

# E - News & Views

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## A Publication of KTBA

Covering information on important judicial pronouncements, circulars and clarifications

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FROM THE DESK OF PRESIDENT	FROM THE DESK OF CONVENER
<p>Dear Members,</p> <p>I am writing down this message with joy and happiness at the start of New Year.</p> <p>Let me remind you the fact that the Almighty has blessed our Country with talent and ability, you all must have in your mind the memory of I.T icon of our Country Arfa Karim Randhawa (Late), she has made all of us proud and also realized us that if we want to sustain and stabiles our Country, we need to provide equal opportunities to every citizen of this Country.</p> <p>Education is the key for success and we have to contribute as per our capacity to make our education standards at par with other developed Countries and at the same time these facilities must be available without discrimination to rich and poor.</p> <p>We at bar this year try to educate our members, to prepare them with the competitive challenge in the profession. E-news and views is one of the tool of education which on a regular basis sharing knowledge, so the members will be aware about the recent reported as well as the unreported judgments.</p> <p>I would like to acknowledge the hard work put in by Convener E-news and views and his team for publishing the current quarterly issue timely, as well as the updating of previous year data.</p> <p>In the end, I would like to thank all the members for their support and guidance which make this year more meaningful and relevant.</p> <p>Thanking you,</p> <p><b>ANWAR KASHIF MUMTAZ</b></p>	<p>Dear Fellow Members,</p> <p>I am pleased to present the October - December 2011 being the fourth and final issue of "E-News &amp; Views" of the present Managing Committee of the Karachi Tax Bar Association (KTBA). One of the major tasks taken up by the Managing Committee of KTBA 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. This task was given to Sub – Committee of E – News &amp; Views who took this responsibility and published all the issues on time. The important features of these issues are summarized below:</p> <ol style="list-style-type: none"> <li>1. For the first time the important un-reported decisions of the Higher Appellate Authorities were included in all the publications and we believe these are being the significant assistance to our members.</li> <li>2. The case laws from the corporate law segment were also included first time in E - News &amp; Views publications. This was sure to enlighten the understanding of our members in their varied field of practices.</li> <li>3. We have also included the circulars / notifications and decisions of the Higher Appellate Authorities of the first half of the last calendar year 2010 in the third issue and second half of 2010 in the current i.e. fourth issue of these publications to cover the lapse of said year</li> <li>4. It was decided that the issues of these publications of the KTBA will be emailed to the members and for that matter the name of the News &amp;Views was renamed as <b>E - News &amp; Views</b>. This was done from the point of view of the convenience attached to the emailing the news and views. Further, the E-News &amp; Views has also saved the cost of printing and the courier associated with the manual publication.</li> </ol> <p>Due to above features, the responses from the members are very encouraging for all of us.</p> <p>Finally, I would also like to thank my team members of E-News &amp; Views Committee for their timely input and continued support.</p> <p><b>MUHAMMAD ARSHAD</b></p>

## IMPORTANT CIRCULARS & NOTIFICATION/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	ITBAK LIBRARY REF: NO.
Circular No.10 of 2010 Dated 16-07-2010	Explanation regarding important amendments mad in the Income Tax Ordinance, 2001 by the Finance Act, 2010.	779
Circular No.11 of 2010 Dated 28-07-2010	Computation of Income Tax Payable by the Salaried Taxpayers for Tax Year 2010 and clarifications regarding changes made through the Finance Act, 2010	780
Circular No13 of 2010 Dated 28-09-2010	Extension of filing of Income-tax Returns / Statements for tax year 2010 upto 15 <sup>th</sup> October, 2010, in the case of Business Individuals, Salaried Individuals, for Annual Statement by the Employer and Returns of Income by AOP.	781
Circular Letter No.2(4) Chief (ITP)/2009 Dated 30-09-2010	Extension for filing of Income Tax Returns/ Statements for Tax Year 2010 upto 15 <sup>th</sup> October, 2010 also applicable to corporate income-tax returns/statements.	782
Circular No.15 of 2010 Dated 11-10-2010	Further Extension for filing of Income Tax Returns/ Statements for Tax Year 2010 upto 30 <sup>th</sup> October, 2010 in all taxpayers.	783
S.R.O 754(I)/2010 Dated 09-08-2010	Inapplicability of provisions of S.148 on import of raw material for own consumption of the taxpayers located in the most affected areas of Khyber Pakhtunkhwa (district Peshawar, Malakand Agency and districts of Swat, Buner, Shangla, Upper Dir, Lower Dir, Hangu, Bannu, Tank, Kohat and Chitral) and taxpayers located in moderately affected areas of Khyber Pakhtunkhwa (Charsadda, Nowshera, D.I. Khan, Bhatgram, Lakki Marwat, Swabi and Mardan), FATA and PATA on fulfillment of conditions.	784

CIRCULAR/SROs/ NOTIFICATIONS REFERENCE	SUBJECT	ITBAK LIBRARY REF: No.
S.R.O 755(I)/2010 Dated 09-08-2010	Amendment in Part-I of the Second Schedule for insertion of clause (64C) for providing exemption to Prime Minister's Flood Relief Fund 2010 and Provincial Chief Ministers' Relief Funds, for victims of flood 2010.	785
S.R.O 808(I)/2010 Dated 17-08-2010	Draft amendments in Income Tax Rules, 2002 Chapter II – Part-III for Computation of Capital Gains under Income Tax Ordinance, 2001.	786
S.R.O 827(I)/2010 Dated 24-08-2010	Draft amendments in Income Tax Rules, 2002 Second Schedule prescribing new Income Tax Returns/Statements of Final Tax.	787
S.R.O. (I)/2010 Dated 31-08-2010	Extension of due date upto 30 <sup>th</sup> September, 2010 of Annual Statement of deduction of income-tax from salary to be filed by the Employer of an individual and Return of incomes required to be e-filed by salaried individuals and statement required u/s.115(4).	788
Finance (Amendment) Act, 2010	Insertion of section 4A – Surcharge for levy of surcharge @ 10% of the income-tax payable for Tax Year 2011.	789
S.R.O 865(I)/2010 Dated 07-09-2010	Fresh draft amendments in Income Tax Rules, 2002 Chapter II – Part-III for Computation of Capital Gains under Income Tax Ordinance, 2001.	790
S.R.O 881(I)/2010 Dated 09-09-2010	Amendments in Income Tax Rules, 2002 Second Schedule prescribing new Income Tax Returns/Statements of Final Tax	791
S.R.O 895(I)/2010 Dated 22-09-2010	Further amendments in Income Tax Rules, 2002 - Second Schedule in respect of Income Tax Returns/Statements of Final Tax.	792
S.R.O 1053(I)/2010 Dated 22-11-2010	Entitlement of exemption certificate from Commissioner provided to persons from payment of transitional advance-tax deductible under S.235, who paid the entire advance-tax liability u/s.147 on fulfillment of specified conditions.	793

CIRCULAR/SROs/ NOTIFICATIONS REFERENCE	SUBJECT	ITBAK LIBRARY REF: No.
S.R.O 1086(I)/2010 Dated 30-11-2010	Amendments in Part-III of the Second Schedule for insertion of clause (8) providing for reduction of 80% of annual turnover for levy of minimum tax under S.113 in case of the distributors of pharmaceutical products, fertilizers, consumers goods, including fast moving consumer goods and clause (9) for reduced rate of 0.5% of minimum tax u/s.113 in case of Oil Marketing companies, Oil Refineries and sui southern gas company limited, where annual turnover exceeds rupees one billion.	794
S.R.O 1099(I)/2010 Dated 07-12-2010	Amendment in Part-IV of the Second Schedule for insertion of clause (76) providing for inapplicability of the provisions of section 235 to an industrial undertaking which is manufacturer-cum-exporter and situated in KEPZ, which has been declared by the Federal Government as a "Zone" within the meaning of the EPZ Authority Ordinance, 1980.	795
S.R.O 1119(I)/2010 Dated 10-12-2010	Draft amendments in Income Tax Rules, 2002 – Second Schedule in Tax Return Form for Tax Year 2010.	796
S.R.O 1128(I)/2010 Dated 14-12-2010	Draft amendments in Income Tax Rules, 2002 – Second Schedule in Tax Return Form for Tax Year 2010.	797
S.R.O 1158 (I)/2010 Dated 30-12-2010	Amendments in Income Tax Return Form in Part-I of the Second Schedule of Income Tax Rules, 2002 made applicable for Tax Year 2010.	798
S.R.O 1159(I)/2010 Dated 30-12-2010	Amendments in Corporate Income Tax Return Form for in Part-I of the Second Schedule of Income Tax Rules, 2002 made applicable for Tax Year 2010.	799
S.R.O 1161(I)/2010 Dated 31-12-2010	Amendments made in S.R.O 586(I)/91 dated 30 <sup>th</sup> June, 2001 restricting exemption from WHT on supplies under S.153(1)(a) as follows:  a. Exemption to "Local Authority" restricted to "Local Government".  b. Exemption to " <b>persons</b> " receiving payments for supply of agricultural products substituted by " <b>growers/ producers of agricultural produce</b> ".	800

<b>CIRCULAR/SROS/ NOTIFICATIONS REFERENCE</b>	<b>SUBJECT</b>	<b>ITBAK LIBRARY REF: NO.</b>
Circular No.14 of 2011 Dated 06-10-2011	Clarifications regarding Exemption Clause (!26F) of Part-I of the Second Schedule granting certain relief to the taxpayers whose businesses were adversely affected during the strife in the Khyber Pakhtunkhwa, FATA and PATA for a period of three years effective from Tax Year 2010.	801
Circular No15 of 2011 Dated 25-10-2011	Extended due date for filing of Returns of Total Income/Statements of Final Taxation of 25 <sup>th</sup> October, 2011 for Tax Year 2011 further extended to 31 <sup>st</sup> October, 2011.	802
Circular Letter No.1(8) Rev. Bud/98 Dated 27-10-2011	Extended time for Collection of Income Tax on 29 <sup>th</sup> , 30 <sup>th</sup> and 31 <sup>st</sup> October, 2011 by authorized Branches of SBP and NBP.	803
Circular No.16 of 2011 Dated 27-11-2011	Further extension for filling of Income Tax Returns/Statements of Final Taxation for Tax Year 2011 due on 31 <sup>st</sup> October, 2011 till 21 <sup>st</sup> November, 2011 subject to the condition that tax to be paid with the Return is deposited by 31 <sup>st</sup> October, 2011.	804
Circular No.17 of 2011 Dated 04-11-2011	Further extension upto 21 <sup>st</sup> November, 2011 for filing of Income Tax Returns/Statements of Final Taxation for Tax Year 2011 and also deposit of tax liability alongwith the Return / Statement upto 21 <sup>st</sup> November, 2011.	805
Circular No.18 of 2011 Dated 04-11-2011	Amendment in Annexure "D" to the Tax Return Form for Tax Year 2011 relating to Personal Expenditure Statement.	806
Circular No.19 of 2011 Dated 21-11-2011	Further extension upto 30 <sup>th</sup> November, 2011 for filing of Income Tax Returns/Statements for Final Taxation for Tax Year 2011.	807
S.R.O. 929(I)/2011 Dated 28-09-2011	Draft amendment for insertion of sub-rule (2DD) of Income Tax Rule-73 for mandatory electronic filing of income-tax returns and withholding tax statements in case of individual with annual turnover of Rs.50 million or more and in the case of Director of a company.	808
S.R.O. 977(I)/2011 Dated 19-11-2011	Amendment made in Part-III of the Second Schedule to Income Tax Ordinance, 2011 for insertion of clause (11) to the effect that "the amount of surcharge payable on the income-tax liability for the tax year 2011 under section 4A shall be computed on the proportionate amount of income-tax liability for three and a half months".	809

<b>CIRCULAR/SROs/ NOTIFICATIONS REFERENCE</b>	<b>SUBJECT</b>	<b>ITBAK LIBRARY REF: No.</b>
S.R.O. 978(I)/2011 Dated 21-11-2011	Amendment in prescribed Annexure "D" of Income Tax Return regarding details of Personal Expenses.	810
S.R.O. 990(I)/ 2011 Dated 18-10-2011	Exemption allowed to donations to Bank of Commerce and Credit International Foundation for Advancement of Science and Technology by insertion of sub-clause (xlii) in Clause (61) of Part-I of the Second Schedule to Income Tax Ordinance, 2001.	811
S.R.O. 1003(I)/2011 Dated: 31-10-2011	Amendment in Part-IV of Second Schedule for insertion of clause (79) providing that the provisions of S.153(3)(b) shall not applicable to the tax withheld on payment received by a company for providing or rendering of services [WHT @ 6% u/s.153(1)(b) not Minimum Tax in case of corporate taxpayers)	812

## INDIRECT TAX

CIRCULAR/SROS/ NOTIFICATIONS REFERENCE	SUBJECT	ITBAK LIBRARY REF: No.
SRO 685(I)/2010 Dated 26 July 2010	Through this SRO certain amendments in the Sales Tax Rules, 2006 were made.	813
SRO 706(I)/2010 Dated 02 August 2010	Exemption of Input Tax paid by recognized manufacturers of Agricultural Tractors.	814
SRO 748(I)/2010 Dated 05 August 2010	Through this SRO certain amendments in the Sales Tax Rules, 2006 were made.	815
SRO 824(I)/2010 Dated 19 August 2010	Through this SRO the amendment was made in SRO 536(I)/08 dated 11.06.2008, whereby exemption from Sales Tax on pesticides was granted.	816
SRO 810(I)/2010 Dated 19 August 2010	Instruction to file refund through FBR web-portal was given through this SRO.	817
SRO 862(I)/2010 Dated 07 September 2010	Amendments in the Sales Tax Special Procedure Rules were made.	818
SRO 1042(I)/2010 Dated 15 November 2010	Amendments in Sales Tax Rules, 2006 (Refund) were made.	819
1125(I)/2011 Dated 31 December 2011	The scheme of zero-rating of five major export oriented sectors has been revamped to introduce a uniform rate (reduce sales tax @5% instead of earlier rate of 4% and 6%). This SRO will take effect from 1 <sup>st</sup> January 2012. This SRO is being issued in rescission of SRO 1058(I)/2011, dated 23.11.2011.	820
1012(I)/2011 Dated 04 November 2011	The scheme of zero-rating of five major export oriented sectors has been revamped to introduce the uniform rate (reduce sales tax @5% instead of earlier rate of 4% and 6%). This SRO replaces SRO 283(I)/2011, dated 01.04.2011 for zero-rating of export oriented sector.	821
SRO 821(I)/2011 Dated 06 September 2011	The Federal Board of Revenue with objective to broaden the tax base has made it mandatory for the registered manufacturer, importer and exporters supplying taxable or dutiable goods to unregistered persons to procure and provide computerized National Identity Card or NTN of such persons.	822

## CORPORATE

CIRCULAR/SROS/ NOTIFICATIONS REFERENCE	SUBJECT	ITBAK LIBRARY REF: NO.
Circular No.12of 2010 Dated 01-07-2010	Re-launching of Companies Easy Exit Scheme (CEES) operative for 3-months from 01-07-2010 to 30-09-2010 on fulfillment of specified conditions.	823
Circular No.13 of 2010 Dated 01-07-2010	Re-launching of Companies Regularization Scheme (CRS) operative for 3-months from 01-07-2010 to 30-09-2010 on fulfillment of specified conditions.	824
Circular No.14 of 2010 Dated 05-07-2010	To prevent criminal misuse of the Insurance industry by the money launderers for the purposes of money laundering and terrorist financing , in continuation of earlier Circular No.38/2009 further directives and information about United Nations 1267 Committee's Consolidated List of Individuals and Entities regarding Freezing of Funds and Other Resources.	825
Circular No.15 of 2010 Dated 06-07-2010	On the recommendations of Committee formed for review the solvency regulations and after consultation with Insurance Companies, eventualities specified for Insurance companies in respect of Related Parties disclosures.	826
Circular No.16 of 2010 Dated 07-07-2010	Categorization of Open-End Collective Investment Schemes specified.	827
Circular No.17of 2010 Dated 08-07-2010	Authorization of short notice period of at least three (3) days for holding Extraordinary General Meeting to pass resolution for filing application under Companies Easy Exit Scheme.	828
Circular No.18 of 2010 Dated 16-07-2010	Additional condition inserted to the Modaraba Authorization Certificate issued by the Registrar (Modaraba) to the Modaraba Company under section of the Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980	829
Circular No.19 of 2010 Dated 30-07-2010	Sharing of Costs of Insurance Ombudsman's Secretariat by Insurance/Takaful Companies.	830

<b>CIRCULAR/SROS/ NOTIFICATIONS REFERENCE</b>	<b>SUBJECT</b>	<b>ITBAK LIBRARY REF: NO.</b>
Circular No.20 of 2010 Dated 30-07-2010	Clarification regarding the term "Paid-up Capital" for Insurance Brokers registered in Pakistan that it shall connote net of accumulated losses and for purpose of facilitating existing brokers, who fail to meet the minimum criteria, a grace period of one year is allowed.	831
Circular No.21 of 2010 Dated 10-08-2010	Clarification on disclosure requirement under clause 3(ii) of Part-II of the 3 <sup>rd</sup> Schedule of the Modaraba Companies and Modaraba Rules, 1981 that they do not apply to sale or transfer of Ijarah (lease) assets by a Modaraba in normal course of business.	832
Circular No.22 of 2010 Dated 24-08-2010	Revised Second Schedule to the Modaraba Companies and Modaraba Rules, 1981 issued vide S.R.O No.826(I)/2010 dated 21-08-2010 with effect from 21-08-2010.	833
Circular No.23 of 2010 Dated 01-10-2010	Extension in the period of Companies Regularization Scheme (CRS) and Companies Easy Exit Scheme (CEES) for the Year 2010 upto 31-10-2010.	834
Circular No.24 of 2010 Dated 27-10-2010	Directives for submission of Reinsurance / Retakaful Treaty Arrangements – 2011 as per the requirements contained in the Rules.	835
Circular No.25 of 2010 Dated 01-11-2010	Extension in the period of Companies Regularization Scheme (CRS) and Companies Easy Exit Scheme (CEES) for the Year 2010 upto 30-11-2010.	836
Circular No.26 of 2010 Dated 16-11-2010	Standard Application Form developed to streamline process for claim of Refund of Fees received under the Sixth Schedule to the Companies Ordinance, 1984.	837
Circular No.27 of 2010 Dated 01-12-2010	Extension in the period of Companies Regularization Scheme (CRS) and Companies Easy Exit Scheme (CEES) for the Year 2010 upto 31-12-2010.	838
Circular No.28 of 2010 Dated 21-12-2010	Clarification for submitting original paid challan with application for claim of refund of fess received under the Sixth Schedule to Companies Ordinance, 1984.	839

<b>CIRCULAR/SROS/ NOTIFICATIONS REFERENCE</b>	<b>SUBJECT</b>	<b>ITBAK LIBRARY REF: NO.</b>
Circular No.29 of 2010 Dated 24-12-2010	Annual Supervision Fees for the Year 2011 prescribed for payment by the Insurers.	840
S.R.O. 655 (I)/2010 Dated 13-07-2010	Directives to all assets management companies to report compliance by June 30, 2011 of Regulation 37(7)(k) proviso of the Non-Banking Finance Companies and Notified Entities Regulations, 2008.	841
S.R.O.686(I)/2010 Dated 27-07-2010	Amendment made in Regulation 3(2)(f) in the Real Estate Investment Trust Regulations, 2008.	842
Notification dated 09-08-2010	All Listed insurance/takaful companies to take notice that they are to continue filing the Annual Return on Form A and prescribed information pursuant to Commissions' notifications Nos. S.R.O 763(I)/85 dated 07-08-1985; S.R.O.1014(I)/86 dated 12.11.1986 and Circular No.6 of 2001 with the Securities Market Division of SECP as required under the law notwithstanding re-location of the Insurance Division in Karachi. Annual Returns for 2009 directed to be re-submitted to the Securities Market Division.	843
Notification Dated 21-09-2010	The Beneficial Owners of the listed companies instructed to file their overdue returns of beneficial ownership, if any, with head Office of the Commission by 31-10-2010 without facing legal proceedings and also observe the prescribed time limitation in future for filing of such returns.	844
Notification Dated 21-09-2010	Final opportunity to all Listed Companies to file their overdue Annual Return Form A, soft copy of List of Members (in MS Excel) and prescribed information regarding pattern of shareholding of the company by 31-10-2010 without facing legal proceedings and also observe prescribed time limit in future.	845
S.R.O.996(I)/2010 Dated 26-10-2010	Sixth Schedule of the Companies Ordinance, 1984 prescribing Table of Fees to be paid to the Registrar and the Commission in case of online submission of documents and in case of physical submission of documents substituted.	846

<b>CIRCULAR/SROS/ NOTIFICATIONS REFERENCE</b>	<b>SUBJECT</b>	<b>ITBAK LIBRARY REF: NO.</b>
Circular No.14 of 2011 Dated 10-11-2011	Directives to all Listed Companies incorporated in Pakistan, if required can hold board meetings abroad, in a financial year, as per the threshold prescribed in the Circular.	847
S.R.O 889(I)/2011 Dated 22-09-2011	Subject to such conditions and limitations as it may from time to time impose, authorized its different officers at various locations to file a report of the facts constituting an offence under sub-section (2) of section 7 of the Companies (Appointment of Legal Advisors) Act, 1974.	848
Press Release Dated 03-10-2011	Comments sought on draft Fertilizer Industry (Cost Accounting Records) Order, 2011 issued vide S.R.O 852(I)/2011	849
S.R.O 946(I)/2011 Dated 06-10-2011	Draft amendments proposed in the Securities (Leveraged Market and Pledging) Rules, 2011.	850
S.R.O 1019(I)/2011 Dated 11-11-2011	Thermal Energy (Cost Accounting Records) Order, 2011 issued.	851
S.R.O.1055(I)/2011 Dated 22-11-2011	Draft of further amendments proposed in Voluntary Pension System Rules, 2005.	852
S.R.O.1079(I)/2011 Dated 02-12-2011	Draft of further amendments proposed in the Non-Banking Finance Companies (Establishment and Regulation) Rules, 2003.	853

## SYNOPSIS OF IMPORTANT CASE LAWS

### DIRECT TAX

- Note:** (1) Members are advised to read the complete judgment for better understanding of the respective issues.  
(2) Income Tax Ordinance, 2001 is referred as “the Ordinance” and Income Tax Ordinance, 1979 is referred as “the repealed Ordinance”.

CITATION	ISSUES INVOLVED
<p>2010 PTR 1 Supreme Court of Pakistan</p>	<p><b>Sections 153(6B), (46B) of Pt-II, of 2<sup>nd</sup> Schedule to Income Tax Ordinance, 2001</b></p> <p><b>FACTS OF THE CASE</b> Leave was granted to consider whether Notification SRO. No. 847(1)/2001 dated 27.8.2007 issued by Government of Pakistan, was ultra vires the provisions of Section 53(2) and whether ratio laid down by this court in case reported as 1993 SCMR 1232 was distinguishable on the facts of the present case.</p> <p><b>DECISION</b> It was held by the Hon’ble Court that:</p> <ol style="list-style-type: none"> <li>a. It is well settled principle of law that a delegate who has been empowered to exercise powers on behalf of the principal, arising out of the legislation is not allowed to go beyond the prescribed boundaries namely that in exercise of the delegated powers neither the main legislation can be amended nor any provision can be made therein.</li> <li>b. Clause (46B) has travelled beyond the scope of section 153(6B) of the Ordinance.</li> <li>c. Addition of Clause (46B) by amending the second schedule in exercise of delegated powers was not permissible.</li> </ol> <p>The judgment of the High Court is plainly correct to which no exception can be taken.</p>

CITATION	ISSUES INVOLVED
<p>(2010) 102 Tax 1 Karachi High Court</p>	<p><b>SECTION 99, 101, 107, 152(1A) &amp; 161 OF THE INCOME TAX ORDINANCE, 2001</b></p> <p><b>FACTS OF THE CASE</b> The taxpayers are Public Limited Companies engaged in the business of insurance filed petitions challenging the amendments made by Finance Act 2008.</p> <p><b>DECISION</b> It has been held by the Hon'ble High Court that:</p> <ol style="list-style-type: none"> <li>a. However in our opinion the re-insurance premiums paid to the foreign enterprises where AFAODT is available would fall outside the scope of tax because of the fact that the provision of section 107 of the Ordinance which has remained unamended even today have an overriding effect and prevail over the ordinary tax laws as specifically discussed in the decisions referred supra. It would not be out of place to mention that the amendments made in section 101 and 152 of the Ordinance vide F.A. 2008 do not start with the non-obstente clause "notwithstanding anything contained in this Ordinance or any other law for the time being enforced" makes in our view, these provisions still subservient to those provisions of the which have an overriding effect over the sections.</li> <li>b. We are therefore, of the view that unless it is established that the payment is chargeable in Pakistan, action under section 161 of the Ordinance against the taxpayer cannot be taken merely for the reason that he has not obtained approval from the Commissioner in terms of section 152(5) of the Ordinance. Moreover the related expenses can also not been disallowed in terms of section 12(c) of the Ordinance which itself makes it clear that a deduction claimed can only be disallowed if the tax if required under the Ordinance is not deducted.</li> </ol> <p>We therefore are of opinion that in the case where the payment of re-insurance is being made to the non-resident which is covered under AFAODT, they are entitled to exemption.</p>

CITATION	ISSUES INVOLVED
(2010) 102 Tax 132 Karachi High Court	<p><b>SECTIONS 2(20), 4, 12(2)(A), 2<sup>ND</sup> PROVISIO, PART-1, 1<sup>ST</sup> SCHEDULE, DIVISION-1, PARA (I-4), 3<sup>RD</sup> PROVISIO &amp; PARA (2)] OF THE INCOME TAX ORDINANCE, 2001</b></p> <p><b>FACTS OF THE CASE</b> The taxpayers in this case have challenged the imposition of IDPT imposed vide section 5(51)(a)(i)b) of Finance Act 2009 on persons having taxable income of Rs. One million or more at the rate of 5% on income tax payable on their income and imposition of IDPT at the rate of 30% on bonus paid or payable to corporate employees only.</p> <p><b>DECISION</b> The Hon'ble High Court held that the Petitions so far as imposition of IDPT is concerned are liable to be dismissed however the imposition of tax on bonus is discriminatory and is in violation of Article 25 of the Constitution is illegal, of no legal effect and void ab-initio:</p>
(2010) 102 Tax 174 Peshawar High Court	<p><b>SECTIONS 88 &amp; 104 OF THE INCOME TAX ORDINANCE, 1979</b></p> <p><b>FACTS OF THE CASE</b> The department in the tax reference has challenged the order of the learned tribunal on the ground that whether the ITAT was justified to delete additional tax u/s 88 of the repealed Ordinance whereas at the relevant time refund was neither established nor created on record of the assessee. The respondent controverted the fact that the refund were created and established on record.</p> <p><b>DECISION</b> It has been held by the Hon'ble High Court that statute imposing pecuniary burdens are to be construed strictly rather than liberally, but it does not mean that the statute be strained and starched to an extent where even the due benefit should be denied to the person taxed. The tribunal has in fact decided the matter according to the recognized principles regulating the understanding and interpretation of statutes, therefore answer the question in affirmative.</p>
(2010) 102 Tax 182 Karachi High Court	<p><b>SECTIONS 21(C), 31, 151, 158(A), 161 &amp; 205 OF THE INCOME TAX ORDINANCE, 2001</b></p> <p><b>FACTS OF THE CASE</b> The Petitioner in these petition have challenged the notice u/s 161/205 of the Ordinance issued to them to explain as to why tax defaulted/deducted in respect of various term deposits as required u/s 151 of the Ordinance may not be recovered u/s 161 along with default surcharge u/s 205 of the Ordinance.</p> <p><b>DECISION</b> The Hon'ble High Court have held that in terms of section 158 of the Ordinance the time prescribed for withholding/deducting and paying tax on returns/profits in respect of term deposit is the time when the amount of return/profit is credited to the accounts of the recipients.</p>

CITATION	ISSUES INVOLVED
<p>(2010) 102 Tax 229 Lahore High Court</p>	<p><b>SECTIONS 115(4), 131, 153(1) &amp; 234 OF THE INCOME TAX ORDINANCE, 2001</b></p> <p><b>FACTS OF THE CASE</b> The Department aggrieved with the order of the Tribunal and has filed reference to the Hon'ble High Court for resolution of the question whether carriers of goods plying vehicles and providing transportation facilities under contract fall under the ambit of section 115(4) of the Ordinance.</p> <p><b>DECISION</b> The Hon'ble High Court has observed that the revenue authorities themselves in letter No. 7(41) S.Asstt./2006 dated 7-6-2007 have given an interpretation which is in consonance with section 153(1)(c) in as much as the contracts for rendering services have specifically been excluded from the Presumptive tax regime. Hence there is no illegality found in the order passed by the learned Tribunal.</p>
<p>(2011) 104Tax 223 Lahore High Court</p>	<p><b>SECTION 65(1) &amp; (2) OF THE INCOME TAX ORDINANCE, 1979</b></p> <p><b>FACTS OF THE CASE</b> The taxpayer is an individual. Original assessment was finalized under section 59 of the repealed Ordinance. Due to some discrepancy, proceedings under section 65 of the repealed Ordinance were initiated and after obtaining approval from Additional Commissioner-Audit order were finalized at the enhanced income. On appeal the CIT(A) allowed appeal on legal plane on the ground of non-ticking of relevant clause of notice under section 65 of the repealed Ordinance. The department preferred appeal before the Tribunal who confirmed the findings of the CIT(A); hence reference before the Hon'ble High Court.</p> <p><b>DECISION</b> It has held by the Hon'ble High Court that section 65 of the repealed Ordinance is substantive in character and penal in nature therefore inherent requirement to serve the notice under section 65 of the repealed Ordinance should be followed in its letter and spirit, thus in the present case the proceedings initiated without ticking the relevant clause in notice under section 65 of the repealed Ordinance is not sustainable in law.</p>

Citation	Issues Involved
(2011)104 Tax 241 Lahore High Court	<p><b>SECTION 221 OF THE INCOME TAX ORDINANCE 2001, SECTIONS 4 &amp; 12 OF THE W.W.F ORDINANCE, 1971 AND SECTION 10(4) OF THE FINANCE ACT 2006 AND 2008</b></p> <p><b>FACTS OF THE CASE</b> The petitioners through Writ Petitions challenged the vires of section 10(4) of Finance Acts 2006 and 2008 through which amendment were introduced in W.W. F Ordinance 1971 to charge levy on enhanced amount.</p> <p><b>DECISION</b> The Court held that WWF is in the nature of a “Fee” and therefore, the WWF Ordinance cannot be amended through Money Bills as has been done (through the Finance Acts of 2006 and 2008) which is in violation of Article 72(3) of the Constitution. Hence all the Petitions were allowed while disagreeing with the decision of Hon’ble Sindh High Court by the Lahore High Court.</p>
(2011) 104 Tax 287 Karachi High Court	<p><b>SECTION 147(1) &amp; (6) OF THE INCOME TAX ORDINANCE, 2001</b></p> <p><b>FACTS OF THE CASE</b> The taxpayer KPT was required to pay advance tax under section 147(1) of the Ordinance and, filed estimate under section 147(6) of the ordinance declaring NIL income and stated that they do not required to pay advance tax under section 147(1) of the ordinance on the basis of such estimate. The Taxation Officer refused the estimate and asked the taxpayer to pay installments under section 147(7) read with section 2(5) and 137(2) of the ordinance and also levied default surcharge against the tax payer. Both the appellate forums rejected the contentions of the taxpayer; hence the reference before Hon’ble High Court.</p> <p><b>DECISION</b> It has been held that section 147(6) of the ordinance is applicable to a person who is required to pay tax under section 147(1) of the ordinance and he may estimates the tax due for the relevant tax year if he feels that the tax is likely to be less than the amount he is required to pay advance tax under section 147(1) of the ordinance. Further, it is held that there is no provision in sub-section (6) of the ordinance prohibiting that an estimate cannot be filed under which no tax is payable. Held further that once such estimate is filed whether right or wrong, there is no provision which provides any authority to the Taxation Officer to discard such estimate. The only option available to the Taxation Officer to levy default surcharge under section 205(1B) of the Ordinance after completing the assessment.</p>

<b>CITATION</b>	<b>ISSUES INVOLVED</b>
<p>2011 PTD 2543 Karachi High Court</p>	<p><b>SECTIONS 2(44), 9, 10, 80D, 80DD, &amp; 1<sup>ST</sup> SCHEDULE, PART-III, PARA-C, OF THE INCOME TAX ORDINANCE, 1979</b></p> <p><b>FACTS OF THE CASE</b> The common question that whether surcharge levy under Para C of Part-III, of the First Schedule to the repealed Ordinance can be levied on the companies who falls under the ambit of section 80D and 80DD of the repealed Ordinance and have subjected to minimum tax.</p> <p><b>DECISION</b> It has been held by the Hon'ble High Court that no surcharge under Para C of Part-III, of the First Schedule to the repealed Ordinance shall be chargeable on the tax by any name called payable under section 80D and 80DD of the ordinance by observing that presumptive tax liability is the final tax whereas minimum tax is not the final tax liability and even after assessment if it is seen that the total assessed tax exceeds the tax payable under section 80D of the ordinance than the case will be excluded from the ambit of section 80D of the ordinance and will assessed under normal rates.</p>
<p>2011 PTD 2668 2011PTR72 Karachi High Court</p>	<p><b>SECTIONS 80D &amp; 107AA OF THE INCOME TAX ORDINANCE, 1979</b></p> <p><b>FACTS OF THE CASE</b> The taxpayer a limited company claimed tax credit on the investments made by them on plant &amp; machinery under section 107AA of the repealed ordinance, which was disallowed. On appeal the claim was ordered to be allowed. The Learned Tribunal on appeal restored the order passed by Assessing Officer.</p> <p><b>DECISION</b> Held that:</p> <ol style="list-style-type: none"> <li>a. Section 80D of the repealed ordinance is the minimum tax payable by certain persons and any deduction of any allowance, rebate or credit from this minimum tax is defiance of law.</li> <li>b. The term 'credit of rebate' in tax mentioned in the explanation given in section 80D of the repealed ordinance includes credit of tax pertaining to section 107AA of the repealed Ordinance hence tax credit is not available to the taxpayer.</li> <li>c. Section 80D of the repealed ordinance would enjoy the overriding effect over the provisions of section 107AA of the repealed Ordinance even though the same was introduced subsequently.</li> </ol>

<b>CITATION</b>	<b>ISSUES INVOLVED</b>
<p>(2011) 104 Tax 142 (FTO)</p>	<p><b>SECTIONS: 2(3)(B), CLAUSE (2) OF PART III OF 2<sup>ND</sup> SCHEDULE OF INCOME TAX ORDINANCE 2001</b></p> <p><b>FACTS OF THE CASE</b> Refusal to grant 75% rebate to librarians, despite the fact that the order passed by the CIT(A) and Tribunal is in favour of the taxpayer.</p> <p><b>DECISION</b> The orders of the CIT(A) and Tribunal holds the field and the librarians of Punjab and Sindh are availing the benefit of 75% rebate. FBR letter C.No. 4(32)/ITP/2001 dated 15-04-2011 is prima facie discriminatory.</p>
<p>W.P. No 2895/2011 Dated 01-12-2011 Islamabad High Court</p>	<p><b>SECTION 4A OF THE INCOME TAX ORDINANCE, 2001</b></p> <p><b>FACTS OF THE CASE</b> Through Finance (Amendment) Ordinance, 2011, a new Section 4A was inserted in the Income Tax Ordinance, 2001 whereby 15% surcharge was levied on the Income Tax payable for the period commencing from 15<sup>th</sup> March, 2011 to 30<sup>th</sup> June 2011.</p> <p><b>DECISION</b> 15 % surcharge has to be paid at the time of paying the income tax and the payment of income tax for the purpose of surcharge has been specified that it is to be paid with effect from 15<sup>th</sup> March 2011 to 30<sup>th</sup> June 2011, so no surcharge on the Income derived on other months can be demanded or deducted. It is one of the basic principles of law that if any benefit arises in payment of tax, the benefit must go to the taxpayer. In the instant cases, there is no reason for the Income Tax Department to burden the taxpayer with the amount, which is not required under the law to be paid by the taxpayer. The taxpayer has been burdened to pay surcharge for the specific period and only for that specific period is to be charged.</p> <p>The Hon'able Court hold that the method of deduction of surcharge provided in S.R.O No 850(1)/2011, dated 17-09-2011 is illegal and void to the extent of calculating the surcharge over income tax for the period commencing from 15<sup>th</sup> March 2011 to 30<sup>th</sup> June 2011. The surcharge should be deducted only for the said period i.e. from 15<sup>th</sup> March to 30<sup>th</sup> June 2011 separately as provided in the explanation provided by the Federal Board of Revenue.</p>

CITATION	ISSUES INVOLVED
<p>CP No. 1709 of 2008 a/w CP 785/ 06; CP Nos. 2490 &amp; 2491/07 CP Nos. 2376 to 2378/2008 Sindh High Court</p>	<p><b>SECTION 53 AND 153 OF THE INCOME TAX ORDINANCE, 2001</b></p> <p><b>FACTS OF THE CASE</b></p> <p>Proper interpretation and interaction of sections 53 and 153, and clause (42) of Part IV of the Second Schedule to the Ordinance. The petitioner’s case is that the payments to which it is entitled as a result of the operation of its terminal come within the scope of section 153 (1) (c) of the Ordinance and thus, the tax deducted thereon is the final tax by reason of section 153 (3). The Department on the other hand, contends that the payments received by the petitioner come within the scope of section 153(1)(b) of the Ordinance, i.e., have been received on account of the rendering of services. Clause (42) of Part IV of the Second Schedule provides that section 153(3) of the Ordinance does not apply, <i>inter alia</i>, to “payments received by a resident person for providing services by way of operation of oil terminal</p> <p>The petitioner operates an oil/bulk storage terminal, where oil and other similar types of goods are off loaded from, or on-loaded onto, ships calling at the port. By means of notices issued under section 122(5A) of the Ordinance, the concerned taxation officer sought to reopen and amend the petitioner’s assessments on the ground that the income constituting the payments received for the operation of the oil terminal was liable to be taxed under the NTR, and not the FTR, by reason of Clause (42) of Part-IV of the Second Schedule to the Ordinance. The petitioner’s representations against the notice under section 122(5A) of the Ordinance did not succeed, therefore a petition filed.</p> <p><b>DECISION</b></p> <p>We are satisfied that since Clause (42) of Part-IV of the Second Schedule to the Ordinance cannot have any application with regard to the petitioners, section 153(3) of the Ordinance does not stand dis-applied in their case, and hence it cannot be said that the tax deducted on the relevant payments received by them was not a final tax.</p> <p>The impugned show cause notices, to the extent that they seek to bring to tax payments received by the petitioners by way of operation of oil terminals by reference to or application of Clause (42) of Part-IV of the Second Schedule to the Ordinance and/or the Tribunal’s order are hereby quashed and set aside.</p>

CITATION	ISSUES INVOLVED
2010 PTR 46 (Trib)	<p><b>SECTIONS 121, 122 &amp; 177 OF THE INCOME TAX ORDINANCE, 2001</b></p> <p><b>FACTS OF THE CASE</b> The taxpayer in this case was aggrieved with ex-parte order, selection of case for audit and additions in purchases, wastage and salaries has filed 1<sup>st</sup> appeal before CIT(A) and then challenged the appellate order before the learned ITAT.</p> <p><b>DECISION</b> It has been held by the Learned Tribunal that:</p> <ol style="list-style-type: none"> <li>a. As the queries of the Assessing Officer has not been replied therefore case had rightly been processed under section 177 of the Ordinance and subsequent continuation under Section 122 of the Ordinance.</li> <li>b. Selection of audit in itself does not mean an assessment or modification of assessment.</li> <li>c. Earlier assessment can be modified after holding that the same is either under assessed on the basis of definite information under section 122(5) or is erroneous and prejudicial to the interest of revenue under section 122(5A) of the Ordinance.</li> </ol>
(2010) 102 Tax 193 (Trib) 2010 PTR 49 (Trib)	<p><b>SECTIONS 177, 120, 121 &amp; 122 OF THE INCOME TAX ORDINANCE, 2001</b></p> <p><b>FACTS OF THE CASE</b> The taxpayer's case was selected under section 177 of the Ordinance and for non-compliance of notices the proceedings culminated in ex-parte assessment under section 121 of the Ordinance.</p> <p><b>DECISION</b> The Tribunal held that:</p> <ol style="list-style-type: none"> <li>a. There is no method to modify or re-assess a deemed assessment under the provisions of section 122 before exercising jurisdiction provided under section 122(5) of the ordinance.</li> <li>b. The Taxation Officer's action being not in strict compliance of the provisions and procedures provided in law is therefore not endorsed.</li> </ol>

CITATION	ISSUES INVOLVED
(2010) 102 Tax 196 (Trib) 2010 PTR 73 (Trib)	<p><b>SECTIONS 182(1) OF THE INCOME TAX ORDINANCE, 2001</b></p> <p><b>FACTS OF THE CASE</b> The Taxation Officer levied penalty under section 182(1) of the Ordinance for late filing of the return by 16 days for the tax year 2008. On appeal the CIT(A) deleted the penalty. The department preferred appeal against the order of said appellate order.</p> <p><b>DECISION</b> The learned tribunal held levy of penalty is contingent to the tax payable. In this case there is no tax payable with the return. Definitely there is no question of levying penalty because it is not provided in the relevant law</p>
(2010) 102 Tax 97(Trib)	<p><b>SECTIONS 66A, 62 THE INCOME TAX ORDINANCE, 1979</b></p> <p><b>FACTS OF THE CASE</b> The taxpayer is anon resident company carries out seismic and geophysical surveys for oil exploring companies operating in Pakistan. As a result of proceedings under section 66A of the repealed Ordinance the sale proceed on account of re-export of machinery were considered as per clause (i) instead of clause (j) of rule 8(5) and taken as per original cost and thus the demand were recomputed accordingly.</p> <p><b>DECISION</b> The learned tribunal held that the benefits of Rule 8(5)(j) are not available to the contractors and sub-contractors of the license company ranted for license for exploration and petroleum in Pakistan.</p> <p>Held further that the Concession Agreements executed by President of Pakistan in pursuance of Regulations of Mines &amp; Oilfields and Mineral Developments (Government Control) Act 1945 being specific in nature will prevail upon the provision of Income Tax Ordinance 1979 being general in nature. thus no tax could be charged on the re-export of equipments used in Pakistan for the exploration and production of petroleum in view of the Concession Agreements executed between President of Pkistan and Oil Companies.</p>

CITATION	ISSUES INVOLVED
(2010) 102 Tax 284 (Trib)	<p><b>SECTIONS 122(5) &amp; (5A), 177 OF THE INCOME TAX ORDINANCE, 2001</b></p> <p><b>FACTS OF THE CASE</b> The Taxpayer is an individual is aggrieved by the selection of case for audit u/s 177 filed appeal before the CIT(A) who annulled the amended order placing reliance on Mohsin Raza's case. The department being dissatisfied filed appeal before the Learned Tribunal.</p> <p><b>DECISION</b> The Learned Tribunal held that audit proceeding uder section 177 of the ordinance is only a procedure to find out some defects in the accounts and to obtain information to further enter into the jurisdiction of making an assessment after acquiring authority under section 122(5) of the ordinance. Section 177 of the Ordinance does not itself provide any power to modify assessment or re-determine the income of the assessee. In this regard the key point which is to be kept in mind is that it is not a return of income which is being processed by the officer doing audit. He is dealing with a 'deemed assessment' which is by process of law has acquired a sanctity. The finalized assessment, therefore, cannot just be modified or disturb in continuation of the proceedings of audit under section 177 of the Ordinance.</p>
(2010)102 Tax 405 (Trib)	<p><b>SECTIONS 80(2)(B)(V), PARA-II OF PART-I OF 1<sup>ST</sup> SCHEDULE TO THE INCOME TAX ORDINANCE, 2001</b></p> <p><b>FACTS OF THE CASE</b> The Revenue have assailed the order of the CIT(A) who has directed to assign the status of AOP to the taxpayer for the purposes of rate of tax. Whereas the taxpayer has challenged the initiation of proceeding under section 122 of the Ordinance and treatment of receipt as contractual.</p> <p><b>DECISION</b> It has been by the Learned Tribunal that a cooperative society has been clothed by with the status of the company as per section 80(2) (b) of the Ordinance its income is proposed to be taxed at relatively lower rate in order to ensure the growth and expansion of the Cooperative Societies. There is thus no conflict between 80(2) and para-II of 1<sup>st</sup> Schedule of the ordinance and both the provisions are applicable simultaneously.</p> <p>Further held that the authorities were not justified in treating the receipts as contractual under PTR.</p>

<b>CITATION</b>	<b>ISSUES INVOLVED</b>
(2010) 102 Tax 538 (Trib)	<p><b>SECTIONS 148, 122(1), 122(3), &amp; 234(A) OF THE INCOME TAX ORDINANCE, 2001</b></p> <p><b>FACTS OF THE CASE</b> The taxpayer is an AOP running a CNG station. The deemed order was selected for audit and finalized under section 122(3) of the Ordinance and 122(1) of the Ordinance. Subsequently the case was subjected to the proceedings under section 122(5A) of the Ordinance which was challenged before the CIR(A). Against the said order both taxpayer and department preferred appeal before the learned Tribunal.</p> <p><b>DECISION</b> It has been held by the Learned Tribunal that section 234-A of the Ordinance was inserted by Finance Act 2007 to deduct tax at source which is applicable for the tax year 2008 and onwards, therefore the taxpayer is entitled to the claim of adjustments of all the withholding tax collected or deducted under various heads during the year under appeal. However fitting of kits in vehicle is not a manufacturing activity. More so these are not kits for own use of industrial undertaking. Sale of kits is commercial/trade activity. It will be treated as final discharge of tax liability.</p>
(2010) 102 Tax 554 (Trib)	<p><b>SECTION 122(5A) OF THE INCOME TAX ORDINANCE, 2001</b></p> <p><b>FACTS OF THE CASE</b> The taxpayer is private limited company filed return of total income and statement under section 115(4) of the Ordinance for the tax year 2004. Subsequently Additional Commissioner passed order u/s 122(5A) of the Ordinance on certain grounds. On appeal the CIR(A) rejected the appeal of the taxpayer. Being aggrieved the taxpayer filed appeal before the tribunal.</p> <p><b>DECISION</b> The learned tribunal has observed that it has been held by the Hon'ble Supreme Court of Pakistan that any authority vested with the power or discretion is duty bound to exercise the same by himself by applying his independent mind not influenced by extraneous consideration. He should neither accept any dictation nor delegate his authority to any other person. Violation of these rules, it is categorically held by Supreme Court of Pakistan, will render decision illegal. Needless to say that this order of Supreme Court of Pakistan is binding under Article 189 of the Constitution of Pakistan and any contrary judgment of any authority including this Tribunal will have no binding force.</p>

<b>CITATION</b>	<b>ISSUES INVOLVED</b>
(2010) 102 Tax 566(Trib)	<p><b>SECTION 184(2)(A), 122(1), 122(5) &amp; 111(2) OF THE INCOME TAX ORDINANCE, 2001</b></p> <p><b>FACTS OF THE CASE</b> The taxpayer declared NIL income for the tax year 2007. Subsequently on information deemed order was amended u/s 122(1)/(5) by making additions u/s 111 of the Ordinance, on account of investment made in property. The CIT(A) dismissed main appeal as well as appeal in respect of penalty.</p> <p><b>DECISION</b> The learned tribunal held that the date of discovery as envisaged in section 111(2) of the Ordinance clearly means that the date on which it is confronted to the person against whom the said information is going to be used. It is clear in this case that the discovery was made on 4-3-2009 which clearly fell into tax year 2008 and not ax year 2007.</p>
(2011) 104 Tax 137 (Trib)	<p><b>SECTION 122(5A) OF THE INCOME TAX ORDINANCE, 2001</b></p> <p><b>FACTS OF THE CASE</b> The taxpayer declared loss in the tax year 2005, also availed benefit of waiver of loan and mark-up and also claimed loss for the assessment year 1997-98. The Assessing Officer invoked section 122(5) of the Ordinance. The CIT (A) allowed the appeal on the point of law as well on merits. Subsequent to CIT(A)'s order the Taxation Officer invoked the provision of section 122(5A) of the Ordinance on the similar grounds and amended the order repeating the same income. On appeal the CIT (A) maintained the amended order.</p> <p><b>DECISION</b> The Tribunal held that the original order has merged in the order of the CIT(A), hence ceased to exist and since no appeal was filed against the said order it attained finality therefore invocation of section 122(5A) of the Ordinance is not sustainable.</p>
2011 PTD (Trib) 2590	<p><b>SECTIONS 177, 177(6), &amp; 120(1A), 122(9) OF THE INCOME TAX ORDINANCE, 2001</b></p> <p><b>FACTS OF THE CASE</b> The taxpayer is an individual was selected for audit under section 177(4) of the ordinance. The amended order as well as selection of case was challenged before the CIR(A) who allowed the appeal on legal ground that selection of case for audit was illegal. The department preferred appeal before Learned ATIR.</p> <p><b>DECISION</b> It has been held that pre-selection notice is not the necessary requirement for invoking the provisions of section 177 of the ordinance. Held further that sub-section (1A) of section 120 of the ordinance is clarificatory in nature and was aimed to elaborate that passing of deemed assessment order should not be so construed that it prejudices the administrative domain as to review of such assessment by way of conducting an audit.</p>

<b>CITATION</b>	<b>ISSUES INVOLVED</b>
2011PTR165 (Trib)	<p data-bbox="651 271 1302 338"><b>SECTIONS 29 OF THE INCOME TAX ORDINANCE 2001, 23(1)(X) OF THE INCOME TAX ORDINANCE, 1979</b></p> <p data-bbox="651 376 903 405"><b>FACTS OF THE CASE</b></p> <p data-bbox="651 405 1449 506">The larger bench was constituted to decide controversy which had arisen with regard to disallowance of bad debts claimed by adopting mercantile system of accounts by various banks.</p> <p data-bbox="651 544 775 573"><b>DECISION</b></p> <p data-bbox="651 573 1337 607">Having heard the parties the Learned ATIR held as under:</p> <ol data-bbox="651 640 1449 1077" style="list-style-type: none"><li>a. The allowance of bad debt is necessarily based upon a mere estimate. Ultimately a larger or smaller portion of the bad debt or loan may be recoverable at the time of making the allowance under this clause. In such a case the excess would be taxed as profit of the year in which it is realized to make up for the excessive allowance in an earlier year.</li><li>b. The Taxation Officer erred in holding that the respondents' entries about its bad debts "show that the debts have been written off in the accounts provisionally.</li><li>c. The arguments that unless all the measures to recover the debts are exhausted the claim is rejected</li></ol> <p data-bbox="651 1111 1449 1178">There is no deviation of the 'Prudential Banking Regulations' the claim of bad debt cannot be disallowed.</p>

CITATION	ISSUES INVOLVED
<p>ITA NO 107/KB/2009 ITA NO 108/KB/2009 ITA NO 109/KB/2009 ITA NO 110/KB/2009 ITA NO 111/KB/2009 Dated 17-03-2009 Appellate Tribunal Inland Revenue</p>	<p><b>SECTION 234 OF THE INCOME TAX ORDINANCE, 2001</b></p> <p><b>FACTS OF THE CASE</b> Order of the Commissioner of Income Tax (Appeals) maintaining the action of the taxation officer in determining income from goods transport business under Normal Tax Regime instead of Final Tax Regime of Section 234(5) of the Ordinance was challenged. The appellant is a Private Limited Company engaged in transport business through plying and hiring of goods transport vehicles owned by it. Statement U/s 115(4) of the Ordinance was filed showing tax deduction U/s 234(5) of the Ordinance as final discharge of tax liability under presumptive tax regime. Thus under the provision of section 169 read with Section 120(1)(b) of the Ordinance, it was treated as deemed assessment. This order remained in the field up to the tax year 2007. Subsequently, in the light of Circular No 7(41)5 Asst 2006 dated 07-06-2007, issued by FBR that rendering or providing of transport services are covered U/s 153 (1)(b) of the Ordinance to be assessed under normal tax regime, hence the Taxation Officer amended the assessment U/s 122(5A) of the Ordinance ousting the assessee from FTR and amended the assessment under the normal tax regime for the reason that Section 234(5) of the Ordinance applies in those cases where service is provided to person who are not withholding agent prescribed person U/s 153 of the Ordinance.</p> <p><b>DECISION</b> The Tribunal held that “from plain reading of above provision of law, in our view there exist no room or ambiguity that the advance tax collected under section 234(5) of the Ordinance is not final discharge of liability assessable under Final Tax Regime, and there shall be no requirement of filing of income tax return u/s 114 of the Ordinance. Further in section 234(5) of the Ordinance the word used “any person” is also of great significance, the word “any person” include other person the prescribed person, the payer or the recipient, it clarifies and unveils the issue that in the cases of transport business the tax deducted u/s 234(5) whether from the person, the prescribed person, the payer or the recipient by the motor vehicles tax collecting authority shall be the final liability of the tax. Further had it the intention of legislature to exclude the services rendered by the transport from the Final Tax regime exclusion of it should have expressly been manifest there in sub-section 234(5) of the Ordinance. No such is the case here.</p> <p>... Thus by giving accumulative effect to the above discussion we hold that in case of transport business income of transport tax collected u/s 234(5) of the Ordinance of “any person” who are defined in section 80 or 153(9) of the Ordinance or the payer or the recipient the tax withheld is final discharge of liability. Therefore, the order of officers below taxing income of transport under normal tax regime is against the spirit of law vacated and statement filed u/s 115(4) of the Ordinance considered as final discharge of tax liability under FTR.</p>

CITATION	ISSUES INVOLVED
<p>ITA NO 144/KB/2010 ITA No 162/KB/2010 Dated 1-07-2010 Appellate Tribunal Inland Revenue</p>	<p><b>SECTION (103A) OF PART-I OF THE SECOND SCHEDULE TO THE INCOME TAX ORDINANCE, 2001</b></p> <p><b>FACTS OF THE CASE</b></p> <ol style="list-style-type: none"> <li>1. Interpretation of the word ‘entitled’ and disallowance of claim for exemption on inter-cooperate dividends under Clause (103A) of Part I of the Second Schedule to the Ordinance.</li> <li>2. Disallowance of claim of deduction on account of financial charges on borrowing meant for expansion of the business.</li> <li>3. Adjustment of loss of the subsidiary company.</li> </ol> <p><b>DECISION</b></p> <ol style="list-style-type: none"> <li>1. Appellant’s view holds weight especially since the stance taken by the Department would essentially mean that two or more qualifying companies of the group opt to file a consolidated return as one tax entity. Due to consolidated accounts their internal transaction would become nullity since one cannot trade with one’s own-self. This would lead to payment of dividend become an entry in the same book in which the money will move from the P &amp; L account to the retained earnings or appropriation for payment to the shareholders of the parent company and the step of payment of dividend from subsidiary to the parent company will get simply eliminated. In that situation there will be no need ever of applying the said clause (103A). We therefore accept the appellant’s view on this issue and accordingly direct that the inter-corporate dividend received by the Appellant be treated as exempt.</li> <li>2. .... ..... in cases of the higher forums cited as 2000 PTD 2906, 1997 PTD 43 (Trib) and 1997 PTD 1454 (Trib) in which the superior appellate forums have held that in case of borrowing cost for expansion of an existing business it would be a deductible expense and not a capital expense. ..... ..... In line with the ration of the cases laws cited by the learned ARs of the taxpayer we tend to agree with the legal principle that financial charges on expansion of an existing business are allowable as revenue expenses. .... Regarding earning on the deposit of those funds we find that it being “Income from Other Sources” will get taxed as a separate block and cannot be net off against the financial expenses which do not relate to that head of income.</li> </ol>

3. The off shoot of the discussion supra would be that the clause (b) of sub-section (2) is to be read in its context to the intent and provision of Section 59B of the Ordinance whereby it clearly emerges that the phrase “A Company” refers to the company within the group seeking relief under the scheme of group relief and it would be the company surrendering its losses to the holding company for gaining the relevant benefit. The losses in the situation are to be allowed against the income of the holding company, therefore, the real beneficiary is the subsidiary company availing benefit and it has been restricted through this clause that the loss being surrendered by it should not be a trading loss because under this eventuality the subsidiary company will not be entitled for group relief.....

We feel that the Learned CIR (A) has dealt with the issue appropriately and accordingly to the legal principles therefore, no interference of this forum on this count is warranted ----- We would however add that enjoying of a legal right cannot be left to the governmental authorities as in this case SECP was to make some procedures. As we understand from the perusal of record and analysis of the arguments that the need for SECP designation seems to arise from the fact that it keeps the record of the shareholding of different persons and institutions in a company and could confirm about that fact and on that basis determine whether there is a “group” relationship between and among the companies if they seek to avail the tax benefits under section 59AA and 59B of the Ordinance. Other than that there seems to be no need for making the SECP part of the framework. ----- However in a situation where such shareholding was not so clear the SECP designation can become a stumbling block in the way of availing the facility. Another aspect of the designation is that now the Department shall ensure through SECP that such required holding continues for the required period in future. ON the transfer of case to the loss surrendering company, we agree with the argument of the AR and are of the view that when there is no time frame given in the statutes, none can be imposed by the Department.

<b>CITATION</b>	<b>ISSUES INVOLVED</b>
<p>ITA NO 502/KB/2009 ITA NO 503/KB/2009 ITA NO 504/KB/2009 ITA NO 505/KB/2009 ITA NO 506/KB/2009 Dated 01-07-2010 Appellate Tribunal Inland Revenue</p>	<p><b>SECTION 29 OF THE INCOME TAX ORDINANCE, 2001</b></p> <p><b>FACTS OF THE CASE</b></p> <ol style="list-style-type: none"><li>1. Allow-ability of bad Debts written off</li><li>2. Allocation of specific expenses on the ground that salary and some administrative expenses were incurred to earn capital gains and dividend income and no financial cost was incurred in earning such gains and dividend.</li></ol> <p><b>DECISION</b></p> <p>The arguments of the AR on the ground that bad debt (other than consumer loans whose provision has been allowed under section 29A) of the Ordinance were irrecoverable and written off in the books. .... Therefore the appellant was correctly allowed to claim bad debt written off. Which were previously disallowed being provisions.</p> <p>2. We have considered the arguments of both the parties and found merits in the arguments of the AR that reasonable basis of allocation or expenses were not adopted by the assessing officer. The learned Division Bench of this Tribunal in case of Pak Kuwait Investment Group (ITA No 1615/KB/2005 dated May 20, 2006) has disapproved the mandatory application of turnover formula given in rule 13(3) of the Rules. The other decisions of the Tribunal relied upon by the AR in the case of M/s PICIC Commercial Bank (ITA No 932/KB/2006 dated September 28, 2009) and Habib Metropolitan Bank (ITA No 797/KB/2006 dated June 29, 2009) also accepts in principle that reasonable basis of allocation of expense shall be made and allocation of expenses on turnover basis is not reasonable. The arguments of the AR to the extent that the expense allocation in the return of income should only be disallowed is also not acceptable as reasonable amount of cost of fund is incurred in the investment of shares, which is allocable in the ratio of investment.</p>

<b>CITATION</b>	<b>ISSUES INVOLVED</b>
<p>ITA NO 1113/KB/2007 Dated 14-01-2010 Appellate Tribunal Inland Revenue</p>	<p><b>SECTION 122(5A) OF THE INCOME TAX ORDINANCE, 2001</b></p> <p><b>FACTS OF THE CASE</b> Amended assessment order passed under Section 122(5) of the Ordinance.</p> <p><b>DECISION</b> The Commissioner of Income Tax did not actually delegate powers under provision of section 210 of the Ordinance to the Additional Commissioner/ Taxation Officer to initiate action under provision of Section 122(5) of the Ordinance nor the Taxation Officer mentioned in the assessment order the fact that such powers were delegated and therefore, the Additional Commissioner /Taxation Officer has passed the impugned order without jurisdiction and without lawful authority. The Learned D.R. was allowed time by this Court to rebut the claim of the Learned Counsel for the Taxpayer but on the next date of hearing the Learned D.R failed to produce before this Court any such order of Commissioner Income Tax delegating powers under provisions of Section 210 of the Ordinance to the Additional Commissioner /Taxation Officer to exercise powers under provisions of section122 (5) of the Ordinance. Thus the contention of the Learned Counsel for the Taxpayer appears justified that the Additional Commissioner /Taxation Officer of Income Tax had no jurisdiction to pass order under section 122(5) of the Ordinance in the case.</p> <p>It is settled law that proceedings initiated on wrong legal presumption become totally unlawful. Reliance can be placed on the reported case cited as PLD 1987 Quetta 235.</p> <p>We hold that Commissioner of Income Tax had not delegated powers to the Additional Commissioner /Taxation Officer to proceed in this case under provision of section 122(5) of the Ordinance and therefore, the order passed was without jurisdiction and legal authority and, therefore the same is liable to quashed.</p>

CITATION	ISSUES INVOLVED
<p>ITA NO 358/KB/2010 ITA NO 359/KB/2010 Dated 06-09-2010 Appellate Tribunal Inland Revenue</p>	<p><b>SECTION 113 OF THE INCOME TAX ORDINANCE, 2001</b></p> <p><b>FACTS OF THE CASE</b> Charging of minimum tax under section 113 of the Ordinance on the sale of value of calling cards of Pakistan Mobile Communication Limited and Pakistan Telecommunication Company Limited.</p> <p>The appellant apart from commercial imports and local trading in various items is providing distribution services to PTCL and PMCL for the sale of pre paid calling cards, SIMs and Easy Load to retailers and earn service income from such distribution.</p> <p><b>DECISION</b> Charging of minimum tax on gross receipts tantamount to double taxation, once in the hands of telecommunication companies and twice in the hands of the distribution company, therefore, we are inclined to agree with the finding of the CIR (A) that transfer of calling cards are the normal purchases of the appellant company as per the provision of section 4 of the Sales of Goods Act 1930. Accordingly it is directed that minimum tax to be charged on the net services receipts instead of gross receipts.</p>
<p>ITA NO 347/KB/2010 Dated 04-08-2010 Appellate Tribunal Inland Revenue</p>	<p><b>SECTION 122(5A) AND 221 OF THE INCOME TAX ORDINANCE, 2001</b></p> <p><b>FACTS OF THE CASE</b> Modification in the order under Section 122(5A) of the Ordinance to correct proration of expenses by applying provisions of section 221 of the Ordinance, whether permissible?</p> <p>The original deemed assessment under Section 120 of the Ordinance was <i>amended</i> by Additional Commissioner under section 122(5A) of the Ordinance. His successor Additional Commissioner after examination of a case record came to the conclusion that the amended under section 122(5A) of the Ordinance was erroneous and prejudicial to the interest of revenue on the ground that proration of expenses made by his predecessor Additional Commissioner was not according to law. He accordingly issued a show cause notice with the intention to rectify the order of his predecessor under provisions of Section 221 of the Ordinance.</p>

CITATION	ISSUES INVOLVED
	<p><b>DECISION</b></p> <p>First amended order has been passed the Additional Commissioner vide his order under section 122(5A) of the Ordinance on 12-09-2005 and therefore, his successor Additional Commissioner cannot amend the same order on the same issue of proration of expenses under provisions of Section 221 of the Ordinance read with Section 122(5A) of the Ordinance. Contention of the Learned DR that only computational mistake has been rectified is not correct as the successor Additional Commissioner has give a different treatment to proration of expenses as compared to the treatment given by his processor Additional Commissioner in the first amended order. The Additional Commissioner vide his order under section 221 read with Section 122(5A) of the Ordinance has made substantial change in the method of proportion of expenses which does tantamount to change or opinion. We therefore hold that the action of the Additional Commissioner under provisions of Section 221 of the Ordinance read with Section 122(5A) of the Ordinance is beyond his legal jurisdiction. Reliance is placed on judgment of the Honourable Supreme Court of Pakistan reported as (2008) 97 Tax 201 (SC Pak) – 2008 PTD 253.</p>
<p>ITA No.118/KB/2009 Dated 23-12-2010 Appellate Tribunal Inland Revenue</p>	<p><b>SECTION 176 AND 111 OF THE INCOME TAX ORDINANCE, 2001</b></p> <p><b>FACTS OF THE CASE</b></p> <ul style="list-style-type: none"> <li>• Failure to issue notice under Section 176 of the Ordinance during audit.</li> <li>• Definite information</li> <li>• The learned Commissioner of Income Tax (Appeals) and Taxation Officer both have erred in holding that Bank Statement maintained by the Bank is a part of Books of Accounts maintained by the Appellant from where the addition under Section 111(1)(a) of the Ordinance can be made.</li> </ul> <p>The taxpayer is an individual engaged in import of Dumper Trucks – Registered Trucks in his own name, playing for hire and sales thereof. Statement under Section 115(4) of the Ordinance on the pretext that the tax deducted under Section 234(1) of the Ordinance treated to be final discharge of tax liability u/s 234(5) of the Ordinance. However, during Tax Year 2006 no import of dumper trucks was made Return 114(4) was filed declaring Nil Income claiming refund of Rs.253,786 deducted under section 231A of the Ordinance on cash withdrawals. Case was selected for audit. On the basis of information called from the bank credit entries worth Rs.568,482,997/- were found and notice treating the same as unexplained under clause (a) of sub section (1) of 111 of the Ordinance was issued.</p>

CITATION	ISSUES INVOLVED
	<p><b>DECISION</b></p> <p>It is correct that consequent upon completion of audit in terms of Section 177(5) of the Ordinance, no notice under Section 177(6) of the Ordinance was issued to the taxpayer, rendering the entire proceedings abinitio, illegal, null and void, being not in consonance with the provision of law. The case law cited as (2010) PTD Trib 30 (Lahore) is Squarely applicable to the facts of the instant case.</p> <p>It is further noted that nothing concrete material or definite information was the concession of the department in terms of sub-section (8) of Section 122 of the Ordinance to attract under the provisions of sub-section(5) of the Section 122 of the Ordinance. Thus amending the deemed order without having any positive evidence of definite information acquire through audit or otherwise, which being prime condition for amendment of an assessment is missing. This is evident from the fact that Taxation Officer has amended the assessment on the basis of presumption and guess work and have also pointed out that in notice under Section 122(9) of the Ordinance the selling price of the dumper was admittedly proposed to be estimated and the gross profit rate of 25% and later on the same was applied at 50% as such the entire proceedings were based on presumption and guess work are illegal and are declared so.</p> <p>Addition under Section 111(1)(a) of the Ordinance without first issuing notice under Section 111 of the Ordinance the section being Para meteric to Section13 of the Ordinance (Repealed), which was mandatory for making and addition by invoking the provisions of Section 111 of the Ordinance is condemnation of taxpayer unheard. To follow this preposition, the notice under section 122(9) issued by the department cannot be equated with the notice under section 111(1)(a) of the Ordinance. Thus in the absence of any specific credit entry or entries appearing in the bank statement, which were found un-reconciled by the Taxation Officer, for which he was under legal obligation to have in pointed the bank entry/entries before drawing any adverse inference and embarking upon addition under Section 111 of the Ordinance.</p> <p>We, therefore, hold that the addition made by the Taxation Officer or maintained by the CIT(A) also do not attract the provision of section 111(1)(a) of the Ordinance. It is further observed that addition, if any, that the mandatory requirements of the provisions of sub-section (2) of section 111 of the Ordinance have not been followed. Order annulled.</p>

## INDIRECT TAX

CITATION	ISSUES INVOLVED
<p>2010 PTD 2403 Lahore high Court</p>	<p><b>SECTION 7, 8 &amp; 10 OF THE SALES TAX ACT, 1990</b></p> <p><b>FACTS OF THE CASE</b> In this case petitioners who were manufacturers of export goods, and were refused by the Collectorate refund of Sales Tax, paid on inputs of manufactures goods exported by them. Federal Government w.e.f 6-6-2005 (SRO 538(1)/2005) had decided to make all inputs of export goods manufactured by the petitioners to be sales tax free. Petitioners though had been able to export all their finished goods made from inputs purchased before 6-6-2005, but not within the final deadlines fixed by the impugned notifications goods.</p> <p><b>DECISION</b> High Court held that Petitioner had a right of refund of input tax only in respect of those raw materials that were purchased before target date 6-6-2005 and were consumed in finished goods that were duly exported from the country. The vested right could only be enforced, if the petitioners would satisfy authorities on both counts namely, date of acquisition of raw materials as well as export of finished goods resulting from such raw material.</p>
<p>2010 PTD 2406 Appellate Tribunal Inland Revenue</p>	<p><b>SECTION 4, 7, 10 &amp; 46 OF THE SALES TAX ACT, 1990</b></p> <p><b>FACTS OF THE CASE</b> Appellants claimed benefit of refund of input tax to the tune of Rs.946,111 but out of that amount, Processing Officer rejected the claim for Rs. 277,200 after lapse of more than three years. The taxpayer had claimed input tax on the purchase as refund but the department disallowed the same on the ground of seller being blacklisted and suspension of registration pertaining to the tax period concerned. In this regard no authority could be cited to support the preposition that if the person from whom the exporter purchase the goods was found to be blacklisted, the input tax that had been charged by the seller from the exporter and that had been deposited in to the treasury could not be refunded.</p> <p><b>DECISION</b> Tribunal set aside the Order in Original and Order in Appeal being illegal and void. Deputy Commissioner of Sales Tax(Refund), was directed to sanction appellants' pending sales tax refund claim as per the provisions of Sales Tax Act, 1990.</p>

<b>CITATION</b>	<b>ISSUES INVOLVED</b>
<p>2010 PTD 2421 Inland Revenue Appellate Tribunal</p>	<p><b>SALES TAX REFUND RULES 10(4), 11(2), 7, 8, 73 &amp; 3</b></p> <p><b>FACTS OF THE CASE</b> In this case the Appellant was refused refund of input tax vide show cause notice issued after lapse of three years which was time barred as audit was conducted in 2006 and allegations in the show cause notice were not spelt in the audit report . Department failed to confront the registered person regarding discrepancies within the prescribed limit as provided by the Rules. Issuance of show cause notice itself is contradictory to the audit report.</p> <p><b>DECISION</b> The Tribunal held the show cause notice invalid and all subsequent proceedings taken there under having no legal effect. Orders passed were recalled and refund was allowed to be sanctioned.</p>
<p>2010 PTD 2425 Inland Revenue Appellate Tribunal</p>	<p><b>SECTION 36(3) &amp; 74 OF THE SALES TAX ACT, 1990</b></p> <p>Appeal was rejected due to non filing of invoice summary of the supplier required to be filed by the registered person. Objection of limitation was before First Appellate Authority but remained unattended. Show cause notice was issued on 15-11-2007 whereas the order-in-original was passed on 23-9-2008, which was beyond 180 days, ended on 15-5-2008.the department had filed extension application dated 20-6-2008 under proviso to 36(3) of the Sales Tax Act, 1990 and not under section 74 of the Sales Tax Act, 1990 and extension given by the Federal Board of Revenue was also under the same proviso. Appeal of the department was dismissed and that of registered person accepted.</p>
<p>2010 PTD 2673 Inland Revenue Appellate Tribunal</p>	<p><b>SECTION 3(1)(B), 4, 7 &amp; 47 OF THE SALES TAX ACT, 1990</b></p> <p>Grievance of assessee was with regard to entitlement of input tax adjustment / refund in respect of sales tax paid on raw materials consumed in manufacturing / export of goods by assessee, whether under DTRE Scheme or otherwise. When sales tax was levied in VAT mode, it was charged at each stage in the supply chain as the goods move from point of origin to ultimate destination. At each stage, sales tax was paid by him for the goods sold by him(output tax) and subtracting from it the sales tax paid by him for the goods purchased by him(input tax).</p>

<b>CITATION</b>	<b>ISSUES INVOLVED</b>
<p>2010 PTD 2670 Inland Revenue Appellate Tribunal</p>	<p><b>SECTION 11(2), 13, 36(3) &amp; 46 OF THE SALES TAX ACT, 1990</b></p> <p><b>FACTS OF THE CASE</b> Collector (Refund) after examination of supportive documents in respect of refund claims, partly accepted the said claim of assessee. The assessee being aggrieved filed appeal before the Collector who upheld the treatment given by Assistant Collector (Refund).</p> <p><b>DECISION</b> The order in original was passed beyond the prescribed time limit of 90 days, further the adjudicating authority neither sought any extension from the competent authority nor had recorded any reason for passing of order after 90 days.</p> <p>Order passed by the Collector being made after the lapse of statutory period was declared to have been made without lawful authority.</p>
<p>2010 PTD 2665 Inland Revenue Appellate Tribunal</p>	<p><b>SECTION 3(3),13, 23, 36 &amp; 46 OF THE SALES TAX ACT, 1990</b></p> <p><b>FACTS OF THE CASE</b> Refund Claim was rejected by the sanctioning authority on the basis that refund claim exceeded output tax declared by the supplier in the monthly sales tax return and recovery of already refunded amount was ordered without invoking provisions of section 36 of Sales Tax Act, 1990 and without issuing the show cause notice.</p> <p><b>DECISION</b> Both order in appeal and order in original were set aside being not sustainable.</p>
<p>2011PTD 1966 Appellate Tribunal Inland Revenue</p>	<p><b>SECTION 7, 11, 36, 34 &amp; 46 OF THE SALES TAX ACT, 1990</b></p> <p><b>FACTS OF THE CASE</b> Department contended that taxpayer had adjusted input tax which was inadmissible because no sales had been reported by their supplier; the taxpayer was held responsible for that. The first appellate authority observed that the taxpayer was deprived of claiming input tax adjustment on merely a complaint, which had never been revealed to the taxpayer and neither the whereabouts of person complaining were known or incorporated in the order.</p> <p><b>DECISION</b> It was held by the Tribunal that facts of some other case had wrongly been included in the case for making a base of wrong decision by the first appellate authority. Such was a case of misuse of exercise of power under an enactment. The order passed hurriedly in a slipshod manner was against the principles of natural justice and was not sustainable in the eyes of law.</p>

CITATION	ISSUES INVOLVED
<p>2011 PTD 2086 Appellate Tribunal Inland Revenue</p>	<p><b>SECTION 11(2) &amp; 45(2)(III) OF THE SALES TAX ACT, 1990</b></p> <p><b>FACTS OF THE CASE</b> The Assistant Collector (Refund) was not lawfully empowered to adjudicate the case falling under sub section 2 of section 11 of the Sales Tax Act,1990 beyond pecuniary limit of one million rupees as specified under clause (iii) of sub section (2) of section 45 of the S.T. Act.</p> <p><b>DECISION</b> The Appellate Tribunal held that Assistant Collector had transgressed his jurisdiction and powers of adjudication by issuing show cause notice and passing the adjudication order beyond pecuniary limit. Only Deputy Collector had the power to issue the show cause notice and pass the order. Order was declared illegal and set aside.</p>
<p>2011 PTD 2194 Appellate Tribunal Inland Revenue</p>	<p><b>SECTION 8 OF THE SALES TAX ACT, 1990</b></p> <p><b>FACTS OF THE CASE</b> In this case Registered person was charged that he failed to make payments through banking and financial transactions hence not entitled to claim adjustment of tax paid. The registered person also failed to explain the reason of doing so and accordingly these charges against him were established. On non production of documentary evidence in support of his claim his appeal was rejected by the First Appellate Authority. At the stage of Appellate Tribunal also the registered person failed to produce any documentary evidence in support of his claim.</p> <p><b>DECISION</b> The Appellate Tribunal held that the registered person had evidently committed the violations of the provisions of Sales Tax Act, 1990 and were engaged in activities which were not permissible within the framework of law. Appeal was rejected being devoid of any merit.</p>

<b>CITATION</b>	<b>ISSUES INVOLVED</b>
<p>2011 PTD 2197 Federal Tax Ombudsement</p>	<p><b>REFUND RULES, R7(3), S.2(3), 8, 9, 10 &amp; 11</b></p> <p><b>FACTS OF THE CASE</b> Complainant filed eight complaints alleging maladministration due to illegality involved in issuing show cause notice and order in original without reference to relevant provisions of Sales Tax Act, 1990. Since matter involved serious allegations constituting maladministration. FTO had the jurisdiction in the matter. The facts in the Complaints revealed gross inefficiency, incompetence, oppressiveness, highhandedness and unreasonable attitude on the part of tax officials. The show cause notices were not maintainable being time barred.</p> <p><b>DECISION</b> Recommendations were made to the FBR to the effect to set aside the orders in original and orders in appeals in complaint as same were based on time barred show cause notices. To provide opportunity to the complainant to produce documentary evidence of genuineness of supplies for payment of deferred amounts. To identify the staff responsible for excessive delay and non observance of time limitations and initiate deterrent action against the defaulters and report compliance within 30 days.</p>
<p>2010 PTD 2345 Inland Revenue Appellate Tribunal</p>	<p><b>SECTION 33, 34, 36, 46 &amp; 73 OF THE SALES TAX ACT, 1990</b></p> <p><b>FACTS OF THE CASE</b> In this case the Registered person deducted the input tax involved on the purchase of certain items, but he failed to provide the proof of payment through cross banking instruments in contravention to section 73 of the Sales Tax Act, 1990. Record showed that payment of due sales tax was deposited by registered person by some way or the other. Proof of summary statement was available on record. No fraud or cheating had occurred or false claim was filed. Allegation against the registered person was of technical nature.</p> <p><b>DECISION</b> Tribunal held that allegation against registered person was only contravention of making payment exceeding Rs.50,000, was liable to only penalty of 3% of the amount of tax adjustment.</p>

## CORPORATE

CITATION	ISSUES INVOLVED
<p style="text-align: center;">2010 CLD 774 Supreme Court of Pakistan</p>	<p><b>SECTION 265(B) &amp; 485(1) OF THE COMPANIES ORDINANCE, 1984 (INVESTIGATION OF COMPANY’S AFFAIRS IN OTHER CASES)</b></p> <p><b>FACTS OF THE CASE</b></p> <p>The leave to appeal was filed by Attock Refinery Limited against the impugned judgment of High Court under which the appeal of the petitioner against the order of Securities &amp; Exchange Commission of Pakistan under section 265(b) of the Companies Ordinance, 1984 for the appointment of a firm of Chartered Accountants to investigate the affairs of the company, was dismissed on the basis of proviso of section 485(1) of the Companies Ordinance 1984.</p> <p>The proviso to section 485(1) implies that no appeal shall be made against an order which does not dispose of the entire case before the Commission or the Federal Government, as the case may be. The High Court considered the investigation integral part of the case which was pending with SECP and dismissed the appeal.</p> <p>The aforesaid decision of the Honorable High was challenged in the Supreme Court. The argument of the learned counsel for the petitioner was that the appointment of the investigator under Section 265(b) had disposed of the “entire case” before the SECP. The Supreme Court was of the view that the mere appointment of investigator does not “dispose of the entire case” and the purpose of the proviso to section 485(1) is to avoid fragmentary decisions and to ensure that delays do not occur so as to hamper the regulatory role of the SECP.</p> <p>The Supreme Court noted that the company had already obstructed investigation for the past nine years through delaying tactics and that SECP’s order was based on sound reasons. Therefore, in the opinion of the Supreme Court, the investigation of the affairs of the petitioner company must be undertaken.</p> <p><b>DECISION</b></p> <p>Held that the plea of the petitioner that the appointment of the investigators would impair company’s reputation could not be taken as the ground for rendering the section 265 redundant. The ends of justice and law have been met through impugned order although it was only based on the proviso to section 485(1).</p> <p>The Supreme Court dismissed the petition and declined to grant leave to appeal.</p>

CITATION	ISSUES INVOLVED
<p>2010 CLD 135 Sindh High Court</p>	<p><b>SECTION 97, 98 AND 101 OF THE COMPANIES ORDINANCE, 1984 (REDUCTION OF SHARE CAPITAL)</b></p> <p><b>FACTS OF THE CASE</b></p> <p>The case is related to a petition filed by M/s Reckitt Benckiser Pakistan Limited (RBPL) for seeking confirmation of the Court for reduction in paid up capital under Section 97 of Companies Ordinance, 1984 with prayer to dispense with the word “and reduced” with the name of the Company under Section 98 and confirmation of the minutes of the general meeting wherein shareholders approved the scheme of reduction in 2/3 paid up capital of the Company under Section 101.</p> <p>The scheme of reduction in capital from Rs. 1,470,138,900 divided into 147,013,890 ordinary shares of Rs. 10/- to 147,013,890 shares of Rs. 1/- each and distribution of the amount of reduced capital amongst the shareholders was approved unanimously by the shareholder in the Annual General Meeting of the RBPL held on April 08, 2009.</p> <p>The objections of the SECP were in respect of absence of formal approval from the secured creditors and adding of the word “and reduced” with the name of the Company. The main objection was complied with by obtaining formal approval of all the secured creditors while the later objection was overruled by the learned Counsel for the petitioner.</p> <p>The learned counsel for the petitioner demonstrate its prevalent sound financial position before the reduction in share capital and its future viability with reference to the reduction in paid up share and distribution of the amount of reduced capital amongst the shareholders without impairing their voting rights and affecting/compromising the financial strength of the Company.</p> <p><b>DECISION</b></p> <p>In view of the fulfillment of all legal and regulatory requirements and satisfaction of the Honorable High Court of the financial position of the Company prior and subsequent to the propose reduction in paid-up share capital of the company, the High Court accepted the petition and allowed the prayers of the petitioner through order under section 101 of the Companies Ordinance, 1984 and the prayer to dispense the words “and reduced” with the name of the company was also allowed.</p>

CITATION	ISSUES INVOLVED
<p>2010 CLD 143 Sindh High Court</p>	<p><b>SECTION 305 &amp; 309 OF THE COMPANIES ORDINANCE, 1984 (WINDING UP OF COMPANY BY COURT)</b></p> <p><b>FACTS OF THE CASE</b> The Petition for winding up was filed by the Additional Registrar of Companies, Securities &amp; Exchange Commission of Pakistan against Messrs Noorie Textile Mills Limited for various grounds under section 305 such as default in holding seven consecutive Annual General Meetings, suspension of business for almost last twelve years, default in payment of dividend to its shareholders, absence of a registered office at the notified address, default in holding election of Directors since 1997, disappearance of substratum of the company and also because of the use of Company for fraudulent purposes.</p> <p>The arguments advanced by the learned counsel for the respondent against the aforesaid grounds of the petition were well contended by the learned council for the petitioner.</p> <p>The petitioner highlighted to Court, the fraud committed by the respondent and its directors by taking advantage of the leniency given by the Court in terms of setting aside the ex-parte order for winding up of the company which was previously pronounced by the Court</p> <p>The aforesaid relief was obtained by respondent upon presentation of a fraudulent scheme to the Court and also filing false declaration and issuer admission form before the Central Depository Company of Pakistan Limited (CDC) under CDC Regulation 5.11(b) falsely showing the paid up capital as Rs. 598,600,000 instead of 48,600,000.</p> <p>The learned counsel of petitioner proved to the Court that the fraud committed by the respondent by inducting fictitious shares in the CDC making false declaration, must have caused serious loss to the general public and investors in the stock market and the company is being used for fraudulent purposes. Thus proving it a fit case for winding up of the respondent under subsections (f) (i) (iv) and (v) of section 305 of the Ordinance.</p> <p><b>DECISION</b> The Learned Judge keeping view of the above discrepancies allowed the petition with costs and ordered to wind up the Company by appointing the Nazir of the Court as the Liquidator in terms of Companies Ordinance, 1984.</p>

<b>CITATION</b>	<b>ISSUES INVOLVED</b>
<p>2010 CLD 1115 Sindh High Court</p>	<p><b>SECTION 305, 309 OF THE COMPANIES ORDINANCE, 1984 (WINDING UP OF THE COMPANY)</b></p> <p><b>FACTS OF THE CASE</b> The Additional Registrar of Companies, Karachi filed this petition for winding up of company of M/s Tri Star Power Limited based on the grounds under section 305 of the Companies Ordinance, 1984 such as suffering of huge losses, being inactive for the last ten years, non-holding of Annual General Meeting for the last seven years.</p> <p>To comply with the requirement section 309; prior to filing this petition the respondent was given an opportunity of hearing under a show cause notice as to why the Additional Registrar, CRO Karachi may not be given sanction to present the petition for winding up. The decision of the Commission on that SCN was not come out in favour of the respondent company. Moreover, appeal before the Appellate Bench of the Commission against the decision of the Commission was also dismissed resulting in the sanction of the Commission for filing the instant petition for winding up.</p> <p><b>DECISION</b> In the opinion of Court's; finality of a winding up order based on the opinion under clause (h) of section 305 of the Ordinance as to whether it is just and equitable that the company should be wound up.</p> <p>The learned Judge was of the view that the grounds raised by petitioner were lawful and it would be just and equitable that company should be wound up.</p> <p>The High Court admitted the Petition and appointed an official liquidator to do the needful in the circumstances and ordered to submit preliminary report with the Court in pursuance of section 329 of the Companies Ordinance, 1984.</p>

CITATION	ISSUES INVOLVED
<p>2010 CLD 1337 Sindh High Court</p>	<p><b>SECTION 284 &amp; 287 OF THE COMPANIES ORDINANCE, 1984 (SCHEME OF ARRANGEMENT OF TWO COMPANIES)</b></p> <p><b>FACTS OF THE CASE</b> The case is related to a Petition filed by M/s International Industries Limited and another for the approval of a scheme of arrangement between such two companies under section 284(2) read with section 287 of Companies Ordinance, 1984. Petitioner No.1 is a public listed company whereas Petitioner No. 2 is a public unlisted company desiring an arrangement by virtue of section 284(2), whereby if a majority in number representing not less than three-fourth of the creditors or members, as the case may be, agree to any arrangement then if such scheme is sanctioned by the Court, it shall be binding on all creditors or members or any class thereof as the case may be.</p> <p><b>DECISION</b> The Court ordered publication of the notice of filing of such petition in all major newspapers to invite any sort of objections from any person concerned and on non-receipt of any objection in regards to the proposed arrangement including Securities and Exchange Commission of Pakistan, pronounced judgment in favor of petitioners by approving their scheme.</p>
<p>2010 CLD 1531 Sindh High Court</p>	<p><b>SECTION 188(1)(B), 209, 265, 305 &amp; 309 OF THE COMPANIES ORDINANCE, 1984 (INVESTIGATION OF COMPANY'S AFFAIRS / WINDING-UP OF COMPANY BY COURT)</b></p> <p><b>FACTS OF THE CASE</b> The Petition was filed by Mr. Sarfaraz Quadri against Messrs Light Metal &amp; Rubber Industries (Private) Limited and three others as respondents. Petition was majorly related to the accusation of misappropriation of company's funds to a large extent and according to the Court's findings the matter could only be thoroughly understood through detailed scrutiny of the financial affairs of the company in accordance with section 265 of the Companies Ordinance, 1984, whereas the respondents' counsel was of the view that the company could not afford another audit due to poor financial position. Both the parties were shareholders of the Company which is a family concern and dispute arose in respect of non-agreement on the accounts of the company for a certain period.</p> <p><b>DECISION</b> The High Court held that in order to reach the true state of company's financial affairs, the matter pertaining to the accounts of the company should be investigated for the period in question from the available material because the Court deemed such investigation indispensable under such circumstances and considered that the audit would not affect the financial position of the company; hence, directed Security and Exchange Commission of Pakistan to appoint a Chartered Accountant/Auditor to inquire the accounts for the period under reference and submit a comprehensive report with the Court.</p>

CITATION	ISSUES INVOLVED
<p>2010 CLD 1565 Sindh High Court</p>	<p><b>SECTION 333 OF THE COMPANIES ORDINANCE, 1984 (POWERS OF OFFICIAL LIQUIDATOR)</b></p> <p><b>FACTS OF THE CASE</b> Reference was filed by the Official Liquidator with the High Court in the Petition for winding up initiated by M/s Pima Foods Limited, a public company incorporated as joint venture between Messrs International Laboratories (Private) Limited (IL)-(Rangoonwala Group) and Pakistan Industrial Development Corporation (Private) Limited (PIDC).</p> <p>The Court order for winding up of the Pima Foods was without prejudice to the suit filed by PIDC for damages against Messrs International Laboratories (Private) Limited and PIMA Foods on alleged violation of joint venture rules. The PIDC filed suit for damages subsequent to filing of petition by Pima Foods for obtaining winding order.</p> <p>As a result of Official Assignee’s invitation through publication, for filing of any claim against Pima Foods, only the Joint Venture partners’ International Laboratories and PIDC lodged their claims and at the same time filed objection to each others claims. This reference was filed by the Official Assignee without doing any investigation and forming his opinion whether these claims are justly and due or otherwise; and prayed before the court to pass any appropriate order in this regard. The reference did not file in accordance with the Rule 63 of Sindh Chief Court Rules (OS).</p> <p><b>DECISION</b> The High Court held that it was the duty of the Official Liquidator to investigate the debts or claims, if any, of the company thoroughly and decide as to whether any of the claims is proper and due to be discharged without any need to obtain further evidence but instead no efforts were made by the official liquidator to investigate any claim and to express his opinion on the justifiability of the two claims raised upon the Company, therefore, High Court directed the official assignee to call both the claimants and properly investigate their claims and submit a report in accordance with Rule 863 of Sindh Chief Court Rules (OS) for further orders. Reference was disposed of.</p>

CITATION	ISSUES INVOLVED
<p>2010 CLD 1802 Sindh High Court</p>	<p><b>SECTION 92, 97, 284 &amp; 287 OF THE COMPANIES ORDINANCE, 1984</b> (SANCTION OF SCHEME OF AMALGAMTION OF TWO COMPANIES)</p> <p><b>FACTS OF THE CASE</b> The case is about Petition filed by M/s Omer Iqbal Solvent (Private) Limited with another Company as petitioners, seeking therein a grant of the Scheme of Merger of M/s Omer Iqbal Solvent (Private) Limited into M/s Tahir Omar Industries (Private) Limited whereby the scheme of merger contained a clause for the merger of authorized capital of the transferor company into transferee company.</p> <p>SECP raised objection that merger of authorized capital does not come under the ambit of section 284 &amp; 287. It is only a nominal figure and cannot not be classify as asset, property or liability of the transferor company therefore cannot be merged. The procedure laid down under sections 92 &amp; 94 should be followed to increase the authorized capital of the surviving entity. In SECP’s view the merger of authorized capital is being sought only to avoid the payment of capital enhancement fee.</p> <p>The Court was of the view that sections 284 to 287 provide complete procedure for the matters pertaining to merger and amalgamation therefore with the sanction of the Scheme by the Court the authorized capital of the merging companies shall automatically be merged / transferred into surviving entity; no need to follow separate procedure provided under section 92 and payment of capital enhancement fee on that capital for which the fee has already been paid by the two companies. The objections raised by the SECP were rejected</p> <p><b>DECISION</b> The Court held that the term “property” and “liabilities” have been defined in very wide terms in Section 287(4) of the Companies Ordinance, and include property, rights and powers of every description. In view of the Court the right of the company to increase its paid up capital upto the limit of authorized capital represents a tangible right; and power of the transferor company to exercise this right fall within the wide definition of “property” given in aforesaid section.</p> <p>The High Court sanctioned the scheme of merger and amalgamation including aggregation of authorized capitals of merging companies without the need of adherence of procedure provided under section 92.</p>

CITATION	ISSUES INVOLVED
<p>2011 CLD 1485 Sindh High Court</p>	<p><b>SECTION 263, 265, 290, 305 &amp; 309 OF THE COMPANIES ORDINANCE, 1984 AND SECTION 151 OF CIVIL PROCEDURE CODE, 1908 (CPC)</b> (INVESTIGATION OF COMPANY'S AFFAIRS / WINDING-UP OF COMPANY BY COURT)</p> <p><b>FACTS OF THE CASE</b> The appeal filed against the decision of the Single Judge of High Court wherein the Learned Judge directed the SECP to appoint an inspector under Section 265 of the Ordinance to investigate the affairs of M/s Light Metal &amp; Rubber Industries (Private) Limited (the company) on an application of one of shareholder (respondent in the instant appeal) making the company and its three other shareholders as respondent (appellant in this appeal).</p> <p>The aforesaid order was passed on the application filed under Section 151 of CPC for appointment of an auditor/chartered accountant from the list maintained by SBP for scrutiny of the account of the company since 2007 due to serious charges of to misappropriation of accounts in the absence of the applicant from the country.</p> <p>The instant appeal was filed challenging the appointment of the inspector under Section 265 on the application filed under section 151 of CPC.</p> <p><b>DECISION</b> The High Court held that section 151 of CPC, signifies powers to a court in order to do complete administration of justice to pass such orders as may be necessary to meet the ends of justice.</p> <p>The Court was of the view that allegations for manipulation of accounts is a matter of investigation needs to be thoroughly investigated and only in this way both the parties would have a fair chance to prove or repel the allegations leveled upon them. The shareholder of a company has a legal right to know about the affairs of the Company. The appointment of inspector was necessary in order to meet the ends of justice.</p> <p>The appeal was dismissed.</p>

CITATION	ISSUES INVOLVED
<p>2011 CLD 1737 Sindh High Court</p>	<p><b>O.IX, R 13 OF THE CIVIL PROCEDURE CODE, 1908 (CPC) AND SECTION 309 OF THE COMPANIES ORDINANCE, 1984 (SUSPENSION OF OPERATIONS AND SETTING ASIDE OF EX PRATE WINDING UP ORDER)</b></p> <p><b>FACTS OF THE CASE</b> The case is related to two applications filed under O.IX, R 13 of C.P.C for suspension of operations of winding up order till the disposal of the application and secondly setting aside of ex prate winding order of the respondents M/s Bambino (Pvt) Limited and its two directors (being major shareholders of the respondent company).</p> <p>The respondents took a plea that they were not aware of the petition as no notice was served upon them and the order was obtained at the back of the company and its two directors through concealment and misappropriation of facts by the petitioners being shareholders of the respondent company. The winding up order violated the principle of audi alterm partem as the respondents, being major shareholders and directors as well, were not given a fair chance of defending the case and condemned unheard.</p> <p>The learned counsel of the petitioner objected on the maintainability of the application; on grounds that the application is filed by an unauthorized person as the respondent company has been wound up as on the date of application; secondly the Order IX, Rule 13 of C.P.C. provide remedy against the ex prate judgment and decree passed by the Court and not against the winding up order of the Court. Whereas the learned counsel for the respondents supported the maintainability of the application under C.P.C.</p> <p><b>DECISION</b> The Learned Judge after hearing the two sides at length, rejected the plea of the respondent as regards the lack of knowledge of the petition. He was of the view that even if it is assumed that the notice was not duly served upon the respondents, as it was published in the two newspapers and official gazette therefore, the plea was not tenable. Another plea of the respondent regarding impalement of major shareholders and directors as party to the winding up proceedings, the Court held it unnecessary to impaled every director or shareholder and held the impalement of the Company sufficient as the company covers all the directors' or shareholders.</p> <p>Regarding maintainability of the application under C.P.C. as aforesaid, the Court held that C.P.C. has no applicability to the companies matters for being related to special jurisdiction; only Companies Ordinance, 1984 (specifically Section 10) would apply in the circumstances. The applications were dismissed and respondents were given the liberty to avail the remedy available under the law.</p>

<b>CITATION</b>	<b>ISSUES INVOLVED</b>
<p>2011 CLD 1779 Sindh High Court</p>	<p><b>SECTION 309 READ WITH PROVISIO TO SECTION 439(5) OF THE COMPANIES ORDINANCE, 1984 (WINDING UP PETITION)</b></p> <p><b>FACTS OF THE CASE</b> The case pertains to petition for winding up of A.M. Industrial Corporation Ltd. (struck off) under Section 309 read with the Proviso to Section 439(5) with a prayer to transfer the only asset of the company i.e. a plot in the name of its existing members/directors in proportion with a right to recover the possession and arrears of rent in respect of the property.</p> <p>A.M. Corporation was incorporated on 12-June-1964, the aforesaid property was rented to a business man under a tenancy agreement and it continues to be in the possession of the tenant and the company has remained in litigation with the tenant for a period of over 30 years.</p> <p>Earlier a winding petition of the Company filed by the SECP after striking off the name under Section 439, was dismissed on 30-Sep-1998 on the ground of non-maintainability as filed by an unauthorized person as the vesting of the property of the company in the state through a mere notification appeared harsh to the then Court.</p> <p>Subsequently, the name of the company was restored by Registrar, on the application filed by company, in exercise of the powers under section 439(9) of the Ordinance vide order dated 19-Oct-2005 giving direction to the Company for filing of overdue returns and other documents along with payment of fee and additional fee. However, the company could not comply with the aforesaid direction due to lack of resources and again struck off/dissolved on 03-Jan-2007 by the Registrar.</p> <p>The Registrar informed the Court that when dissolution of the company was communicated to the Company, its directors passed a unanimous resolution for winding of the Company instead applying for restoration under Section 439(6) (9) as advised by the Registrar; since the Company has no business over the years.</p> <p><b>DECISION</b> SECP confirmed the contents of the petition and communicated to the Court regarding publication of the order of dissolution of the company in the official gazette of Pakistan on 03-Jan-2007.</p> <p>The Court held that non-appearance of the respondent and non-filing of objections, affidavits or counter-affidavits by them to deny contents of the petition; would be deemed to be true, correct and acceptable in the circumstances; the High Court accepted the winding petition.</p>