviso. The substituted clause provides that the name of a company or an association of persons, whose return is not due to be filed because of incorporation or formation of such company or association of persons, after the 30th day of June relevant to the latest tax year, shall be included in the ATL.

Existing	Proposed
	A new sub-rule (9) is proposed which provides that a person's name, where such person has filed return in the Azad Jammu and Kashmir Central Board of Revenue or Gilgit-Baltistan Council Board of Revenue, shall be included in the ATL, only if his temporary and permanent addresses are in the Azad Jammu and Kashmir or Gilgit-Baltistan.

B. Reported Decisions

1. TAX STATUTES OPERATE PROSPECTIVELY UNLESS CLEARLY INDICATED BY THE LEGISLATURE

ITR NO. 10 OF 2018

LAHORE HIGH COURT, RAWALPINDI BENCH

COMMISSIONER INLAND REVENUE, RAWALPINDI

VS

SH. IKRAM ELLAHI & OTHERS

APPLICABLE SECTIONS: SECTIONS 111 AND 113 OF THE INCOME TAX ORDINANCE, 2001 (THE ORDINANCE)

Brief Facts:

In the instant case, show-cause notice was issued to the Taxpayer to explain the nature and source of the amounts credited into the Taxpayer's bank account on the contention of suppression of sales / evasion of tax. The tax officer found the response submitted by the Taxpayer unsatisfactory, leading to amendment of assessment and addition of income under section 111(1)(d) of the Ordinance. The taxpayer filed an appeal before the Commissioner Appeals who dismissed the addition made by the tax officer under section 111(1)(d) of the Ordinance. The officer filed appeal before the Appellate Tribunal Inland Revenue (ATIR) which was disposed of by deleting the addition made by the assessing officer under section 111(1)(d) of the Ordinance. The department then filed reference application before the Lahore High Court and raised the following questions of law:

1. Whether on the facts and in the circumstances of the case, when it is admitted or determined that income has been concealed by suppressing the sales, can the evaded tax be allowed to be kept as a gift by the taxpayer on the ground that wrong provision of law has been mentioned i.e. Section 111(1)(d)(i)?

2. Whether the ATIR was justified to vacate the order passed u/s 122(5) without appreciating that amount credited in the bank account of the Taxpayer, which remained unexplained, and attracted the addition under section 111(1)(b) of the Ordinance cannot be deleted merely for mentioning of section 111(1)(d) in the order?

Decision:

Questions raised by the department were answered against the department and in favour of the taxpayer.

The ATIR in its order confronted the department for its retrospective application of clause (d) of section 111(1) of the Ordinance as it was introduced through Finance Act, 2011, whereas the assessment year under consideration of the Taxpayer was 2010. ATIR further stated that the Commissioner Appeals was also convinced that provision inserted through Finance Act, 2011 was applicable prospectively i.e. from tax year 2012.

It was further confronted by the High Court that since the question of retrospective application of the above-mentioned clause was not assailed in the instant reference application that means that the observations made by the ATIR has

attained finality. The finality of such decisions establishes vested rights, thereby the High Court reinforced the need for diligence in addressing legal matters within the prescribed timelines.

As a basic principle of interpretation of statutes, tax statutes operate prospectively unless clearly indicated by the legislature, therefore, retrospectivity cannot be presumed. In this regard, reliance was placed in the case reported as Commissioner Inland Revenue, Lahore v. Messrs Millat Tractors Limited, Lahore and others (2024 SCMR 700).

2. CLAUSE (72B) OF PART IV OF THE SECOND SCHEDULE TO THE INCOME TAX ORDINANCE, 2001 IS SPECIALIZED IN NATURE AND HAS AN OVERRIDING EFFECT OVER GENERAL PROVISIONS OF THE ORDINANCE

CP NO. D-3073 & 3074 of 2021

SINDH HIGH COURT

UNITED REFRIGERATION INDUSTRIES LIMITED & DAWLANCE (PRIVATE) LIMITED

VS

COMMISSIONER INLAND REVENUE, KARACHI

APPLICABLE SECTIONS: 177, 214C AND 148 OF THE INCOME TAX ORDINANCE, 2001 (THE ORDINANCE)

Brief Facts:

In the instant case, the Petitioners are industrial units engaged in the imports from abroad for their manufacturing facilities. By virtue of clause (72B) of Part IV of the Second Schedule to the Ordinance, the Petitioners were exempted from deduction of tax on their imports under section 148 of the Ordinance. Both the Petitioners received notices for conducting audit in terms of third proviso of the above-mentioned clause and amendment of assessment orders were passed.

The Petitioners challenged the orders passed before the Sindh High Court (SHC) on the basis that the Petitioners were selected for audit in one of the three preceding tax years and by virtue of clause (105) (omitted vide Finance Act, 2019) of Part IV of the Second Schedule to the Ordinance, they cannot be selected for audit.

It was further contended that under section 177 of the Ordinance, the Commissioner Inland Revenue (CIR) can still select a person for audit, however, it can only be done with the approval of the Board, whereas no prior approval was obtained in the case of the petitioners. Hence, conducting of audit is illegal and without jurisdiction.

Decision:

The SHC dismissed the petitions filed in favor of the department on the following basis:

- Third proviso to clause (72B) of Part IV of the Second Schedule to the Ordinance provides that the CIR shall conduct audit of taxpayer's accounts during the financial year in which the certificate is issued in respect of consumption, production and sales of the latest tax year for which return has been filed and the taxpayer shall be treated to have been selected for audit under section 214C of the Ordinance. SHC further observed that perusal of the notices issued shows that the notices were neither issued by virtue of section 177 of the Ordinance nor under 214C of the Ordinance, whereas the notices were issued while exercising powers conferred under third proviso to clause (72B) of Part IV of the Second Schedule to the Ordinance.

- Clause (105) is general in nature, whereas clause (72B) is specialized in which selection for audit is inbuilt hence, the petitioners have no protection or exemption from being audited pursuant to clause (105). As soon as the Petitioners applied for availing such benefit and were issued exemption certificates under clause (72B) of the Ordinance, they stood selected automatically for audit, as it was a condition precedent for issuance of an exemption certificate.

3. FILING OF REFUND APPLICATION WITH PRESCRIBED PARTICULARS TO THE SATISFACTION OF THE COMMISSIONER IS MANDATORY BEFORE CLAIMING REFUND

2024 PTD 1090

APPELLATE TRIBUNAL INLAND REVENUE

COMMISSIONER INLAND REVENUE APPEALS LAHORE

VS

ADG LDI (PVT.) LTD.

APPLICABLE SECTIONS & RULES: SECTIONS 120, 122, 170, PART VI OF THE FIRST SCHEDULE TO THE INCOME TAX ORDINANCE, 2001 (THE ORDINANCE)

RULE 71 OF THE INCOME TAX RULES, 2002

Brief Facts:

In the instant case, the Appellant taxpayer, being a private limited company, filed return of income for Tax Year 2016 by adjusting the admitted tax liability of Rs. 871,767 with the prior year's tax refund. The tax officer issued notice for amendment of assessment under section 122(5A) of the Ordinance on the contention that the Taxpayer adjusted the previous year's refund without filing refund application. The Taxpayer did not file any response, therefore, the tax officer passed order for amendment of assessment by treating the return filed erroneous and prejudicial to the interest of revenue.

The appellant preferred appealed before the Commissioner Appeals, who confirmed the tax officer's decision. Being aggrieved with the Commissioner Appeal's decision, the Taxpayer filed an appeal before the ATIR.

Decision:

The ATIR dismissed the appeal filed by the Appellant Taxpayer and decided the matter in favor of the tax department. The ATIR held that section 170 of the Ordinance specifies the procedure for claiming tax refund, whereas, Rule 71 of the Rules prescribes that an application for refund of tax shall be made in the proforma specified in Part VI of First Schedule to the Rules. Further, the refund application shall be accompanied by such documents, statements and certificates as specified in the Ordinance and the Rules.

The ATIRE further observed that upon verification of the excess payment of tax, the Commissioner shall either apply the excess tax paid in reduction of any outstanding liability or refund the remainder. If the Commissioner is not satisfied, he may pass an order refusing the claimed refund.

It was held that the whole process does not allow self-adjustment of refund amount, hence in the absence of refund application and verification of refund, the refund adjustment was disallowed by the ATIR.

4. AN INTERIM ORDER PASSED WITHOUT ADHERING TO THE PROCEDURE PROVIDED UNDER ARTICLE 199(4) WILL BE ILLEGAL AND WITHOUT JURISDICTION

2024 PTD 1085

SUPREME COURT OF PAKSITAN

COMMISSIONER INLAND REVENUE, LARGE TAXPAYERS OFFICE, ISLAMABAD

VS

PAKISTAN OILFIELDS LTD., RAWALPINDI AND OTHERS.

APPLICABLE SECTIONS: SECTION 4C OF THE INCOME TAX ORDINANCE, 2001 AND ARTICLES 185(3) & 199 OF THE CONSTITUTION OF PAKISTAN, 1973

Brief Facts:

The petitioner challenged the interim order of the Islamabad High Court, dated August 8, 2023, whereby the High Court, as interim relief, restrained the petitioner from recovering the super tax under Section 4C of the Ordinance, as amended by the Finance Act, 2023.

Petitioner made two contentions:

- That the Islamabad High Court did not adhere to the mandatory procedure prescribed in Article 199(4) of the Constitution for making interim orders in matters relating to assessment and collection of public revenue;
- That by making the impugned orders, the Islamabad High Court virtually suspended the operation of the legislation, i.e. Section 4C of the Ordinance, which could not have been legally done. Reliance was placed on

Federation of Pakistan v. Aitzaz Ahsan (PLD 1989 SC61), Aijaz Jatoi v. Liaquat Jatoi (1993 SCMR 2350) and Assistant. Collector v. Dunlop India Ltd.(AIR 1985 SC 330.

On the other hand, the learned counsel for the respondents submitted that the respondents challenged the amendment to Section 4C of the Ordinance through Finance Act, 2023 only to the extent of its retrospective applicability. He submits that a similar challenge to the extent of retrospectivity of the unamended Section 4C of the Ordinance was read down by the Islamabad High Court in its judgment dated July 20, 2023 passed in Fauji Fertilizer.

Decision

SC converted the petitions into appeals and set aside the Order as under:

It is a well-established principle that where any provision couched in a negative language requires an act to be done in a particular manner then it should be done in the manner as required by the statute otherwise such act will be illegal and without jurisdiction. The use of the negative language, i.e., "shall not", in Article 199(4) leaves no doubt that its provisions are mandatory and an interim order passed without adhering to the procedure provided therein will be illegal and without jurisdiction.

It is an admitted fact that the Islamabad High Court did not give notice of the application for interim relief and provide an opportunity of hearing to the prescribed law officer, nor did the Islamabad High Court record its finding, and the reasons therefore, that the interim order would have the effect of suspending an order or proceeding which on the face of the record is without jurisdiction. Both the mandatory requirements of Article 199(4) were not complied with by the Islamabad High Court in making the impugned orders, which failure makes these orders illegal and without jurisdiction.

The impugned orders were set aside with the directions that the respondents' applications for interim relief shall be decided by the High Court, after affording a fair and reasonable opportunity of hearing as envisaged under Article 199(4) of the Constitution. Further, the High Court shall also identify the order or proceedings under challenge in terms of Article 199(4)(b)(ii) of the Constitution.

5. SECTION 111 IS NOT ATTRACTED TO NON-RESIDENT IN THE PRESENCE OF TAX TREATY BETWEEN PAKISTAN AND FRANCE UPON APPLICABLE TIE-BREAKER TEST.

2024 PTD 1097

APPELLATE TRIBUNAL INLAND REVENUE

SHAHBAZ AHMAD VS

COMMISSIONER INLAND REVENUE, RTO, SARGODHA

APPLICABLE SECTIONS: SECTION 111, 120, 122, 122(9) OF THE INCOME TAX ORDINANCE, 2001 (THE ORDINANCE)

Brief Facts:

Show Cause Notice was issued under sections 122 and 111(1) of the Ordinance through which the declared "Foreign Remittances" under Inflows as per wealth statement was confronted, as no documentary evidence has been filed/attached in support of declaration.

In response, nobody appeared nor filed any reply, despite issuance of reminders, therefore, the tax officer passed the impugned order under section 122(5A) of the Ordinance by making additions under section 111(1)(b) of the Ordinance.

Being aggrieved, the appellant filled appeal at CIRA and then at ATIR.

Appellant argued that:

- The Jurisdiction in the instant case has been assumed by the tax Officer under section 122(5A) and as per settled law, the error and prejudice should be clearly manifest from the show-cause notice and there is no room for any roving inquiry or fishing expedition. The tax officer cannot require the explanation from the taxpayer based on documentary evidence.
- Taxpayer was a non-resident person during the period under reference and drawn handsome amount of foreign income from France. The amount of foreign remittances declared was received through banking channel and brought to Pakistan through legal

means and the source is also valid and explainable. Same evidence was also produced before the below authorities, but despite acknowledging the evidence CIR(A) partially considered the evidence.

- Moreover, as a resident of France the appellant has center of vital interest in France by virtue of his personal and economic interest abroad moreover, he has his habitual abode abroad, having bank account and does not come to Pakistan frequently and his income is assessed in France on which tax has been paid there. Reliance placed on the judgment of the Honorable Lahore High Court reported as "2020 PTD 1662" wherein in a similar case the honorable Court held that once it is established that the center of vital interest is not Pakistan, section 111 read with section 82 of the Ordinance, are thus superseded by the bilateral tax treaty between Pakistan and contracting state on the application of tie-breaker test under Article-4 of the bilateral Double Taxation Treaty with France.

The Department argued that:

- That the appellant was provided sufficient opportunity but he preferred not to comply with the notices. Therefore, amendment of assessment was made on the basis of definite information available on record. CIRA rejected the appeal, filed by the taxpayer, considering it without any substance or merit

Decision

ATIR held that:

- The additional data, information, documents or records were required by the tax officer to establish erroneousness and prejudice to the interest of revenue which falls clearly out of the scope of section 122(5A). Therefore, the arguments of the Appellant are convincing as the same are based on the 'ratio decidendi' of the reported judgments of this Tribunal as well as the higher courts of the country.

- It is therefore, held that the tax officer could not go beyond the allegations mentioned in the show-cause notice while CIRA also failed to apply judicious mind to confirm the same. It is therefore, held that the additions made by the tax officer and confirmed by the CIRA on this account without confronting the same through show-cause notice are illegal hence not sustainable as per ratio settled by the Apex Court.

- Section 111 of the Ordinance cannot be invoked on non-resident whose habitual abode is in France and have more personal and economic interest in France than Pakistan and has not earned Pakistan source income. The department has failed to discharge onus for the reinforcement of section 111. In the light of above the appellant is not taxable in Pakistan and section 111 is not attracted to non-resident in the presence of tax treaty between Pakistan and France upon applicable tie-breaker test.

6. THE ISSUANCE OF A SEPARATE NOTICE UNDER SECTION 111 OF THE ORDINANCE IS MANDATORY FOR THE PURPOSE OF ADDITION ON ACCOUNT OF UNEXPLAINED INCOME OR ASSETS.

2024 PTD 1112

LAHORE HIGH COURT

ZUBAIR KHAN VS

COMMISSIONER INLAND REVENUE JHELUM ZONE AND OTHERS

APPLICABLE SECTIONS: SECTION 2(29), 111, 111(1)(b), 122, 122(1), 122(5), 122(8), 122(9) AND 133 OF THE ORDINANCE AND SECTION 189 OF THE CONSTITUTION

Brief Facts:

Show cause notice issued under section 122(9) of the Ordinance for tax year 2018 on the basis of definite information that applicant purchased property during said tax year but did not disclose its source. Later, order was passed by the tax officer which was appealed before CIRA and ATIR without success.

A reference application under Section 133 of the Ordinance was filed by the Applicant, being dissatisfied by ATIR's order.

Following questions of law was raised by the applicant:

- Whether under the facts and circumstances of the case the learned ATIR was justified in upholding the orders of both the authorities below.
- Whether under the facts and circumstances of the case the order of learned ATIR is a speaking order and is maintainable in the eye of law.
- Whether under the facts and circumstances of the case the learned ATIR was not justified by not considering that order passed by Respondent has without issuing mandatory separate / independent notice for making the additional under section 111 of Ordinance.
- Whether under the facts and circumstances of the case the learned ATIR has mis directed itself by not considering that addition under section 111(1)(b) can be made only after confronting by separate notice under section 111(1)(b).

Decision

LHC decided the matter in favour of applicant and held that:

- Non-issuance of proper notice in order to invoke provisions of Section 111 cannot be taken lightly and its non-compliance may lead to render the proceedings not in conformity with or according to the intent and purpose of law. In the instant case, neither notice under section 111 of the Ordinance has been issued to the applicant nor was the applicant specifically confronted, with such proposed addition so that the applicant could have advanced some explanation in this regard (2019 PTD 1828). Thus, impugned addition appears to be without any lawful authority
- The issue regarding definite information has already been elaborated and interpreted by the Supreme Court of Pakistan from time to time firstly in various judgments reported as 1993 SCMR 1232, 1993 PTD 1108, 2019 SCMR 1639 and in Civil Petition No.2447-L of 2022.

Expression definite information certainly meant much more than mere material so as to cause a reasonable belief or even such evidence which may lead to a definite belief. Unless there is definite direct information and there is no further need to put the said definite information to trial by putting in further supporting material the process of self-assessment could not be reopened. Definite information does not mean a re-analysis of existing information or an analysis of further information that was previously accessible but had not been taken into account. Therefore, proposed question answered in affirmative.

- Furthermore, FBR has already issued instructions through Notification No.2(22)Rev.Bud. / 2020 dated May 25, 2021 to the Chief Commissioners Inland Revenue, LTOs, MTO, CTOs, RTOs in the following manner:

"Representations have been received in the Board suggesting that field officers are recklessly issuing notices under section 122(5) read with Section 122(9) of Income Tax Ordinance, 2001 (hereinafter "the Ordinance ") where purportedly the threshold of "definite information" as defined under section 122(8) is not met. It goes without saying that amendment proceedings under section 122(5) of the Ordinance, merely on the basis of audit suspicion picked from within the declarations lodged by the taxpayers themselves, is an enforcement travesty and need to abate. The scheme of law warrants that a taxpayer must be dealt with precisely as per principles of justice and fair play".

However, above instructions have also been brushed aside while passing the impugned orders from tax officer till the ATIR.

7. POWER UNDER SECTION 221 ARE QUITE LIMITED TO THE EXTENT OF MISTAKES APPARENT FROM RECORD AND INTENDED TO OPERATE WITHIN THEIR RESPECTIVE SPHERES.

2024 PTD 1062

APPELLATE TRIBUNAL INLAND REVENUE

AHMED HASHIM ZAFAR

VS

COMMISSIONER INLAND REVENUE, FAISALABAD

APPLICABLE SECTIONS: 114,120,122,170,and 221 of the Ordinance, 2001

Brief Facts:

In this case, the taxpayer submitted an income tax return for the tax year 2017. It was later discovered that the taxpayer had adjusted a refund against their tax liability for the same year without obtaining proper verification from the Commissioner. Recognizing this as an error, the Officer of Inland Revenue (OIR) initiated rectification proceedings by issuing a show-cause notice under Section 221 to the taxpayer.

Consequently, the OIR disallowed the refund adjustment and issued an order under Section 221 of the Ordinance. This decision was upheld by the Commissioner (Appeals) of Inland Revenue.

Aggrieved by this decision, the taxpayer filed an appeal before the Appellate Tribunal Inland Revenue (ATIR). It is important to note that the taxpayer did not submit a refund application under Section 170 of the Ordinance for determination of their claim by the Commissioner; instead, the taxpayer adjusted the refund against their tax liability at the time of filing their return. Such actions are not condoned by either the department or prevailing law.

Decision

The ATIR held that it is a settled proposition that a declared version of a refund can only be amended under Section 122 of the Ordinance while disposing of a refund application under Section 170, in conjunction with Rule 71 of the Income Tax Rules 2002. However, the ATIR clarified that the scope of Section 221 of the Ordinance is restricted to rectifying mistakes apparent from the record. If an officer exercising such powers enters into controversy, investigates the matter, reassesses evidence, or takes into account additional evidence to form an opinion different from the original order, it does not constitute "rectification" of that order.

The OIR improperly handled the matter through rectification under Section 221 of the Ordinance. In light of these circumstances, the impugned orders were set aside as they were passed without lawful authority and are deemed to have no legal effect.

8. PACKAGING OF IMPORTED TEA AND SPICES IN RETAIL CLASSIFICATION AS MANUFACTURER UPHELD BY HIGH COURT IN FAVOR OF TAXPAYER

2024 PTD 1095

PESHAWAR HIGH COURT

COMMISSIONER INLAND REVENUE, PESHAWAR

VS

MESSRS AL KHYBER TEA AND FOOD AND 2 OTHERS

APPLICABLE SECTIONS: 148, 170(4) of the Ordinance, 2001

Brief Facts:

The taxpayer submitted a refund application for the tax years 2014 to 2018 concerning imported raw materials. The Department did not process this application, citing that the taxpayer was enjoying manufacturer status. The taxpayer, engaged in the packaging of imported tea and spices in retail packaging using human resources, lodged a complaint with the Federal Tax Ombudsman (FTO) regarding the non-issuance of refunds for the specified tax years.

The FTO recommended that the Federal Board of Revenue (FBR) complete the verification process for the taxpayer's refund applications within 45 days. The FTO's recommendations were contested by the Department and had filed references before this Court with the questions of law whether under the facts and circumstances, the taxpayer- respondent No.01 falls under the definition of "manufacturer" or "commercial importer"?

Decision

During the course of arguments, the learned counsel for the respondent-company provided a copy of consolidated judgment of this Court dated 07.11.2022 rendered in Tax References Nos. 16, 10, 11 and 12-P of 2019 whereby all the references have been answered in negative by holding that the issue of declaring the respondent-company as manufacturer" has

already been adjudicated upon and decided in its favour. The court dismissed the constitutional petition as meritless, emphasizing that all legal questions regarding the taxpayer's classification had been resolved in favor of the taxpayer.

9. POWERS OF THE COMMISSIONER TO REVISE TAX RETURNS APPLIED RETROSPECTIVELY.

2024 PTD 1068

LAHORE HIGH COURT

FAUJI FRESH AND FREEZE LTD. THROUGH EXECUTIVE VICE-PRESIDENT

VS

COMMISSIONER INLAND REVENUE

APPLICABLE SECTIONS: 114,(6)(ba) of the Ordinance, 2001

Brief Facts:

The taxpayer filed applications for revision of assessments for multiple years prior to tax years 2015 under 114(6) of the Ordinance. The Controversy turned on the retrospectively of the amended and as whether the commissioner was obliged to pass an order for revision of return before the expiration of 60 days for the date of revision of date was sought. The third proviso 114(6)(ba), inserted through Finance Act, 2015,provides that if Commissioner does not entertain the revision application within 60 days, the revision application will be considered as deemed accepted.

An appeal was filed before the High Court under Section 3 of the Law Reforms Ordinance, 1972 regarding the application of proviso 114(6)(ba) of the Ordinance. A Single Judge of the High Court ruled that the amendment was substantive and refused to apply it retrospectively. Being aggrieved, the taxpayer filed Intra Court Appeal before the division Bench with the same jurisdiction.

Decision

The Division Bench found that the amendment did not reference specific tax years and was applicable to pending proceedings regardless of when they occurred. Consequently, since the Commissioner failed to decide on the revision within 60 days, it was deemed granted and the learned Single Judge fell in error by holding that "tax years prior to 2015 shall be excluded from its operation". The Bench held that clearly, the amendment did not have any reference to the tax years and was merely related to the powers of the Commissioner to decide the revision of return expeditiously and not later than 60 days. The amendment clearly applied to pending proceedings before the Commissioner and whether they related to the year 2015 or to prior tax years. The appeal was allowed, and the Single Judge's order was set aside, affirming that the taxpayer's revision application was approved

10. EVERY STATUTE THAT RELATES TO SUBSTANTIVE RIGHTS AND OBLIGATIONS SHOULD BE DEEMED PROSPECTIVE UNLESS, BY EXPRESS PROVISION OR NECESSARY IMPLICATION, IT HAS BEEN GIVEN RETROSPECTIVE EFFECT.

WRIT PETITION NO.43578 OF 2024

LAHORE HIGH COURT

M/S K&N'S FOODS (PVT.) LTD

VS

FEDERATION OF PAKISTAN

APPLICABLE SECTION: 153(4)

Brief Facts:

Petitioner was issued an exemption certificate for the period July 1, 2024 to December 31, 2024 under section 153(4) of the Ordinance, for the supply of goods without payment of tax under section 153(1)(a) of the Ordinance, which was proposed to be revoked vide impugned notice on the pretext of amendment, substituting sub-section (4) of section 153 of the Ordinance through Finance Act, 2024 dated June 30, 2024 w.e.f. July 1, 2024 allowing deduction of tax at reduced rates.

Consequently, vide impugned orders dated July 8, 2024, the exemption certificates issued in favour of the petitioner were revoked. However, certificates of reduced rate of 1% were ordered to be issued for

the same period on filing of fresh application by the taxpayer.

Being aggrieved from the above decision, the petitioner filed petition before LHC.

Arguments:

Petitioners contends that the impugned notices and the impugned orders have been issued without lawful authority and the same are of no legal effect inasmuch as the amendment introduced in section 153(4) of the Ordinance through the Finance Act, 2024 has no retrospective effect or application to adversely affect the exemption certificates dated June 30, 2024 and June 28, 2024 issued in favour of the petitioners. Petitioners further contends that they cannot be asked to pay more tax which is not due as they had already discharged their entire tax liability by paying the tax in advance from July 1, 2024 to December 31, 2024.

The Department contended that the certificates of exemption have been issued for the tax year 2025 commencing from July 1, 2024, therefore, the amended section 153(4) of the Ordinance was squarely applicable in the instant case. They maintain that issuance of exemption certificates on June 28, 2024 or June 30, 2024 is in disregard of the law applicable with effect from July 1, 2024 therefore, of no legal effect and the impugned orders have been passed lawfully.

Decision

LHC allow the petition and set aside the notices and orders as follows:

- Every statute that relates to substantive rights and obligations should be deemed prospective unless, by express provision or necessary implication, it has been given retrospective effect.
- By now it is well settled that the Courts must lean against giving a statute retrospective effect that affects vested rights and/or past and closed transactions by adhering to two rules:
  (i) If two interpretations are reasonably possible, the one that saves vested rights and/or past and closed transactions should be adopted; and
  (ii) No statute should be construed to have retrospective effect to a greater extent than its language necessarily requires.

Reliance in this regard is placed on the cases of **1993 SCMR 1905** and **2000 SCMR 367**.

- There is no provision of the Finance Act, 2024 that expressly or by necessary implication gives any retrospective effect or application to the amended section 153(4) of the Ordinance. Therefore, the aforementioned amendment cannot be construed to affect the exemption certificates issued in favour of the petitioners on June 30, 2024 and June 28, 2024 respectively in accordance with the law existing at the relevant time. The amendment introduced through the Finance Act, 2024 is applicable on all exemption certificates issued after its effective date i.e. July 1, 2024.

11. NO CONCESSION OF EXEMPT INCOME, WITHOUT FULFILLMENT OF REQUISITE CONDITIONS.

2024 TAX 352

LAHORE HIGH COURT

PUNJAB LOK SUJAG VS APPELLATE TRIBUNAL INLAND REVENUE, LAHORE

APPLICABLE SECTIONS: SECTION 2(29), 2(36), 121, 122, 122(1), 122(4), 122(5), 122(9), 137, 137(2), 174, 176(6), 177, 214C, 221 OF THE INCOME TAX ORDINANCE, 2001

Brief Facts:

The applicant is a Non-Profit Organization, which claimed exemption, without obtaining approval from Commissioner under section 2(36) of the Ordinance.

Audit proceeding initiated under section 177(6) of the Ordinance, wherein explanation with respect to the claiming of exemption, without Commissioner Approval under section 2(36) was sought. However, no explanation was offered by the applicant during the proceeding.

Thereafter, notice was issued under section 122(9) of the Ordinance, whereby explanation was sought with respect to issues, other than the exemption claimed.

Upon receiving partial response, Order was passed under section 122 of the Ordinance, after conclusion of the audit proceeding under section 177 of the Ordinance.

Being aggrieved, applicant filed appeal with CIRA and then with ATIR, however, both were decided in favour of the department.

Being aggrieved, the applicant filed reference application, before the LHC.

The Applicant contended that the audit proceedings initiated were not concluded in accordance with the timelines prescribed in decisions in the case, referred as Intra-Court Appeal No.338 of 2017, and 2018 PTD 1444(SC). The Applicant also relied upon the Circular dated April 13, 2018, issued by FBR.

The Applicant contended that they were never confronted with the objections regarding the claim of exempt income, in the notice under section 122(9) of the Ordinance, but still the tax department proceeded to tax the exempt income on the premise that no approval under section 2(36) of the Ordinance was extended by the concerned Commissioner and certificate was not procured. The applicant place reliance on the judgement reported as 2021 SCMR 1133, where it was held that

"*an order of adjudication passed on the basis of a ground not stated in the notice is palpably illegal and void on the face of it. The purpose of serving a notice on a taxpayer is to notify him of the case against him. When such a document contains incomplete information it can seriously prejudice the taxpayers defense".*

The department argued that objection qua claim of exempt income was confronted while seeking explanation with respect to the issues arising out of audit report, and upon fulfilment of the requirement under section 177(6) of the Ordinance, additions were rightly made while amending assessment.

Decision

LHC decide the matter as follows:

Perusal of section 177(6) clearly manifest that explanation was required to be sought from the applicant, and upon failure to provide explanation, assessment can be amended.

No premium can be claimed or extendable to the applicant, who evidently had not extended any cooperation or facilitation during conduct of audit. No document is indicated or referred to show that applicant provided requisite documents / material for the purposes of facilitating the audit. No benefit of the ratio settled in the cases can be extended to the applicant, in view of default on the part of the applicant to facilitate the conduct of audit.

The Perusal of sub-section (6) of section 177 clearly manifests that explanation was required to be sought from the taxpayer, and upon his failure to provide explanation, assessment can be amended. Mere non-reiteration of objection qua exempt income in subsequent notice under section 122(9) of the Ordinance is not enough, considering the facts and circumstances of the case. No concession / advantage sought could be extended, with respect to protection claimed qua exempt income when requisite conditions were not fulfilled, and no certificate was procured. In this case, no prejudice is shown to have been caused to the applicant, which on merits failed to justify claim of exempt income.

12. TAX AUTHORITIES CAN PROCEED TO PASSS ORDER UNDER SECTION 161, IF TAXPAYER FAILS TO PROVIDE REQUIRED INFORMATION

2024 TAX 304

ISLAMABAD HIGH COURT,

COMMISSIONER INLAND REVENUE, ISLAMABAD
VS
Messrs T.F. PIPES LIMITED COMPANY LIMITED

APPLICABLE SECTIONS: SECTIONS 174, 161 OF THE INCOME TAX

ORDINANCE, 2001 (THE ORDINANCE) And 133---Income Tax Rules, 2002, R.44(4)

Brief Facts:

The case involves proceedings initiated against the taxpayer under Section 161, read with Section 174 of the Income Tax Ordinance, 2001. A show-cause notice required the taxpayer to submit a reconciliation statement as per Rule 44(4). The tax department claimed that the taxpayer failed to provide the necessary information under Section 174, therefore, they proceeded to pass the order under section 161. The Commissioner Appeals upheld this order.

The Appellate Tribunal held that no demand could be generated under Section 161, suggesting that demand should have been based on the best judgment rule outlined in Section 121.

However, the appellant department referred a recent Supreme Court ruling (Commissioner Inland Revenue Zone-I, LTU v. MCB Bank Limited, reported as 2021 SCMR 1325) along with Messrs Bilz (Pvt.) Ltd. v. Deputy Commissioner of Income-Tax, Multan (2002 PTD 01). This ruling indicated that when a taxpayer fails to produce records upon request, an assessment can be made under Section 161, and recoveries can be pursued. Conversely, if records are provided, it is the responsibility of the tax department to identify specific transactions where withholding obligations were not met.

The taxpayer's counsel argued that responses were submitted on January 1 and February 8, 2018. The tax department contended that these replies did not meet their required format. The Tribunal noted that since information was provided, it was up to the tax department to identify any failures in withholding obligations.

Decision

The Court found that the key question revolves around the obligations of both the tax department and the taxpayer regarding withholding obligations under Section 161 of the Ordinance. The onus shifts between parties, depending on whether the taxpayer has filed the requisite records.

The High Court held that there is no need to reiterate the law as clarified by the Supreme Court in MCB. The legal question has already been addressed; thus, only factual matters regarding how the tax department can generate a demand against a taxpayer remain to be resolved.

The Court decided to remand the matter back to the Commissioner Inland Revenue for further determination. The taxpayer's response is on record as noted in the assessment order. Given this response and the available records within the tax department's database, it should not be challenging for the tax department to identify individual transactions related to which withholding obligations under Section 161 have not been fulfilled and generate a demand if such delinquency is substantiated.

Consequently, the matter is remanded back to the Commissioner for further determination in accordance with Supreme Court precedents established in MCB Bank Limited. The Commissioner must provide the taxpayer with an opportunity for a hearing and issue a reasoned order consistent with legal standards clarified by the Supreme Court.

13. **COURT HELD TO REIMBURSE THE TAX DEMAND RECOVERED BY ATTACHING TAXPYER'S BANK ACCOUNTS, AFTER DEDUCTING 10% OF TOTAL DEMAND REQUIRED FOR AUTOMATIC STAY AT COMMISSIONER APPEALS STAGE, SINCE THE APPEAL FILED BEFORE THE COMMISSIONER APPEAL WAS NOT DECIDED.**

2024 TAX 204

LAHORE HIGH COURT,

MESSRS RADIANT MEDICAL (PVT.) LIMITED
VS

THE FEDERAL BOARD OF REVENUE AND OTHERS

APPLICABLE SECTIONS: SECTIONS 127, 140, 140(1) OF THE INCOME TAX ORDINANCE, 2001 (THE ORDINANCE) And 199--- Constitution of Pakistan, 1973

Brief Facts:

In this case, the petitioner filed a petition under Article 199 of the Constitution challenging a recovery made by the Inland Revenue Officer from its bank accounts pursuant to a notice. The petitioner argued that the recovery under Section 140 of the Income Tax Ordinance is unlawful as it violates the proviso to subsection (1) of Section 140. It was contended that recovery cannot occur while an appeal under Section 127 is pending until adjudication by an external authority, such as the Appellate Tribunal Inland Revenue.

The legal advisor for the revenue authorities opposed the petition, stating that the stay order from the Commissioner (Appeals) had lapsed and that the appeal is now transferred to the Appellate Tribunal Inland Revenue in view of the Tax Laws (Amendment) Act, 2024 dated 09.05.2024. He argued that without a stay order, the department was entitled to recover taxes based on the amended assessment order under Section 140.

Decision:

On Court query, it was apprised by learned counsel for the petitioner that 10% of the alleged tax demand was never demanded, however, the petitioner is ready to satisfy the condition forthwith. It is an undisputed position that the appeal preferred by the petitioner under Section 127 of the Ordinance, against amended assessment is still pending.

In view of the unequivocal provision of the subsection (1) of Section 140 of the Ordinance, recovery proposed to be effected by the department beyond 10% of the tax liability of the petitioner, as determined in the amended assessment order, is without lawful authority.

For the foregoing reasons, the court held that this writ petition is partially allowed and the respondents are directed to ensure that the amount recovered from the Bank accounts of the petitioner pursuant to the impugned notice under Section 140 of the Ordinance is reimbursed to the petitioner or credited to the same Bank accounts within a period of 20-days after deducting 10% of the tax liability therefrom. There shall be no order as to costs.

Sales Tax Act, 1990

A. Notifications:

1. SRO No. 1444 dated September 12, 2024

Through aforesaid notification, FBR has revisited the powers of the Commissioner IR under section 74 of the ST Act for condonation of time limits prescribed under any of the provisions of the ST Act and Rules made thereunder. Previously, through SRO 392(I)/2009 dated May 21, 2009, the Commissioner-IR was empowered to condone the time limit upto one year. However, through aforesaid SRO, period of one year is now extended upto three years.

FBR has also prescribed certain conditions and limitations under aforesaid notification for allowing condonation, which are as under:

- A registered person or their authorized representative shall submit an application to the Commissioner-IR stating the reasons for delay and seeking condonation.
- If no additional information is required by the Commissioner-IR, case will be decided within 30 days of receiving the application taking into consideration the grounds of delay.
- If further information is required by the Commissioner-IR, he may request the same and decide the case within 45 days of receiving of application.
- The Commissioner-IR will decide the case on merit, with recorded reasons for approval or rejection of the application.
- If the case is approved, the Commissioner may condone the time limit up to three years.

Moreover, the Commissioner-IR is required to furnish report of the cases processed in a calendar month to the concerned Chief Commissioner-IR on or before 7th day every month as per the format prescribed in the aforesaid notification.

Furthermore, through Sales Tax Circular No. 5 of 2024 dated September 16, 2024, FBR has also prescribed revised SOPs for disposal of cases of condonation by the Commissioner IR. Procedures are briefly discussed as under:

- Registered persons shall apply to the concerned Commissioner IR for condonation in terms of aforesaid SRO 1444(I)/2024 dated September 12, 2024.
- Where the condonation beyond three years is involved, the concerned Commissioner-IR after considering the grounds of delay and any other information required by him, shall send his categorical recommendations to the Board on the format prescribed in the Circular.
- The Commissioner-IR shall send his recommendations to the Board within 15 days of receiving of application in RTO/LTO/CTO/MTO. However, if the Commissioner requests additional information, the said fifteen-day's period shall be reckoned from date of receipt of such information.
- After receipt of recommendation from the Commissioner IR, the Board shall examine the request and recommendations, and communicate approval or rejection of the request to the concerned Commissioner IR as well as to the applicant.
- The aforesaid Circular supersedes Sales Tax Circular No.01 of 2024/1R Operations dated March 4, 2024.

2. SRO No. 1507(1)/2024 dated September 24, 2024

Through the aforesaid notification, FBR has made amendments to the Chapter V and VA of the Sales Tax Rules, 2006 wherein the scope of Fully Automated Sales Tax e-Refund System (FASTER) has been extended to all categories of exporters effective from October 01, 2024. Through FASTER system, sales tax refund payment order (RPO) shall be generated and same shall be electronically communicated directly to the State Bank of Pakistan

(SBP) within 72 hours of submission of claim for onwards advice to respective banks for credit into the notified account of claimant. However, refunds of commercial exporters shall be processed on receipt of export proceeds realization certificate or bank credit advice.

Prior to this amendment, the expeditious refund facility through FASTER system was only available to five leading export-oriented sectors.

In case the claim that do not fulfill criteria for FASTER Channel, it shall be processed through the "STARR system". Further, the Board is also empowered to process any refund claim through STARR.

3. SRO No. 1513(I)/2024 dated September 26, 2024

Through the aforesaid notification, FBR has revised procedures for the prize scheme through amendments in the rule 150ZEL and 150ZEM of the Sales Tax Rules, 2006 (ST Rules).

The revised procedure for the prize scheme revealed that the customers of integrated tier-1 retailers who report unverified invoices issued by the tier-1 retailers, will be eligible for prizes in respect of their purchases from the integrated tier-1 retailers.

In case of an unverified invoice, the customer shall report the same through the application or WhatsApp number, as the case may be, providing the details such as their name, CNIC, mobile number, IBAN, proof of digital payment, a picture of the unverified invoice, and a photo of the business premises. Without proof of digital payment, customers forfeit the right to claim the prize.

Once an unverified invoice is reported, the Commissioner IR will be alerted through the IRIS system to verify the invoice and determine the customer's eligibility for the prize. Necessary actions will be taken under section 33 of the Sales Tax Act.

B. Reported Decisions

1. DIRECTOR GENERAL INLAND REVENUE RECEIPTS (DGAIRR) HAS NO JURISDICTION TO CONDUCT AUDIT UNDER THE ST ACT.

2024 PTD 1214
PESHAWAR HIGH COURT

THE COMMISSIONER INLAND REVENUE

VS

M/S. TRIBAL AREAS ELECTRIC SUPPLY COMPANY LTD

Applicable provisions: Section 11, 25, 30 and 72B of Sales Tax Act, 1990 (the Act)

Brief facts:

In the instant case, various show-cause notices were issued to the respondent based on an audit conducted by the Director General Audit Inland Revenue Receipts (DGAIRR) for the tax periods (March 2010 to 2013, July 2013 to June 2014, July 2014 to June 2015, July 2016 to June 2017 and July 2017 to June 2018) whereby it was observed that the respondent has short paid sales tax or suppressed supplies.

The Assessing Officer being not satisfied with the explanation offered by the respondent ordered for recovery of principal amount of sales tax along with default surcharge and penalty. The learned First Appellate Forum though affirmed the orders of Assessing Officer, however, the Tribunal accepted the appeal of respondent and annulled the orders of both the lower fora vide impugned orders. Feeling aggrieved, the petitioner-department has filed the Sales Tax References for each tax period mentioned above.

Decision:

The Hon'ble Court decided the instant Sales Tax Reference as well as connected ST references in favour of the respondent and held that the audit findings were not supported by further verification required under Section 25 or Section 72B of the ST Act. It was further held, admittedly, DGAIRR does not fall within categories of the officers as provided under Section 30 of the Act, therefore, on the basis of the said audit conducted by the DGAIRR, the assessment order could not have been passed without verification of the record of the respondents.

The Court placed reliance on the similar case of Ms. Makk Beverages reported as 2010 PTD 1355 settled by this Court and also affirmed by the Apex Court. The Court did not find any occasion to interfere in the matter and answered the Reference in negative.

2. PHC ALLOWED PESCO TO CLIAM INPUT TAX ADJUSTMENTS RELATED TO ITS OPERATIONS EVEN IN THE FACE OF LOSSES FROM THEFT OR PILFERAGE

2024 PTD 1174
PESHAWAR HIGH COURT

THE COMMISSIONER INLAND REVENUE

VS

M/S PESHAWAR ELECTRIC SUPPLY COMPANY (PESCO)

Applicable provisions: Sections 2(35), 3, 7, 8, 8(i)(a), 36, 36(3), 47 and 74 of the Sales Tax Act, 1990 (the Act)

Brief facts:

Peshawar Electric Supply Company Ltd. (PESCO), a federal government-owned entity responsible for electricity distribution in Khyber Pakhtunkhwa, received a show-cause notice followed by an audit conducted by the Assistant Collector of Sales Tax, which exposed discrepancies in the respondent's input tax adjustments. In response, PESCO provided a written explanation and supporting documents during the adjudication process overseen by the Additional Commissioner Inland Revenue.

The Assessing Officer passed the order with the contention that PESCO's claim of input tax adjustment was inadmissible under Sections 7(1), 8(1)(a), and 59 of the ST Act read with Rule 13(1)(2)(b) of the Special Procedure for the Collection and Payment of Sales Tax on Electric Power, as notified in Chapter III of SRO 480(I)/2007 dated 9 June, 2007. Being aggrieved, PESCO filed appeal before the Commissioner (Appeals) who had upheld the appeal however, also allowed a partial adjustment. Being dissatisfied with the outcomes, both the respondent and the department filed separate appeals before the Appellate Tribunal.

The Tribunal partially accepted PESCO's appeal and disposed of the departmental appeal with certain terms, the department being aggrieved has come up with references before the High Court.

Decision:

The High Court dismissed the Sales Tax Reference and decided the case in favour of PESCO, allowing PESCO to claim input tax adjustments related to its operations, even in the case of losses from theft or pilferage.

The Court held that losses from electricity transmission and distribution are part of the respondent's operational activities directly related to its taxable supplies. Therefore, claims for input tax adjustments should be allowed as the losses, regardless of their nature, relate to the taxable activities of the respondent.

3. NOTICE ISSUED UNDER SECTION 37 OF THE ACT IN THE ABSENCE OF ANY INQUIRY PENDING BEFORE THE OFFICER APPEARS IS NOT SUSTAINABLE

2024 TAX 357
SINDH HIGH COURT

AACHEE GARMENTS (PVT.) LTD. & ANOTHER
VS
FEDERATION OF PAKISTAN & OTHERS

Applicable provisions: Sections 37 of the Sales Tax Act, 1990 (the Act)

Brief Facts:

In the instant case, the petitioner challenged a summons/notice issued under Section 37 of the ST Act. The impugned notice required the petitioner to personally appear and submit comprehensive records for the past five years within seven days, failing which the petitioner would be presumed to be involved in tax fraud. Particularly, the notice did not refer any specific inquiry being conducted by the issuing officer.

Decision:

The Court decided the petition in favour of the petitioner and set-aside the impugned notice.

The Court held that section 37 of the ST Act empowers designated officer to summon persons to give evidence and produce documents in any inquiry pending before the respective officer in pursuance of the Act. The inquiry itself considered to be judicial proceeding within the meaning of the Pakistan Penal Code 1860. The impugned notice makes no reference to any requisite specified inquiry, therefore, the said notice considers to be an abuse of process and manifestly unjust / prejudicial towards the taxpayer. Hence, it cannot be sustained.

4. DEMAND OF REVENUE FOR THE PERIOD PRIOR TO FINANCE ACT, 2016 IS WITHOUT LAWFUL AUTHORITY.
2024 TAX 292
PESHAWAR HIGH COURT

THE COMMISSIONER INLAND REVENUE WITHHOLDING
VS
M/S CHASHMA SUGAR MILLS (PVT.) LTD.

Applicable provisions:
2(5AA),3,3(7),6,8,11,11(2),11(4A) and 47 of the Sales Tax Act, 1990 (the Act)

Brief facts:

In the instant case, a show cause notice (SCN) was issued to the respondent to address the discrepancies identified during the audit of the respondent's monthly sales tax and federal excise returns for the period from February 2013 to March 2014. Respondent acting as withholding agent short withheld sales tax from payment made against taxable purchases. The officer passed the order under section 11(2) of the ST Act contending that the respondent is personally liable to pay the amount of tax short withheld along with 5% penalty under Section 33(5) of the ST Act.

Being aggrieved, the respondent filed appeal before the Commissioner (Appeals) who upheld the assessment order. The respondent being unsatisfied filed second appeal before the Appellate Tribunal Inland Revenue (ATIR) where the learned bench of the ATIR held that section 11(2) of the Act is not applicable to the respondent being a withholding agent and only applies to the person making taxable supplies.

Being aggrieved of the tribunal decision, the Revenue Department filed reference before the Court to determine whether the respondent as a withholding agent in terms of section 3(7) of the Act read with rule 3 of the Rule was a person liable to pay tax in terms of section 11(4A) of the Act introduced through Finance Act, 2016 for the tax period prior to the year 2016.

Decision:

The Court dismissed the sales tax reference reaffirming the principle that taxation cannot be imposed retrospectively without clear and express language in the statute.

The Hon'ble Court held that the text of Finance Act, 2016 does not give any impression of its retrospective application and it is for obvious reason that the liability to pay sale tax is on the person making taxable supplies and the withholding agent was only responsible to withhold certain amount of tax at specified rate to deposit the same with the revenue. The Court further held that since, the personal liability of a withholding agent to pay tax short withheld was created through Finance Act, 2016 through insertion of sub-section (4A) of Section 11 of the Act, which has no retrospective application, therefore, the demand of the revenue for the period prior to the enactment of Finance Act, 2016 is without lawful authority.

Federal Excise Act, 2005

A. Notifications

1. S.R.O. No. 1449(I)/2024 dated September 19, 2024

Through aforesaid notification, FBR has revisited the powers of the Commissioner IR under section 43 of the FE Act for condonation of time limits prescribed under any of the provisions of the ST Act and Rules made thereunder. Previously, through SRO 395(I)/2009 dated May 21, 2009, the Commissioner-IR was empowered to condone the time limit upto one year. However, through aforesaid SRO, period of one year is now extended upto three years.

FBR has also prescribed certain conditions and limitations under aforesaid notification for allowing condonation, which are as under.

- A registered person or their authorized representative shall submit an application to the Commissioner-IR stating the reasons for delay and seeking condonation.
- If no additional information is required by the Commissioner-IR, case will be decided within 30 days of receiving the application taking into consideration the grounds of delay
- If further information is required by the Commissioner-IR, he may request the same and decide the case within 45 days of receiving of application.
- The Commissioner-IR will decide the case on merit, with recorded reasons for approval or rejection of the application.
- If the case is approved, the Commissioner may condone the time limit up to three years.

Moreover, the Commissioner-IR is required to furnish report of the cases processed in a calendar month to the concerned Chief Commissioner-IR on or before 7th day every month as per the format prescribed in the aforesaid notification.

Furthermore, through Federal Excise Circular No. 1 of 2024 dated September 24, 2024, FBR has also prescribed revised SOPs for disposal of cases of condonation by the Commissioner IR. Procedures are briefly discussed as under:

- Registered persons shall apply to the concerned Commissioner IR for condonation in terms of aforesaid SRO 1449(I)/2024 dated September 19, 2024.
- Where the condonation beyond three years is involved, the concerned Commissioner-IR after considering the grounds of delay and any other information required by him, shall send his categorical recommendations to the Board on the format prescribed in the Circular.
- The Commissioner-IR shall send his recommendations to the Board within 15 days of receiving of application in RTO/LTO/CTO/MTO. However, if the Commissioner requests additional information, the said fifteen-day's period shall be reckoned from date of receipt of such information.
- After receipt of recommendation from the Commissioner IR, the Board shall examine the request and recommendations, and communicate approval or rejection of the request to the concerned Commissioner IR as well as to the applicant.

Sindh Sales Tax on Services Act, 2011

A. REPORTED DECISIONS

1. FEDERAL BOARD OF REVENUE (FBR) HAS THE LAWFUL AUTHORITY TO COLLECT WORKERS' WELFARE FUND (WWF)

APPEAL No.AT-69/2024
APPELLATE TRIBUNAL, SINDH REVENUE BOARD

Ms. HUFFAZ SEAMLESS PIPE INDUSTRIES LTD
Vs.
THE COMMISSIONER (APPEALS) - SINDH REVENUE BOARD KARACHI

APPLICABLE PROVISIONS: Section 43, 44 of the Sindh Sales Tax on Services Act, 2011.

Brief facts:

The Commissioner Appeals, SRB confirmed the demand in respect of Workers' Welfare Fund (WWF) along-with default surcharge and penalty created through the Order-In-Original (OIO) by the Assistant Commissioner (AC), Unit-37, Sindh Revenue Board (SRB). The appellant challenged the order passed by the Commissioner Appeals before the Appellate Tribunal –SRB pleading that the issue of WWF collection between FBR and SRB was under consideration before the Council of Common Interest (CCI) which has determined that FBR is the rightful authority to collect WWF.

Decision:

The Tribunal allowed the appeal and set-aside the OIO on the basis that since the decision of CCI that is "WWF shall remain with FBR" is in field, the SRB has no authority to collect WWF.

The Tribunal also held that the CCI serves as an essential constitutional institution that effectively addresses differences, problems, as well as among the provinces themselves. Ignoring the decision made by CCI effectively renders it dysfunctional, leading to a clear violation of the constitutional mandates and commands. Bypassing such an important constitutional body would mean making the provisions of the Constitution ineffective and redundant which cannot be permitted.

Baluchistan Revenue Authority Act, 2015

A. REPORTED DECISIONS

1. STATUTE IS NOT TO BE APPLIED RETROSPECTIVELY IN THE ABSENCE OF EXPRESS ENACTMENT ESPACIALLY WHERE VESTED RIGHTS ARE AFFECTED.

2024 TAX 287
BALOCHISTAN HIGH COURT

M/S SARA ENTERPRISES GOVERNMENT CONTRACTORS
VS
SECRETARY FINANCE, GOVERNMENT OF BALOCHISTAN

Applicable provisions: Sections 4(2)(a) of the Balochistan Revenue Authority Act, 2015 (the Act)

Brief facts:

The petitioner is a Government Contractor and is being engaged in construction works. The petitioner was awarded work order in 1998 for construction of 'Khari Penrennial Irrigation Scheme in Jhal Magsi' through an agreement which was successfully completed by the petitioner's company. However, the respondents failed to make the payment within stipulated period. The petitioner filed application under Section 20 of the Arbitration Act, 1940 and the matter was referred to the arbitrator, which was finalized with consent of both parties.

In pursuance of said judgment and decree, the amount was released in favour of the petitioner during tax year 2019. However, the Executive Engineer deducted 15% sales tax vide impugned order. Feeling aggrieved of said order of the Executive Engineer, the petitioner approached the Chairman Balochistan Revenue Authority, Quetta but all in vain. Consequently, the petitioner filed the constitutional petition.

Decision:

The High Court decided the constitutional petition in favour of the petitioner and held that the Balochistan Revenue Authority Act, 2015, which came into force on July 1, 2015, could not be applied retrospectively to impose a tax on transactions that predated the Act.

The Court emphasized that statutes are generally presumed to be prospective unless expressly stated otherwise or impliedly necessary to have retroactive effect, particularly when affecting vested rights and past transactions. In accordance with these principles, the Court established that the Act did not apply to the transaction prior to its enactment. Consequently, the Court set aside the tax deduction on transactions pertaining to 1998 and declared it as void ab initio. The court also ordered the respondents to refund the deducted amount to the petitioner.

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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.

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