

E-News & Views

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Karachi Tax Bar Association

(Formerly: The Income Tax Bar Association Karachi)

covering information on important judicial pronouncements, circulars and clarifications

Executive Committee

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FROM THE DESK OF PRESIDENT	FROM THE DESK OF CONVENER
<p>It gives me immense pleasure to pen down my message on the eve of launching Quarterly E-News & Views. I would like to take this opportunity to congratulate the Executive Committee for the term 2002-2003 who had started the publication of News & Views which is very informative, educational and useful magazine as the members are continuously benefiting with the said publication.</p> <p>As we know information travels with the speed of light, the world has been changed by three major revolutions i.e. Railway, Electricity and Broadband. People are interacting with each other socially & professionally. Knowledge of the people is increasing with great speed and if we cannot cope up with that speed, it would be very difficult for us to sustain and grow. Therefore, everyone has to use this tool to benefit not only himself, but also passing the information/ knowledge to others.</p> <p>This year the Executive Committee has decided to launch News & Views electronically and the sole purpose behind this is to give our members a chance to use electronic medium and visit our website so they will be more aware and confident about their capacity for usage of technology, which will help them in endeavoring their professional responsibilities.</p> <p>According to Albert Einstein:</p> <p style="text-align: center;"><i>“Try not to become a man of success but a man of value”</i></p> <p>Thanking you and looking forward for your continuous support.</p> <p>Regards</p> <p>Anwar Kashif Mumtaz</p>	<p>I am pleased to present the Jan to Mar 2011 issue of “E-News & Views” of the Karachi Tax Bar Association (KTBA).</p> <p>One of the major tasks taken up by the newly elected managing committee of the Bar is to restart its 9 years old practice after a lapse of one year for keeping its member abreast of the latest judicial pronouncements and changes in tax and corporate laws.</p> <p>Moreover, an endeavor has been made to come up with certain special features in this issue.</p> <p>It has been decided that from onward the issues of this publication of the Bar will be emailed to the members of the Bar and for that matter the name of the News & Views has been renamed as E - News & Views. This has been done from the point of view of the convenience attached to the emailing the news and views. Moreover it will also immensely increase the readership of the Bar’s publication to a greater circle of our profession within and outside Pakistan and will increase our outreach to other jurisdictions as well. Further, the E-News & Views will also save the cost of printing and the courier associated with the manual publication.</p> <p>The E-News & Views has also been posted on the website of KTBA.</p> <p>Another milestone of this issue remains that we have also planned to include important un-reported decisions of the Higher Appellate Authorities which we will continue sharing through this publication and we believe these will be of significant assistance to our members.</p> <p>Lastly, for the first time the case laws from the corporate law segment have also been included in E-News & Views. This is sure to enlighten the understanding of our members in their varied field of practices. However in view of the large and broad spectrum of corporate laws a careful choice needs to be exercised in this respect so as to confine ourselves strictly to those laws which would have a direct or indirect bearing to our core areas of tax practice. For the purpose we have restricted ourselves to the set of Company laws and merely one case of the Insurance sector has been included. Hope fully you all find the same useful.</p> <p>Your suggestions would remain the most valuable input in our efforts.</p> <p>Finally, I would also like to thank my team members of E-News & Views Committee for their input and continued support.</p> <p>Regards</p> <p>Muhammad Arshad</p>

IMPORTANT CIRCULARS & NOTIFICATIONS/SROs

Note: Members are advised to read the complete Circulars and SRO's/Notifications for better understanding of the respective issues.

DIRECT TAX

CIRCULAR/SROs/ NOTIFICATIONS REFERENCE	SUBJECT	KTBA LIBRARY REF. NO.
Circular No.1 of 2011 Dated 12-02-2011	Restructuring of Inland Revenue Wing at FBR and Field Formations -- Functional jurisdiction and distribution of work for implementation upto the level of Additional Commissioner approved for all Large Taxpayers Units (LTUs) and Regional Tax Offices (RTOs).	683
Circular No.2 of 2011 Dated 11-03-2011	Extension of date upto 25-03-2011 for making payments of advance-tax on Capital Gain on disposal of securities under Section 147(5B) of the Income Tax Ordinance, 2001 in respect of 1 st and 2 nd quarter of the current financial year 2010-2011.	684
Circular No.3 of 2011 Dated 01-04-2011	Clarification for deduction of Withholding Tax @ 10% on payment under Section 233 of the Income Tax Ordinance, 2001 on account of brokerage/commission by Sales Tax Zero-rated categories, namely, (a) Carpets; (b) Leather and Articles thereof including Artificial Leather Footwear; (c) Surgical Goods; (d) Sports Goods and (e) Textile and Articles thereof., which tax collected shall be final tax on the income from brokerage / commission.	685
Circular No.4 of 2011 Dated 02-04-2011	Miscellaneous Clarifications regarding deduction of tax on Sale/Purchase of Agricultural produce and format of Certificate by the Grower/Producer of Agricultural produce.	686
Various Jurisdiction Notifications issued all dated 01.03.2011	Jurisdiction assigned to various Commissioners, Regional Tax Offices and Large Taxpayers Units all over Pakistan.	687

CIRCULAR/SROS/ NOTIFICATIONS REFERENCE	SUBJECT	KTBA LIBRARY REF: NO.
S.R.O 9(I)/2011 Dated 06-01.2011	Draft Amendment for insertion of Income Tax Rule 81B in respect of Active Taxpayers List.	688
S.R.O 35(I)/2011 Dated 11-01-2011	Extension of dates of four Quarterly payments of adjustable advance-tax on capital gains, payable under S.147(5B) of Income Tax Ordinance, 2001.	689
S.R.O 112(I)/2011 Dated 11-02-2011	Income Tax Rules-13A to 13M inserted for Computation of Capital Gains on disposal of Securities under Section 37A of Income Tax Ordinance, 2001 and also prescribing Quarterly Statement thereof	690
The Income Tax (Amendment), Ordinance, 2001 promulgated on 15-03-2011	New Section 4A was inserted in the Income Tax Ordinance, 2001 in respect of Surcharge payable by every taxpayer at the rate of 15% of income-tax payable, including tax payable under Part V of Chapter X (Advance Tax and Deduction of Tax at Source) or Chapter XII (Transitional Advance Tax Provisions) as the case may be, for the period commencing from 15-03-2011 to 30-06-2011.	691
Procedure dated 16-03-2011 Issued by FBR, Islamabad	Procedure for payment of 15% Surcharge on payable Income Tax, issued by the Federal Board of Revenue, Islamabad.	692

CIRCULAR/SROS/ NOTIFICATIONS REFERENCE	SUBJECT	KTBA LIBRARY REF: No.
S.R.O 164(I)/2011 Dated 28-02-2011	Draft Income Tax Rule-12A inserted for Decommissioning Certificate, as required under sub-rule (4A) of rule 2 of Part-I of the Fifth Schedule to the Income Tax Ordinance, 2001	693
S.R.O 174(I)/2011 Dated 05-03-2011	Clause (10) inserted in Part-III of the Second Schedule to the Income Tax Ordinance, 2001 providing that for cases of Flour mills, the rate of minimum tax on the amount representing their annual turnover under S. 113 shall be reduced by 80%.	694
S.R.O 263(I)/2011 Dated 19-03-2011	Clause (77) inserted in Part IV of the Second Schedule to the Income Tax Ordinance, 2001 providing that provisions of Section 148 and 153 of the Income Tax Ordinance, 2001 shall not be applicable on import and subsequent supply of items with dedicated use of renewable sources of energy like solar and wind etc., even if locally manufactured, which include induction lamps, SMD, LEDs with or without ballast with fittings and fixtures, wind turbines including alternator and mast, solar torches, lanterns and related instruments, PV modules alongwith the related components including invertors, charge controllers and batteries.	695
S.R.O (I)/2011 Dated 13-04-2011	Draft of New Income Tax Returns for Individual/AOP and Companies, in respect of Tax Year 2011 issued.	696
S.R.O 316(I)/2011 Dated 18-04-2011	Draft issued for omission of sub-rule (6) of Income Tax Rule 231C, prescribing time –limit for disposal of an application filed before Income Tax Alternative Dispute Resolution by the Committee within 30-days of its constitution.	697

CIRCULAR/SROS/ NOTIFICATIONS REFERENCE	SUBJECT	KTBA LIBRARY REF: NO.
S.R.O 288(I)/2011 Dated 01-04-2011	<p data-bbox="597 446 1198 768">Draft issued for insertion of Clause (45A) in Part-IV of Second Schedule providing for reduced rate of WHT @ 1% under S.153(1)(a) and (b) of the Income Tax Ordinance, 2001 on local sales, supplies or services made or rendered to specified five categories of sales-tax zero-rated taxpayers, namely, (a) Textile and articles thereof (b) carpets (c) Leather and articles thereof including artificial leather footwear (d) Surgical Goods and (e) Sport Goods.</p> <p data-bbox="597 801 1198 962">The concession has also been provided whereby Section 111(1)(a) of the Income Tax Ordinance, 2001 shall not apply to the amounts credited in the books of accounts maintained for the period ending 30.06.2011 by sellers, suppliers, services providers to the above categories of sales-tax zero-rated taxpayers. This concession, however, is only applicable to new cases of sellers, suppliers, service providers of above categories of cases of zero-rated taxpayers, who get themselves registered by 30.06.2011.</p>	698

INDIRECT TAX

CIRCULAR/SROS/ NOTIFICATIONS REFERENCE	SUBJECT	KTBA LIBRARY REF: NO.
SRO 01(1) 2011 Dated 01-01-2011	Vide this SRO besides dealer of motorcycles and specified electric goods provisions of Special Procedures for payment of Sales Tax by Retailers shall now not be applicable to manufacture-cum-retailers who sell the products through retail outlets.	699
SRO 82(I)/2011 Dated 03-02-2011	Sales Tax Rules, 2006 has been amended for expeditious processing and payment of refund. The Audit Division of respective RTO/LTU designated responsibility for post refund audit of refunds processed through Risk Management Systems.	700
SRO 116(I)/2011 Dated 14-02-2011	06June 2005 with retrospective effect being the effective date for Repayment of sales tax to persons registered in Azad Jammu and Kashmir. The SRO 1295(1)/2008 dated 24 December 2008 has been amended to this effect.	701
SRO 180(1)/2011dated 05March 2011	To provide further relief to economic life in NWFP, FATA/PATA, the SRO 165(1)/2010 dated 10March 2010 is superseded and Sales Tax shall be chargeable at the lower rate of fifty percent of the rate levied under the said SRO.	702
SRO 230(1)/2011dated 15March2011	The facility of Zero Rating on plant, machinery and equipment including parts thereof has been withdrawn by amending SRO 549(1) of 2008and has been brought under tax net.	703
SRO 260(1)/2011dated 19March 2011	Federal Government had fixed the value of imported Phosphatic Fertilizer and locally produced Urea Fertilizer vide SRO's 494(1)/2004 dated 12June 2004 and 545(1)/2004 dated 30June2004. Vide this notification both the SRO's are rescinded.	704

CORPORATE

CIRCULAR/SROS/ NOTIFICATIONS REFERENCE	SUBJECT	KTBA LIBRARY REF: NO.
Circular No.3 of 2011 Dated 20-01-2011	Amendments in Circular 36 of 2009 dated 10-12-2009 regarding Investment and Allocation Policies for Pension Funds Authorized under the Voluntary Pension System Rules, 2005	705
Circular No.4 of 2011 Dated 10-03-2011	Open-end Collective Investment Schemes which are allowed to take exposure in CFS in terms of Circular No.7 of 2009 and their constitutive documents also permit to do so, may invest in Margin Trading (MT) in terms of the Securities (Leveraged Market and Pledging) Rules, 2011 with immediate effect	706
Circular No.5 of 2011 Dated 11-03-2011	Notification issued by the Federal Government for Appointment of renowned religious scholar Professor Mufti Munib ur Rehman as a member of the Religious Board for Modarabas (Islamic Financial Institutions) for un-expired term of Mr. Imran Ahsan Nyazee, who resigned	707
Circular No.6 of 2011 Dated 17-03-2011	In view of practical difficulties faced by the Insurance Brokers, SECP has withdrawn Circular No.20 of 2010 dated 30-07-2010 on the subject "Clarification regarding the term Paid up Capital for Insurance Brokers Registered in Pakistan"	708
Circular No.7 of 2011 Dated 18-03-2011	In view of certain operational difficulties faced by few life Insurance companies, SECP has amended its Circular No.6 of 2006 dated 28-04-2006 for the Insurance Companies having more than 10-years of business in Pakistan, by enhancing maximum limits in respect of First Year Premium and Renewal Years Premium for the Years 2011 & 2012, other than Single Premium Policies, Group Insurance Policies and Annuities, with other conditions remaining same	709

CIRCULAR/SROS/ NOTIFICATIONS REFERENCE	SUBJECT	KTBA LIBRARY REF: NO.
S.R.O 87(I)/2011 Dated 03-02-2011	<p>Waiver granted from the requirements of IAS 21 and IAS 39 to Independent Power Projects not covered under Circular 11 of 2008 as under:</p> <ul style="list-style-type: none"> a. The accounting principle of capitalization of Exchange Differences, as allowed to all IPPs established under the 1994 power policy, is also allowed to IPPs, having foreign currency loans, in relaxation of the requirements contained in IAS 21 for a period of one year. b. Those IPPs which have chosen to capitalize exchange differences shall not be permitted to recognize Embedded Derivatives as required under IAS 39. <p>All other IPPs that are not otherwise required to comply with IFRS are also allowed to capitalize exchange differences for a period of one year.</p>	710
S.R.O. 128(I)/2011 Dated 18-02-2011	Securities (Leveraged Markets and Pledging) Rules, 2011 specified for immediate enforcement.	711
S.R.O 282(I)/2011 Dated 30-03-2011	<p>Amendments made in Item VII sub-item (8) of the Sixth Schedule to Companies Ordinance, 1984 regarding fess payment for:</p> <ul style="list-style-type: none"> (i) Issue of further share capital otherwise than Right under the First Proviso of S.86(1) and (ii) For approval of Employees Stock Option Scheme under Second Proviso of S.86(1) 	712
S.R.O. 289(I)/2011 Dated 04-04-2011	Part-II of the Second Schedule to the Companies Ordinance, 1984 substituted prescribing new amended Form of Statement in Lieu of Prospectus to be delivered to Registrar by a Company which does not issues a Prospectus or which does not go to allotment on a Prospectus issued, and Reports to be set out therein.	713

SYNOPSIS OF IMPORTANT CASE LAWS

Note: Members are advised to read the complete judgement for better understanding of the respective issues.

DIRECT TAX

CITATION	ISSUES INVOLVED
2011 PTD 1 (2011) 103 Tax 96 Lahore High Court	Sections 156A, 234A, 235 of the Income Tax Ordinance 2001 FACTS OF THE CASE The collection of advance tax on consumption of electricity under section 235 of the Income Tax Ordinance, 2001 was challenged in writ petitions in cases where the only source of income is from petrol pump or CNG stations. DECISION Once the final tax liability is secured, the question of paying advance tax cannot arise. After discussing the theory of reading down being a time honored rule of interpretation it is further held: the Petitioners are entitled to exemption certificate under section 159(1) which would be valid for the purposes of section 235(3) of the Income Tax Ordinance, 2001.
2011 PTD 104 Peshawar High Court	Sections 234A and 235 of Income Tax Ordinance 2001 FACTS OF THE CASE In this case a contrary view has been taken as against the view of the Hon'ble Lahore High Court in respect of section 234A and 235 of the Income Tax Ordinance, 2001. DECISION It has been held that section 234A & section 235 of the Income Tax Ordinance, 2001 are independent and envisaging different situations cannot be intermingled with each other therefore does not tantamount to double taxation. The provisions are not discriminatory or violative of Constitutional provisions thus not ultra vires.
2011 PTD 145 Sindh High Court	Clauses 7(i) & (ii) of the Second Schedule to the Wealth Ta Act, 1963 FACTS OF THE CASE The department in this case challenged the granting of exemption to multiple conversions of Foreign Exchange Bearer Certificates (FEBC) under clauses 7(i) & (ii) of the Second Schedule to the Wealth Tax Act 1963 (now repealed) as interpreted by the Learned Appellate Tribunal. DECISION The Hon'ble High Court maintained the view of the Learned Tribunal by determining the legislative intent from the notes to clauses of Finance Bill 1985 which means that there would be no restriction on the number of conversions of FEBC's for the purpose of exemption as provided under clauses 7(i) & (ii) of the Second Schedule to the Wealth Tax Act 1963.

CITATION	ISSUES INVOLVED
2011 PTD 438 (2011) 103 Tax 74 High Court of Sindh	<p>Sections 2(40), 11(6), 101(3) & 105 Income Tax Ordinance 2001</p> <p>FACTS OF THE CASE In this case the taxpayer, a banking company registered and headquartered outside Pakistan, did not offer the interest/profits received by it from other branches located outside Pakistan as income liable to tax. Likewise, taxpayers also did not claim any deduction in respect of interest/profit paid by it to other branches located outside Pakistan.</p> <p>DECISION The Hon'ble High Court has resolved the controversy in respect of taxation of interest income received from Head Office and branches located outside Pakistan by holding that any profit on debt earned by the Pakistan Branch of the non-resident banking company on money lent by it to other banks or financial institutions would be its income and any profit on debt paid by it on moneys borrowed by it would be its deductible expense.</p>
2011 PTD 476 Sindh High Court	<p>Sections 147 & 205 of the Income Tax Ordinance 2001</p> <p>FACTS OF THE CASE In this case, a private limited company had filed an estimate under Section 147(6) of the Income Tax Ordinance, 2001 as the taxpayer had estimated that its actual tax liability will be less than the advance tax liability computed under Section 147(1) read with Section 147(4) of the Income Tax Ordinance, 2001. The taxpayer accordingly recomputed its liability on the basis of estimate and paid advance tax accordingly. The Assessing Officer was of the view that the taxpayer did not fall within the ambit of Section 147(6) but fell under the provisions of Section 147(4A) of the Income Tax Ordinance, 2001.</p> <p>DECISION The Hon'ble High Court after discussing various sub-sections of section 147 has ruled that the benefits of section 147(6) in respect of payment of advance tax on estimate basis are available to all taxpayers. Hence corporate taxpayers also fell within the ambit of section 147(6) of the Income Tax Ordinance, 2001.</p>
2011 PTD 637 Sindh High Court	<p>Sections 22(8), 37, Clause (21) of Part II of the Second Schedule to the Income Tax Ordinance, 2001</p> <p>In this case it has been held by the Hon'ble High Court that once the income of the shipping company is liable to presumptive tax under clause (21) of Part II of 2nd Schedule, then entitlement to depreciation deduction under section 2 in respect of any property shall cease to exist, therefore would fall under the definition of capital assets instead of section 37(5) and the income on disposal of the property would be assessed as capital gain. It is further held that all other income except profit on debt would constitute operational activities hence covered by clause (21) of Part II of the Second Schedule of the Income Tax Ordinance, 2001.</p>
(2011) 103 Tax 52 High Court Lahore	<p>Sections 49, 122 of the Income Tax Ordinance 2001</p> <p>The Hon'ble High Court has held that the Defence Housing Authority is a local authority within the meaning of section 49 of the Income Tax Ordinance, 2001, therefore exempt from tax prior to amendment made vide Finance Act 2008.</p>

CITATION	ISSUES INVOLVED
Sindh High Court CP No.973 of 2010 And connected Petitions	Before the Honorable High Court of Sindh several Constitution Petitions were filed in which challenge was made against selection of the cases by computer ballot and subsequent audit proceedings. Challenge was also made to the action of composite audit and to the vires of Section 177 read with Section 214C. The Honorable Court after considering the arguments placed before it and after examining the statutory provisions have held that the Federal Board of Revenue had no statutory power under Section 177 on February 11, 2009 to select taxpayer for audit computer ballot for the tax year 2008. The Honorable Court further held that composite audit cannot be conducted in view of separate provisions available in Income Tax Ordinance, 2001 and Sales Tax Act, 1990. Referring to the Provisions of Federal Excise Act, 2005 which provide for composite audit, which indicates that no audit is permissible in relation to two laws i.e., Income Tax. In respect to challenge to Section 214C after elaborating concept of vested right and past and closed transaction under fiscal statutes, it was held that cases the taxpayer could be taken up by the Board under section 177 of each taxpayer individually not collectively.

CITATION	ISSUES INVOLVED
ITRA No 38/2010 Dated 01-10-2010 Sindh High Court	<p>Section 177 (10) of the Income Tax Ordinance, 2001</p> <p>FACTS OF THE CASE Appeal was filed by the Department against the decision of Appellate Tribunal Inland Revenue, Karachi, in tax year 2005 holding that no exparte order u/s 121 can be passed for non-compliance during audit proceedings. In such a case an order can only be passed under sub-sections (1) or (4) of section 122 of the Ordinance.</p> <p>DECISION “We have seen that vide Finance Act 2010 a new sub section (10) has been inserted in section 177 which now provides that powers to the officer or the Chartered Accountant conducting the audit to make assessment u/s 121 in case of non-compliance of notices issued for such audit and has also provided that in such a case the assessment treated to have been made on the basis of return or revised return filed by the taxpayer shall be of no legal effect. We have seen that it is under this provision that the impugned assessment has been completed by the assessing officer. We are, however of the considered opinion that this provision, which is detrimental to the tax payer can not be given retrospective effect and will apply for the tax year 2011 onwards, therefore, there was no power vested in the assessing officer to pass an order u/s 121 for the tax year 2005”</p>
ITRA No 222/2008 dated 13-10-2010 Sindh High Court	<p>Powers of the Commissioner under section 170 of the Income Tax Ordinance, 2001.</p> <p>FACTS OF THE CASE The taxpayer filed return for the tax year 2005 followed by an application under section 170 of the Income Tax Ordinance 2001 for refund of excess amount of tax paid by it. The Commissioner Income Tax, as he then was, while rejecting the application also took upon himself the task of carrying on a complete investigation and directing the taxpayer to file a statement under section 115 (4) of the Income Tax Ordinance 2001.</p> <p>DECISION Held that while processing refund application the Commissioner has to be satisfied that the taxpayer has paid tax in excess of the amount which was properly and legally chargeable from him. However, conducting investigation and advising the taxpayer to file a statement under section 115(4) of the Income Tax Ordinance, 2001 instead of return tantamount to exercising power in excess of the jurisdiction conferred on the Commissioner under section 170 of the Income Tax Ordinance, 2001.</p>
2011 PTD (Trib) 168 (2011)103 Tax 6 (Trib) Appellate Tribunal Inland Revenue	<p>Sections 113, 154 and 169 of the Income Tax Ordinance, 2001</p> <p>FACTS OF THE CASE In this case the learned Tribunal has not concur with the view of the Department that minimum tax under section 113 of the Income Tax Ordinance, 2001 would be determined on local sales only and the export sales covered under section 154 of the Income Tax Ordinance, 2001 would be taxed separately under Final Tax Regime.</p> <p>DECISION The Learned Tribunal held that for the purposes of calculation of minimum tax under section 113 of the Income Tax Ordinance, 2001, turnover from all sources means aggregate turnover from all sources and both presumptive and non-presumptive sales are to be considered.</p>
2011 PTD (Trib) 184 Appellate Tribunal Inland Revenue	<p>Sections 182, 114 and 120 of the Income Tax Ordinance 2001</p> <p>FACTS OF THE CASE In this case the tax payers furnished return of income declaring loss for the tax year which has been accepted as deemed assessment order under section 120 of the Income Tax Ordinance, 2001.</p> <p>DECISION The Learned Tribunal after carefully considering the language of section 182 has held that for imposing penalty for default under section 114 of the Income Tax Ordinance, 2001, the pre-requisite is the “tax payable”. Fulfillment of basic ingredient of “tax payable” is a condition precedent for levy of penalty under section 182 of the Income Tax Ordinance, 2001.</p>

CITATION	ISSUES INVOLVED
2011 PTD (Trib) 218 Appellate Tribunal Inland Revenue	<p>Sections 63, 65 and 61 of the Income Tax Ordinance 1979</p> <p>FACTS OF THE CASE The department completed ex-parte assessment under Section 63 of the Income Tax Ordinance, 1979 without issuing statutory notice under Section 61 of the Income Tax Ordinance, 1979.</p> <p>DECISION The learned Tribunal in this case has held that assessment framed without issuance to assessee of a notice required under the provisions of section 61 of the Income Tax Ordinance, 1979 being a provision mandatory and substantive in nature is not maintainable in law.</p>
2011 PTD (Trib) 257 (2011) 103 Tax 93 (Trib) Appellate Tribunal Inland Revenue	<p>Sections 114, 115, 120&122 of the Income Tax Ordinance 2001</p> <p>FACTS OF THE CASE In this case, the taxpayer filed statement under Section 11(4) of the Income Tax Ordinance, 2001. Subsequently assessment was amended under Section 122(5) of the Income Tax Ordinance, 2001. Such amendment was challenged before the first appellate authority who held that statement filed under Section 115(4) of the Income Tax Ordinance, 2001 is neither a return nor there is any concept of deemed assessment order hence there is no question of subsequent modification.</p> <p>DECISION The Learned Tribunal, on the departmental appeal, while respectfully distinguishing the FOTCO's case reported as 2006 PTD 734 (H.C. Kar) has held that the legislature has treated the statement filed under section 115(4) as a substitute of return under section 114 for all practical purposes and therefore all subsequential treatment and benefits on its submission shall apply mutatis mutandis on the statement filed under Section 115(4) of the Income Tax Ordinance, 2001 also.</p>
2011 PTD (Trib) 286 (2011) 103 Tax 172 (Trib) Appellate Tribunal Inland Revenue	<p>Sections 56, 57(iii), 21 & 39 of the Income Tax Ordinance 2001</p> <p>FACTS OF THE CASE In this case, the taxpayer, engaged in the business of commercial and residential properties, filed return of income for three years wherein business losses were declared. Such losses were set-off against other income covered under Section 39 of the Income Tax Ordinance, 2001. The income tax department was of the view that business expenses are not admissible under Section 21 of the Income Tax Ordinance, 2001 since there was no business revenue. Hence, other income was liable to be taxed separately under Section 39 of the Income Tax Ordinance, 2001.</p> <p>DECISION The learned Appellate Tribunal has held that expenditure which was otherwise a proper expenditure could not be cease to be such merely because there was no receipt of income. Deduction of the expenditure could not be held to be conditional upon the making or earning of the income. On the concluding remarks, the Tribunal held that the business loss has rightly been set-off against income from other sources under section 56 and the balance of the business loss can be carried forward for adjustment for succeeding years under section 57 of the Income Tax Ordinance, 2001.</p>

CITATION	ISSUES INVOLVED
2011 PTD (Trib) 321 (2011) 103 Tax 200 (Trib) Appellate Tribunal Inland Revenue	<p>Sections 122, 176, 111(1)(b) & 210 of the Income Tax Ordinance, 2001</p> <p>FACTS OF THE CASE In this case, the Taxation Officer amended the assessment of the taxpayer under Section 122 of the Income Tax Ordinance, 2001 without issuing prescribed notice as laid down in Part 2 of the First Schedule of the Income Tax Rules, 2002. The Commissioner (Appeals) has vacated the amended order with the observations that non issuance of the notice renders the proceedings initiated on the basis thereof as illegal and not sustainable under the law.</p> <p>DECISION On the departmental appeal, the learned Appellate Tribunal has held that the proceedings initiated for amendment of assessment without fulfilling the requisite preconditions of section 122(1) & (5) is illegal and void ab-initio. It is further held that issuance of notice under section 176 is also an essential prerequisite for proceedings under section 122 of the Income Tax Ordinance, 2001. It is also held that assessment framed in pursuance of combined notice under section 122 of the Income Tax Ordinance, 2001 suffers from legal infirmity and is not sustainable in law.</p>
2011 PTD (Trib) 329 Appellate Tribunal Inland Revenue	<p>Sections 66A & the Third Schedule of the Income Tax Ordinance, 1979</p> <p>FACTS OF THE CASE The assessments framed by the Assessing Officer under Section 62 of the Income Tax Ordinance, 1979 were found to be erroneous so far as prejudicial to the interest of revenue by the IAC and proceeded to initiate proceedings under Section 66A of the Income Tax Ordinance, 1979. It was confronted to the taxpayer that since it had never entered in the execution of contracts for exploration and production of petroleum therefore the special treatment as provided under clause (j) of Rule 8(5) of the Third Schedule to the repealed Ordinance was incorrectly given by the Assessing Officer.</p> <p>DECISION The learned Appellate Tribunal has held that for initiating proceedings under section 66A of the Income Tax Ordinance, 1979 the limitation period is to be reckoned from the date of relevant order wherein the issue under consideration has been discussed and decided. It has been further held that the benefits of Rule 8(5)(j) of the Third Schedule is available to the original contractor who has been granted license for exploration and production of petroleum in Pakistan and is not available to their contractors and sub-contractors. It is further held that the Concession Agreement executed under Regulation of Mines and Oilfield and Mineral Development (Government Control), Act 1949 being specific in nature would prevail over Income Tax Ordinance 1979 thus no tax would be charged from the contractors and sub-contractors of the licensee company on the re-export of equipments used in Pakistan for exploration and production purposes.</p>

CITATION	ISSUES INVOLVED
2011 PTD 352 (2011) 103 Tax 14 Appellate Tribunal Inland Revenue	<p>Sections 4(5), 5, 8, 39, 94(2) of the Income Tax Ordinance 2001</p> <p>FACTS OF THE CASE It is the case of public limited company engaged in the manufacturing and sale of fertilizers in Pakistan. The taxpayer filed its return of income whereby, inter-alia, dividend income was offered to tax at 10% as provided under Section 5 of the Income Tax Ordinance, 2001. The income tax department initiated proceedings under Section 122(5A) of the Income Tax Ordinance, 2001 and dividend income was taxed at 35% on the premise that Section 5 is not applicable for the Company after the amendment made in Section 8 of the Income Tax Ordinance, 2001 vide Finance Act, 2007.</p> <p>DECISION The learned Appellate Tribunal after discussing the relevant sections at length has held that the dividend income received by the company from resident company is subjected to tax at the rate of 10% as provided under Section 5 of the Income Tax Ordinance, 2001.</p>
2011 PTD 382 (2011) 103 Tax 74 Appellate Tribunal Inland Revenue	<p>Sections 156, 149 of the Income Tax Ordinance 2001</p> <p>FACTS OF THE CASE While monitoring of withholding taxes, the Taxation Officer observed that the taxpayer (Private Limited Company and engaged in manufacturing of pharmaceutical products) failed to deduct withholding tax @20% under Section 156 of the Income Tax Ordinance, 2001 while making payment on account of sales incentives and sales promotion expenses.</p> <p>DECISION The learned Appellate Tribunal has held that the sales incentives are also covered under the definition of “prize for promotion of sales” therefore they will be dealt with under the provisions of section 156 of the Income Tax Ordinance, 2001 for withholding tax purposes.</p>
2011 PTD (Trib) 508 (2011) 103 Tax 253 (Trib) Appellate Tribunal Inland Revenue	<p>Section 12(5) and 80AA of the Income Tax Ordinance, 1979</p> <p>FACTS OF THE CASE In this case, the non-resident assessee, claimed exemption in respect of reimbursement of marketing cost and reservation cost in terms of Tax Treaty for the Avoidance of Double Taxation and Prevention of Fiscal Evasion between Pakistan and the United States of America. The Taxation Officer treated the above reimbursement as “Fee for Technical Services” in terms of Section 12(5) and charged to tax under Section 80AA of the Income Tax Ordinance, 1979.</p> <p>DECISION The learned Appellate Tribunal held by majority that the re-imburement of marketing cost and reservation cost cannot be regarded as “Fee for Technical Services” and section 12(5) of the Income Tax Ordinance, 2001 is not applicable. The Tribunal further held that the said reimbursements are exempt in accordance with Article-III of the Tax Treaty signed between Pakistan and United States of America.</p>

CITATION	ISSUES INVOLVED
<p>2011 PTD (Trib) 590 Appellate Tribunal Inland Revenue</p>	<p>Section 122(5) of the Income Tax Ordinance 2001</p> <p>FACTS OF THE CASE Brief facts as recorded in the order are that the case of an Association of Persons (AOP) was selected for audit. During the course of proceedings, it was discovered that the AOP purchased a property wherein huge investment was involved which had been invested by the members of AOP. The proceedings in the case of AOP were dropped while in the case of members initiated through selection of their (Individuals Members) cases for audit. The proceedings initiated were culminated in amendment of assessment under Section 122(5) of the Income Tax Ordinance, 2001 by making addition under Section 111(1)(b) of the Income Tax Ordinance, 2001. The Commissioner (Appeals) deleted the addition on the ground that the addition was made against the principle of quid pro quo.</p> <p>DECISION It has been held by the Learned Appellate Tribunal that subsection (5) of section 122 of the Income Tax Ordinance, 2001 is not a provision to amend an assessment order. It only sets out the criteria under which an officer can amend an assessment by invoking the provisions of subsection (1) and (4) of section 122 of the Income Tax Ordinance, 2001. Thus subsection (5) of section 122 does not constitute a legal authority to amend an assessment. An assessment can only be amended under subsections (1) and (4) or (5A) of section 122 of the Income Tax Ordinance 2001. Therefore, action taken by the Assessing Officer in the instant case to amend the assessment order by invoking the provisions of section 122(5) of the Income Tax Ordinance, 2001 is held to be ab-intio void illegal and hence not sustainable in law.</p>
<p>2011 PTD (Trib) 705 Appellate Tribunal Inland Revenue</p>	<p>Section 122(5A) of the Income Tax Ordinance 2001</p> <p>FACTS OF THE CASE In this case the taxpayer is a private limited company which derives income from manufacturing, bottling and sale of beverages. Return of income along-with statement under Section 115(4) of the Income Tax Ordinance, 2001 were filed. The Taxation Officer initiated the proceedings under Section 122(5A) of the Income Tax Ordinance, 2001 whereby he showed his intention to tax the receipts as shown in the statement under Section 115(4) of the Income Tax Ordinance, 2001 being business receipts under Section 18 of the Income Tax Ordinance, 2001. Later on the successor Taxation Officer issued notice whereby he categorically mentioned that the receipts of the taxpayer is liable to be taxed under Section 37 of the Income Tax Ordinance, 2001 and not under Section 18 of the Income Tax Ordinance, 2001. However, in the amended order such receipts were taxed under Section 18 of the Income Tax Ordinance, 2001.</p> <p>DECISION The learned Appellate Tribunal has held that initiation of proceedings under section 122(5A) on particular ground and its conclusion on a different ground that was never confronted, cannot be lawful. It is further held that the assessment cannot be amended without conscious application of mind by the Commissioner himself which is the legal obligation imposed by law and cannot be passed on to anybody else.</p>

CITATION	ISSUES INVOLVED
2011 PTD (Trib) 751 Appellate Tribunal Inland Revenue	<p>Section 2(48), Sixth Schedule of Part-I of the Income Tax Ordinance 2001, Rule 94 of the Income Tax Rules 2002</p> <p>FACTS OF THE CASE In this case, an International Non-Governmental Association applied to the Commissioner for recognition of Provident Fund for its employees in accordance with the Sixth Schedule of the Income Tax Ordinance, 2001 read with Part-I of Chapter XV of the Income Tax Rules, 2002 (the Rules). The Commissioner rejected the application on the ground that the applicant did not fall within the definition of employer as contained in Rule 14(f) of Part-I of the Sixth Schedule to the Income Tax Ordinance, 2001. The Commissioner Inland Revenue (Appeals) [CIR(A)], on an appeal filed by the Association, vacated the order of Commissioner declaring that the application of approval of Provident Fund duly fulfilled the criteria as laid down in Part-I of the Sixth Schedule to the Income Tax Ordinance, 2001.</p> <p>DECISION It has been held by the learned Appellate Tribunal that the CIR(A) has no jurisdiction in respect of matters pertaining to the Provident Funds as mentioned under section 2(48) read with Part I of the Sixth Schedule of the Income Tax Ordinance, 2001 and Rule 94 of the Rules. The Appellate Tribunal also held that the applicant may approach the Federal Board of Revenue for remedy being the appropriate appellate forum for the above matter.</p>
2011 PTD (Trib) 784 Appellate Tribunal Inland Revenue	<p>Section 170 of the Income Tax Ordinance 2001</p> <p>FACTS OF THE CASE In this case the taxpayer, an individual manufacturing concern, filed return of income under Section 114 of the Income Tax Ordinance, 2001. The taxpayer also filed an application for refund under Section 170 of the Income Tax Ordinance, 2001. The Taxation Officer, while proceeding under Section 170, embarked on an enquiry into the commercial status of the taxpayer and requested to provide certain information to verify the status of manufacturer. Later on the Taxation Officer rejected the claim of refund by determining the commercial status of the taxpayer as “supplier” instead of “manufacturer”.</p> <p>DECISION The learned Appellate Tribunal held that the Commissioner or his delegate cannot probe in issues which had attained the status of assessment order by operation of law under section 120 of the of the Income Tax Ordinance, 2001.</p>
2011 PTD (Trib) 748 Appellate Tribunal Inland Revenue	<p>Sections 221, 2(38A) & 2(65) of the Income Tax Ordinance, 2001</p> <p>The learned Appellate Tribunal has allowed the miscellaneous application of the taxpayer and hold that the DCIR has no authority to pass order for charging WWF as section 2(38A) of the Income Tax Ordinance, 2001 do not include the authority of Taxation Officer as mentioned in WWF Ordinance 1971. The order considered to be without jurisdiction and void ab-initio.</p>
2011 PTD (Trib) 693 Appellate Tribunal Inland Revenue	<p>Section 122(5) & 111(2) of the Income Tax Ordinance, 2001</p> <p>The learned Appellate Tribunal in this case has held that the date of discovery under section 111(2) for the purposes of making addition under section 111(1) as unexplained investment would be the date on which it was confronted to the person against whom the information is going to be used.</p>
2011 PTD (Trib) 744 Appellate Tribunal Inland Revenue	<p>Section 170(4) of the Income Tax Ordinance 2001</p> <p>It has been held in this case by the Learned Appellate Tribunal that inaction/default by Commissioner under section 170(4) of the Income Tax Ordinance, 2001 amounted to refusal of refund and CIT(A) should treat such inaction as refusal order passed by Commissioner.</p>

CITATION	ISSUES INVOLVED
2011 PTD (Trib) 756 Appellate Tribunal Inland Revenue	Clause (86) Pt I of 2nd Schedule, Income Tax Ordinance, 1979 The learned Appellate Tribunal in this case has held that exemption not claimed in return cannot be claimed at belated appellate stage.
MA (Rect.) No 248/KB of 2008 in ITA No 402/KB of 2005 dated 07-01-2010 Appellate Tribunal Inland Revenue	Power of the Tribunal to recall and modify its order under section 221 of the Income Tax Ordinance, 2001. FACTS OF THE CASE A Misc Application was filed by the taxpayer seeking recalling of the original order passed by the Appellate Tribunal on the ground that a reported judgement cited by the counsel of the applicant during the course of hearing of original appeal has not been discussed in the original order. DECISION The Tribunal after verification from records recalled its original order for examination to the extent of discussion of the cited judgement.

INDIRECT TAX

CITATION	ISSUES INVOLVED
2011 PTD 346 Lahore High Court	<p data-bbox="646 424 1256 459">Section 7,7-A,8 & 10(1) of the Sales Tax Act, 1990</p> <p data-bbox="646 494 948 526">FACTS OF THE CASE</p> <p data-bbox="646 529 1437 626">In this case refund or set off of input tax paid on the purchase of other items used in the manufacture of pesticides was decided by the Lahore High Court.</p> <p data-bbox="646 663 794 696">DECISION</p> <p data-bbox="646 698 1437 1131">It was discussed that Taxpayer is entitled to refund under section 10(1) of the Sales Tax Act, 1990 in case his tax is more than the tax due. When provisions of section 7,7A,8 and 10(1) of the Act and SRO 645 (1)/2006 were read in juxta position, it becomes clear that registered person covered under the said SRO is to pay the final tax due of “fixed value addition “ and not on ‘minimum value addition”, therefore the taxpayer would not be entitled to any such refund or set off of input tax paid by the taxpayer in relation to purchase of further goods and services used in further value addition undertaken by the taxpayer under section 7 of the Act. Question of adjustment of input tax and consequently refund of the taxpayer under SRO 645(1)/2006 is not tenable and liability should be considered as final tax liability.</p>
2011 PTD (Trib) 20 Appellate Tribunal Inland Revenue	<p data-bbox="646 1166 1091 1201">Section 8 of the Sales Tax Act, 1990</p> <p data-bbox="646 1236 948 1268">FACTS OF THE CASE</p> <p data-bbox="646 1271 1437 1540">In this case Registered Person was disallowed input tax being in excess of 20% of input tax claimed on the value of exports. The adjudicating officer relied upon an agreement executed between the Collector of Sales Tax and Association whereby it was agreed that consumption of packing material would be restricted upto 20% of total value of exports. Collector (Appeals) directed to allow the adjustment of input tax as the claim of the registered person was based on consumption of packing material in exports.</p> <p data-bbox="646 1577 794 1610">DECISION</p> <p data-bbox="646 1612 1437 1774">Department filed appeal against judgement of Collector (Appeals) on the basis that agreement executed was binding upon the contracting parties. Appellate Tribunal directed the concerned officer to allow the adjustment to the registered person on the basis that agreement was not enforceable in law.</p>
2011 PTD (Trib) 22 Appellate Tribunal Inland Revenue	<p data-bbox="646 1841 1437 1911">Section 25,32,79,80,156,194-A. & 205 of the Sales Tax Act, 1990</p> <p data-bbox="646 1946 948 1978">FACTS OF THE CASE</p> <p data-bbox="646 1981 1437 2249">Importer was found guilty of misdeclaration of weight of goods deliberately and willfully to defraud the Government of legitimate revenue. Additional Collector passed Order in Original to confiscate goods which was affirmed by Collector (Appeals). The importer contended that the containers were according with the shipped weight. All documents were available and matter should have been treated as procedural lapse and a bona fide mistake, instead of misdeclaration.</p> <p data-bbox="646 2287 794 2319">DECISION</p> <p data-bbox="646 2322 1437 2440">Appellate Tribunal held that department failed to discharge the onus of establishing that prices declared by importer were not correct. No misdeclaration has been committed. Impugned orders set aside.</p>

CITATION	ISSUES INVOLVED
2011 PTD (Trib) 174 Appellate Tribunal Inland Revenue	Section 32,162,163,168 & 194-A of the Sales Tax Act, 1990 FACTS OF THE CASE In this case the Additional Collector dropped all charges against the Appellant except the charge under section 32 of the Customs Act, 1969. The Collector (Appeals) also dismissed the appeal. Appellant contended that staff of Directorate had no authority to take any action under section 32 of the Customs Act, 1969 as no powers were entrusted to them by FBR. Raid, search/ seizure of goods were illegal. DECISION Appellate Tribunal held that there being no evidence that goods got cleared by misdeclaring the description. Impugned orders set aside.
2011 PTD (Trib) 284 Appellate Tribunal Inland Revenue	Section 10,33(2)(cc) & 46 of the Sales Tax Act, 1990 FACTS OF THE CASE In this case the refund claim of registered person claimed on account of excess input tax paid by him along with electricity bills. Said claims were rejected by D.C (Refund) on the basis of being time barred which was upheld by the Collector(Appeals) DECISION Appellate Tribunal held that under the Refund Rules appellant was required to furnish data within sixty days of filing of return. The said data was filed eighteen days after the expiry of time. Appellant failed to adhere to the conditions therefore rejection orders to be maintained.
2011 PTD (Trib) 284 Appellate Tribunal Inland Revenue	Section 10,33(2)(cc) & 46 of the Sales Tax Act, 1990 FACTS OF THE CASE In this case adjustment of input tax and claim of refund by the assessee against input invoices issued by the blacklisted suppliers was not only rejected by the Deputy Collector (Adjudication) but a show cause notice was issued raising various objections and passed order in original and levied penalty in terms of S.33 of Sales Tax Act 1990. Collector (Appeals) set aside the order in original. DECISION Department filed appeal before the Appellate Tribunal which upheld the order of Collector (Appeals) on the ground that the proceedings initiated against assessee were based on whims and surmises.
2011 PTD (Trib) 401 Appellate Tribunal Inland Revenue	Section 7,8,10,11,33,46 & 73 of the Sales Tax Act, 1990 FACTS OF THE CASE In this case Assistant Collector issued show cause notice to assessee on claiming refund claim alleging therein many discrepancies/ irregularities. Order in Original passed was also rejected by the Collector (Appeals). DECISION It was held by the Tribunal that under Rule 8(1) of the Sales Tax Refund Rules,2001, if any refund claim was not found genuine and not admissible under the law, notice was to be issued within fourteen days, in this case show cause was issued after lapse of 3 years which was time barred. Impugned orders were set aside. D.C was directed to sanction refund.

CORPORATE

CITATION	ISSUES INVOLVED
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2011 CLD 10
Lahore High Court

**Sections 284 & 287 the Companies Ordinance, 1984
(Merger & Amalgamation of Companies)**

FACTS OF THE CASE

The case pertains to a petition for Sanction of a Scheme of Amalgamation of Jubilee Energy Limited (JEL) into Jubilee Spinnings Weaving Mills Limited (JSWL) filed before the High Court after the approval of the Scheme by the Members in their respective general meetings in both the companies. The aggregation of authorized capitals of the merging companies in the manner that the paid-up capitals are combined remains the significant and unusual point of the Scheme. The SECP raised, inter alia, its observations on the point. Apart from the above the merger was also objected by one of a major secured creditor of the companies i.e. "National Bank of Pakistan" due to continuous default of bank's loan installments.

DECISION

The Honourable High Court sanctioned the merger of JEL into JSW against both the objections. On the SECP's observation regarding aggregation of authorized capital, the Court held that there is no legal or accounting bars to the proposed aggregation. Regarding the objection of the creditor, the High Court decided that the Principles-Creditor, role of Scheme under Section 284 read with Section 287 of the Companies Ordinance, 1984 is not a tool in the hands of the creditor to recover money or to coerce the company to pay - the Court may direct payment or direct that a creditor or any class of them should be paid their dues or they be substantially secured before the Court sanction scheme of merger. The objection of NBP mainly pertains to change of business of JSWL which is a subjective matter. In the Court's view, it is the domain of shareholders, the Court is not to judge over the commercial viability of the business plan within the objects clause as long as this does not infringe its character covenant or any mandatory law of the land. The Court rejected the objection of the NBP, that the objection could be sustained or would have force if the scheme is shown to be contrary to law or shocking to its conscience or it is patently unfair to the members or creditors or any class of them, or is against public interest or contrary to public policy.

CITATION	ISSUES INVOLVED
2011 CLD 173 Sindh High Court	<p data-bbox="646 298 1437 379">Section 63 of the Insurance Ordinance, 2000 (Commission’s Directives to cease entering into new contracts of Insurance)</p> <p data-bbox="646 419 878 446">FACTS OF THE CASE</p> <p data-bbox="646 451 1437 693">Due to regulatory non-compliances by the plaintiff in respect of increasing its paid up capital, the SECP issued a directive under Subsection (1) of Section 63 of the Insurance Ordinance, 2000 to the plaintiff to ceases its business within 1-month. The plaintiff filed this suit for declaration and a permanent injunction on the ground that the directive issued by the SECP without giving opportunity of being heard under Subsection (2) is illegal and contrary to the principle of justice and is of no legal effect.</p> <p data-bbox="646 733 1437 921">The SECP contended that Subsection (1) of Section 63 of the Insurance Ordinance, 2000 is not regulated by Subsection (2) and therefore the directive was rightly issued without any show-cause notice or opportunity of hearing under the proviso attached to Clause (d) of Subsection (2) of the said section of the Insurance Ordinance, 2000.</p> <p data-bbox="646 962 764 989">DECISION</p> <p data-bbox="646 994 1437 1284">Explaining the applicability of Section 63 of the Insurance Ordinance, 2000, the Honourable High Court decided that Subsection (1) cannot be read or applied in isolation but in conjunction with Subsection (2), which provides that the Commission might issue directions to cease entering into new contracts on happening of some events or pre-conditions, which are mentioned in Sub-clause (a) to (d) in Subsection (2) and the proviso attached to Clause (d) makes it mandatory that direction shall not be issued without giving the insurer an opportunity to be heard.</p> <p data-bbox="646 1325 1437 1529">The High Court declared that the directive was issued without any lawful authority and has no legal effect. However the judgement was without prejudice to the right of SECP being a regulatory body to initiate action and issue directives to the plaintiff for non-compliance, if any, after providing an opportunity of hearing to the plaintiff under proviso attached to Clause (d) of Subsection (2) of Section 63 of the Insurance Ordinance, 2000.</p>