E - News & Views

NV # 3/2011
July, 2011 To September, 2011

A Publication of KTBA

Covering information on important judicial pronouncements, circulars and clarifications

Executive Committee

President
Anwar Kashif Mumtaz

Vice President
Muhammad Zubair

General Secretary
Mohammad Rehan Siddiqui

Joint Secretary
Mian Saleem Akhter

Librarian
Syed Sarwar Mohiuddin

Members Executive Committee
Abdul Qadir Memon
Abid Hussain Shaban
Iqbal Ahmed Abdan
Khalid Mahmood
Muhammad Aleem
Muhammad Arshad
Saulat Bari
Syed Rehan Hasan Jafri
Syed Wasim Hashmi
Younus Rizwani Sheikh

E-News & Views Committee
Muhammad Arshad (Convener)
Abdul Qadir Memon
Lubna Pervez
Rubina Rizvi
Syed Riaz Uddin
Yasmin Ajani
Zafar Ahmed

Contents

From the Desk of the President 2

From the Desk of the Convener 2

Important Circulars and Notifications
- Direct Tax 3
- Indirect Tax 7
- Corporate 09

Synopsis of Important Case Laws
- Direct Tax 13
- Indirect Tax 51
- Corporate 57

Bar Chamber, Regional Tax Office, Shahrah-e-Kamal Ataturk, Karachi
Phone: 021-99211792, 021-99218585 Fax: 021-99218586
Website: www.karachitaxbar.com Email: itbarkhi@cyber.net.pk

FROM THE DESK OF PRESIDENT

Dear Members,

It gives me immense pleasure in writing my message at the culmination of half year of my term of office. We have formulated a two way strategy this year. We have raised and highlighted core issues to FBR and at the same time trying to give opportunity to our members to be more acquainted with the knowledge of tax laws and other important subjects. This year Professional Development Program (PDP) is a very significant contribution by the CPE Committee, which is by the grace of Allah is completed.

As you know our country is facing a serious economic crisis, which is leading towards massive inflation and the buying power of average Pakistani which is already very week is still continuing shrinking. The only bail out to overcome this challenge is to have a proper tax policy under which everybody contribute as per their share, considering it as a service to the other people of Pakistan, otherwise we don't have any other option except enhancing our debts many folds by taking further loans and our coming generation will not be able to repay this loan and live as a debt nation, which none of us wishes to see, therefore being the tax professionals we have to stand-up and create awareness for tax culture and at the same time raise voice against any waste of the tax revenue by the Government in any undue projects and programs.

I would like to congratulate convener E-news & Views and his team for uploading 3rd Issue of E-news & Views and hope that they will bring rest of the issues within time, so the members will be benefited with it while during dispensing their professional services.

Looking forward to work with you all

Anwar Kashif Mumtaz

FROM THE DESK OF CONVENER

Dear Fellow Members,

The response to our earlier two issues received a good deal of positive response and remained a source of encouragement for our team. This encouragement prompted us to gradually ebbing to a greater coverage of the subject and hence we have included in this publication the first half of the last calendar year 2010.

I am accordingly pleased to present the 3rd Issue of Jul. to Sep. 2011 issue of "**KTBA's E News & Views**".

As has been done earlier this current issue has also been emailed to all the members of the Bar.

The E-News & Views has also been posted on the website of KTBA.

You suggestions are always welcome in our pursuit in improving the readership of this news letter.

Finally, I would also like to thank my team members of E-News & Views Committee for their input and continued support.

Muhammad Arshad

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.1of 2010 Dated 20-01-2010	Fiscal Relief granted to rehabilitate the economic life in NWFP, FATA and PATA – Scheme in respect of arrears, withholding-tax and waiver of default surcharge and penalty.	715
Circular No.2 of 2010 Dated 22-01-2010	Clarifications regarding amendments brought in the Income Tax Ordinance, 2001 through the Finance Amendment Ordinance, 2009	716
Circular No.3 of 2010 Dated 24-02-2010	Additional relief measures specified to rehabilitate the economic life in NWFP, FATA and PATA – Scheme in respect of arrears, withholding taxes and waiver of withholding taxes and waiver of default surcharge and penalty.	717
Circular No.4 of 2010 Dated 24-02-2010	Extension of date of filing of Income Tax Returnin case of taxpayers in the NWFP province upto 31-03-2010 in continuation of fiscal Relief to rehabilitate the economic life in NWFP, FATA and PATA.	718
Circular No.5 of 2010 Dated 30-06-2010	Finance Act, 2010 – Explanatory Circular on rate of Advance tax deductible on Import of Goods u/s.148 of the Income Tax Ordinance, 2001	719
Circular No.6 of 2010 Dated 30-06-2010	Finance Act, 2010 – Explanatory Circular on newly introduced Advance tax deductible on Air-tickets u/s.236B of the Income Tax Ordinance, 2001	720
Circular No.7 of 2010 Dated 30-06-2010	Finance Act, 2010 – Explanatory Circular on newly introduced Advance tax deductible on transactions in Banks u/s.231AA of the Income Tax Ordinance, 2001	721
Circular No.8 of 2010 Dated 30-06-2010	Finance Act, 2010 – Explanatory Circular on rate of Advance tax deductible on monthly Electric Bills u/s. 235 of the Income Tax Ordinance, 2001	722

CIRCULAR/SROs/ NOTIFICATIONS REFERENCE	SUBJECT	ITBAK LIBRARY REF: NO.
Circular No.9 of 2010 Dated 30-06-2010	Finance Act, 2010 – Explanatory Circular on rate of Advance tax deductible on Motor Vehicles u/s.234 of the Income Tax Ordinance, 2001	723
S.R.O 16(I)/2010 Dated 07-01-2010	Draft amendments in Income Tax Rules, 2002 for addition of Income Tax Rule-231 for Computation of export profits attributable to export sales	724
S.R.O 58(I)/2010 Dated 24-02-2010	Final insertion of Income Tax Rule-231 for Computation of export profits attributable to export sales	725
S.R.O 69(I)/2010 Dated 03-02-2010	Insertion of Clause (7) in Part-III of the Second Schedule to Income Tax Ordinance, 2001for reduction of minimum tax payable u/s.113 by 80% by the company engaged in the business of distribution of cigarettes manufactured in Pakistan	726
S.R.O 123(I)/2010 Dated 26-02-2010	Insertion of Clause (126E) in Part-I of the Second Schedule for allowing Corporate income-tax holiday for a period of 5-years for projects from the date of start of commercial operations, and for developers of the Zone for a period of 10-years from the date of start of developmental activity in the Special Economic Zones as announced by the Federal Government	727
S.R.O.330(I)/2010 Dated 18-05-2010	Jurisdiction of Commissioner (Appeals) specified.	728
Circular No.7 of 2011 Dated 01-07-2011	Explanation regarding important amendments made in the Income Tax Ordinance, 2001 through the Finance Act, 2011	729
Circular No.8 of 2011 Dated 21-07-2011	Clarifications in regard to Clause (45A) of Part-IV of the Second Schedule to the Income Tax Ordinance, 2001 by SRO 333(I)/2011 dated 02.05.2011.	730
Circular No.9 of 2011 Dated 18-08-2011	Explanation and clarification in regard to Deduction of Tax at Source from payment of “PR“ “Profit on Debt” under Section 151 and 152 of the Income Tax Ordinance, 2001and Reporting Requirements	731

CIRCULAR/SROS/ NOTIFICATIONS REFERENCE	SUBJECT	ITBAK LIBRARY REF: NO.
Circular No.10 of 2011 Dated 26-08-2011	Extension of Date for filling of Income Tax Returns / Statements for Tax Year 2011due on 31st August, 2011 extended to 30th September, 2011 and due on 30th September, 2011 extended to 31st October, 2011.	732
Circular No.11 of 2011 Dated 12-09-2011	Clarification regarding Payment of Surcharge @ 15% under S.4A of the Income Tax Ordinance, 2001levied vide Income Tax (Amendment) Ordinance, 2011	733
Circular No.12 of 2011 Dated 26-09-2011	Extension of date of filing of Returns of Total Income / Statements of Final Taxation due on 31st August, 2011 extended to 25th October, 2011.	734
Circular No.13 of 2011 Dated 27-09-2011	Clarification regarding deduction of tax at source from payment of "Profit on Debt" under S.151 and S.152 by substituting the words "before deduction of Zakat" by the words "as reduced by the amount of Zakat, if any, paid by recipient under Zakat & Ushr Ordinance, 1980.	735
Circular Letter No.2(2)TB/ 2010 dated 27-09-2011	Internal instructions to Department that: 1. The manual returns/statements may not be accepted from the taxpayers who are required to e-file the same. 2. Returns filed on previous format are not valid hence the same may not be accepted. If already accepted, the taxpayers may duly be informed to file the same on the new format alongwith payment of Surcharge u/s.4A as required under the new format.	736
S.R.O. 707(I)/2011 Dated 09-07-2011	ADTA between Government of Pakistan and Republic of Serbia notified to come into force effective from 30th September, 2010	737
S.RO. 715(I)/ 2011 Dated 20-07-2011	Draft amendments proposed in Rule-13E of Income Tax Rules, 2002 dealing with Capital Gains Tax Rules.	738
S.R.O 725(I)/2011 Dated: 28-07-2011	Rule-19A of Income Tax Rules, 2002 amended for consequential change in designation of Member (Direct Taxes) to Member (Inland Revenue)	739

CIRCULAR/SROS/ NOTIFICATIONS REFERENCE	SUBJECT	ITBAK LIBRARY REF: NO.
S.R.O (I) /2011 Dated 08-08-2011	Draft proposed in Income Tax Rules, 2002 prescribing New Income Tax Return Forms for Tax Year 2011 for Individual/AOP and for Companies	740
S.R.O.787(I)/2011 Dated 22-08-2011	Clause (12) inserted in Part-IV of the Second Schedule to Income Tax Ordinance, 2001 for non-applicability of provisions of S.21(1) and S.153(1)(a) where agricultural produce is purchased directly from the grower of such produce, subject to provision of certificate by the grower to the withholding agent in the prescribed format and to incidental expenses of Oil Tankers and to Steel Melters	741
S.R.O 850(I)/2011 Dated 19-09-2011	New Income Tax Return Forms for Tax Year 2011 in case of Individuals / AOP and Companies notified	742

INDIRECT TAX

CIRCULAR/SROS/ NOTIFICATIONS REFERENCE	SUBJECT	ITBAK LIBRARY REF: NO.
SRO775(1)/2011 Dated 26 August 2011	Vide this SRO Officers of Directorate General Intelligence and Investigation, FBR appointed to be the officers of Inland Revenue.	743
SRO822(1)/ 2011 Dated 06 September 2011	The Federal Board of Revenue restricted the adjustment of duty paid on concentrate in all forms and flavours falling under PCT headings 2106.9010 and 3302.1010 used in the production of aerated water PCT heading 2201.1010, 2201.1020 and 2202.1020 to the extent of duty payable on aerated waters	744
SRO 805(1)/2011 Dated 26 September 2011	SRO 551(1)/2008, amended and a new Serial No.29 added whereby cardiology equipment exempted from whole of sales tax.	745
SRO821(1)/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 National Tax Number of such persons.	746
SRO 727(1) Dated 01 August 2011	Sales Tax exemption under SRO 727(I)/2011 dated 1st August, 2011 on capital goods in confined to industrial users and commercial imports have been regulated through security instruments, which will be released on their port-import sale to industrial users. No concession has been extended to trading of capital goods by commercial regimes or supplies to unregistered industrial regimes. Only such plant and machinery has been covered in the scheme as is meant for use in the production of manufacture of goods, which means capital goods of service sector have not been granted any sales tax concession in the notification.	747

CIRCULAR/SROs/ NOTIFICATIONS REFERENCE		SUBJECT		ITBAK LIBRARY REF: NO.
		The Federal Board of Revenue restricted the adjustment of duty paid on concentrate in all forms and flavours falling under PCT headings 2106.9010 and 3302.1010 used in the production of aerated water PCT heading 2201.1010, 2201.1020 and 2202.1020 to the extent of duty payable on aerated waters.		

CORPORATE

CIRCULAR/SROs/ NOTIFICATIONS REFERENCE	SUBJECT	ITBAK LIBRARY REF: NO.
Circular No. 1 of 2010 Dated 15-01-2010	Directives to all NBFCs to submit their monthly returns online through the Specialized Companies Return System (SCRS) by the 10th of every month. However, to facilitate the industry, all NBFCs will be allowed to submit their online returns by the 15th of every month for the first quarter of 2010 only.	748
Circular No. 2 of 2010 Dated 15-01-2010	Directives to all Modarabas to submit their monthly statements online through the Specialized Companies Return System (SCRS) by the 10th of every month. However, to facilitate the sector, all Modarabas will be allowed to submit their online returns by the 15th of every month for the first quarter of 2010 only.	749
Circular No.3 of 2010 Dated 20-01-2010	Clarifications in respect of Circular No.1 of 2009 issued in the light of the queries and suggestions received from different Asset Management Companies and the various discussions held with the Mutual Funds Association of Pakistan	750
Circular No.4 of 2010 Dated 23-01-2010	On consideration of the request of the Insurance Association of Pakistan, the SECP had agreed that implementation of paras 15, 20, 37(c) and 39(c) shall be deferred for the 1st, 2nd and 3rd quarter accounts of the 2009. However, the insurance industry is directed to make full compliance with the requirements of IFRS-4 in the annual financial statements for the year ending December 31, 2009 Implementation of IFRS-4	751
Circular No. 5 of 2010 Dated 23-01-2010 read With Dated 23-04-2010	Guidelines for Bancassurance applicable to Life and Non-life Insurers as well as General and Family Takaful operators issued effective from 01st February, 2010 and time-line provided upto 30-04-2010 for submission of amendments/addendums and copies of new agreements executed after 01-02-2010	752

CIRCULAR/SROs/ NOTIFICATIONS REFERENCE		SUBJECT		ITBAK LIBRARY REF: NO.
Circular No. 6 of 2010 Dated 24-02-2010		Keeping in view the latest developments in technology and realizing the practical difficulties being faced by the companies, the SECP has reconsidered the matter and decided to allow all the directors of the listed and unlisted public companies, whether in Pakistan or abroad, to participate in the Board of Directors' meetings through tele/video conferencing as well		753
Circular No. 7 of 2010 Dated 31-03-2010		All Modaraba Companies are directed to comply with the IFAS-I and other standards as notified by the SECP u/s.234 of the Companies Ordinance, 1984 in true letter and spirit while preparing the financial statements of Modaraba		754
Circular No.11 of 2010 Dated 10-06-2010		Guidelines issued for implementation of section 39 of the Insurance Ordinance, 2000 (Assets of Life Insurer's Statutory Funds)		755
Clarification Dated 27-01-2010		Clarification on the rate of Return assumptions for Illustration Guidelines		756
S.R.O. 60(I)/2010 Dated 03-02-2010		Draft amendments in the Non-Banking Finance Companies (Establishment and Regulations) Rules, 2003		757
Clarification Dated 08-02-2010		Clarification on the Guidelines for Bancassurance 2010 issued by SECP Circular No.5 dated 23-01-2010		758
S.R.O. 145(I)/2010 Dated 01-03-2010		Draft amendments in the Securities Exchange Commission (Insurance) Rules, 2002		759
S.R.O. 271(I)/2010 Dated 21-04-2010		Further amendments in the Non-Banking Finance Companies (Establishment and Regulation) Rules, 2003		760
S.R.O. 272(I)/2010 Dated 21-04-2010		Amendments made in the Non-Banking Finance Companies and Notified Entities Regulations, 2008		761
S.R.O. (I)/2010 Dated 03-05-2010		Delegation of powers to its officers, to be exercised concurrently in respect of Private Companies having paid-up capital of not less than 7.5 million rupees and Non-Listed Public Companies		762

CIRCULAR/SROs/ NOTIFICATIONS REFERENCE	SUBJECT	ITBAK LIBRARY REF: NO.
S.R.O.335(I)/2010 Dated 17-05-2010	Draft amendment for substitution of Second Schedule of Modaraba Companies and Modaraba Rules, 1981prescribing scale of Fees	763
S.R.O.494(I)/2010 Dated 07-06-2010	Deferment of applicability of the Companies Cost Accounting Records (General Order), 2008 for all Companies engaged in following Industries: a. Fertilizer b. Thermal Energy c. Petroleum Refining d. Natural Gas and e. Polyester Fiber However, such Order shall be applicable from 01-07-2010	764
S.R.O.516(I)/2010 Dated 16-06-2010	Certain amendments made in the Real Estate Investment Trust Regulations, 2008	765
S.R.O.591(I)/2010 Dated 28-06-2010	Amendments made in the Non-Banking Finance Companies and Notified Entities Regulations, 2008	766
Circular No.10 of 2011 Dated 19-07-2011	Constitution of Modaraba Tribunal-II Karachi under the Modaraba Companies and Modaraba (Floatation and Control) Ordinance, 1980	767
Circular No.11 of 2011 Dated 01-08-2011	Sharing Formula specified for sharing of cost of Insurance Ombudsman Secretariat by Insurance and Takaful Companies for the financial year 01st July, 2011 to 30th June, 2012	768
Directives of PM Dated 12-09-2011	PM directed SECP to facilitate Corporate Sector in Bahawalpur	769
S.R.O 671(I)/2011 Dated 08-07-2011	Amendments made in Second Schedule to the Companies Ordinance, 1984 for substitution of Part-III – Form of Statement in Lieu of prospectus to be delivered to the Registrar by a Company on ceasing to be a Private Limited Company and reports to be set therein	770

CIRCULAR/SROs/ NOTIFICATIONS REFERENCE	SUBJECT	ITBAK LIBRARY REF: NO.
S.R.O 704(I)/2011 Dated 13-07-2011	Classes of companies specified for exemption from requirement of S.208 in supersession of SRO 819(I)/2007 dated 10-08-2007 and SRO 648(I)/2008 dated 27-06-2008	771
S.R.O 712(I)/2011 Dated 18-07-2011	Draft of amendments notified in Debt Securities Trustees Regulations, 2003	772
S.R.O.779(I)/2011 Dated 18-08-2011	Directives issued to Listed Companies to issue Dividend Warrants only crossed as “Account Payee only” in the name of registered member of authorized person and further such Dividend Warrant should also bear the CNIC of the registered member or authorized person, as the case, may be.	773
S.R.O 801(I)/2011 Dated 01-08-2011	Certain amendments made in Companies Registration Offices Regulations, 2003	774
S.R.O.814(I)/2011 Dated 05-09-2011	Amendments made in Non-Banking Finance Companies and Notified Entities Regulations, 2008	775
S.R.O.825(I)/2011 Dated 08-09-2011	Draft amendments in the Private Equity and Venture Capital Fund Regulations, 2008 notified	776
S.R.O.826(I)/2011 Dated 08-09-2011	Draft amendments in Real Estate Investment Trust Regulations, 2008 notified	777
S.R.O.890(I)/2011 Dated 22-09-2011	Directives and delegation of specified Powers and Functions of Commission to Mr. Ali Azeem Ikram, Director Enforcement and Monitoring Department in the matters of Elixir Laboratories (Private) Limited	778

SYNOPSIS OF IMPORTANT CASE LAWS

DIRECT TAX

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

CITATION	ISSUES INVOLVED
2010 PTD 534 Peshawar High Court	**Section 111 of the Income Tax Ordinance, 2001** **FACTS OF THE CASE** This is a case of individual who filed returns under Self Assessment Scheme under the provisions of the Repealed Ordinance. On the basis of information received by the department the case was re-opened under Section 65 of the Repealed Ordinance and the assessee was directed to file revise returns of income which were accordingly filed. The revise returns were not accepted by the Assessing Officer and impose penalty under Section 111 of the Ordinance. **DECISION** It was observed by the Honourable High Court that assessee while filing return was obliged to furnish particulars of income earned by him during assessing year, but not details of all business activities of assessment year. Where assessee declared his accurate income during assessment year, when penalty could not be imposed on him for failing to give details of purchase made by him. Penalty proceedings could be initiated against assessee for an attempt to conceal or completed act of concealment of income or its particulars, but not concealment of purchases. Onus in penalty proceedings would lie on department to prove guilty intent by showing deliberate commission or omission by assessee resulting in concealment of income or furnishing of inaccurate particulars of income, which might result in avoiding of tax. Assessee must be given reasonable opportunity of hearing in penalty proceedings. Penalty proceeding being of quasi-criminal nature, thus, standard of prove in a criminal case would be required in such proceedings to sustained an order of imposing penalty. Department could impose penalty after providing that such concealment were deliberate an contumacious.

CITATION	ISSUES INVOLVED
2010 PTD 553 Karachi High Court	**Sections 2(12), 80D and Clause (104) of Part-I of Second Schedule of the Income Tax Ordinance, 1979** **FACTS OF THE CASE** In this case the assessee, being a mutual fund claimed exemption under Clause (104) of Part-I of the Second Schedule to the Repealed Ordinance which was allowed by the Income Tax department. Assessment was framed under Section 62 of the Repealed Ordinance, however, minimum tax under Section 80D of the Repealed Ordinance was not charged. Thereafter the Inspecting Additional Commissioner issued notice under Section 66A of the Repealed Ordinance treating such action of non charging of tax under Section 80D of the Repealed Ordinance being erroneous and prejudicial to the interest of revenue. The Inspecting Additional Commissioner levied 80D on the entire receipts/turnover of the assessee which also includes receipts derived from sale of shares. The assessee contended that the tax under Section 80D of the Repealed Ordinance is leviable only on turnover/receipts assessable as business income and not on other receipts. This plea of the assessee was accepted by the Income Tax Appellate Tribunal. **DECISION** The Court, on the departmental appeal held that the receipts derived from sale of shares could not be included in turnover for the purpose of charging of tax under Section 80D of the Repealed Ordinance for being restricted only to gross receipt derived sale of goods etc. and not extended to sale of capital asset.

Citation		Issues Involved
2010 PTD 571 Lahore High Court		**Section 177 of the Income Tax Ordinance, 2001** **FACTS OF THE CASE** In this case various petitioners filed writ petitioner before the Lahore High Court who have been served with notices in terms of Section 177 of the Ordinance informing them that for the alleged reasons mentioned in the said notices, cases of the petitioners have been selected for audit. Being aggrieved of the issuance of the said notices, the petitioners have challenged the same as well as the constitutionality of Section 177 of the Ordinance. **DECISION** The Honourable Court held that provisions of Section 177(1) and (2) of the Ordinance are disjunctive and not conjunctive. Case can always be selected for audit on the basis of criteria as laid down by the Federal Board of Revenue, besides which and in addition thereto, persons can also be selected for audit under Section 177(4) of the Ordinance. Commissioner of Income Tax is empowered under Section 177(4) of the Ordinance to issue notice on the basis of criteria spelt out in Section 177(4) of the Ordinance. However, the Court further held that the conditions and parameters set fourth in Section 177(4) of the Ordinance were jurisdictional basis, existence whereof was a sine qua non for selection of a person for audit. Existence of such jurisdictional basis must necessarily be determined before such power could be exercised. Such discrimination could only be effected after hearing of petitioners and granting them opportunity to produce material to displace the case, which exercise could only be undertaken an individual case to case basis. Any objections raised by petitioner would be required to be adjudicated upon through speaking order by the Commissioner.
2010 PTD 704 Karachi High Court		**Section 111 of the Income Tax Ordinance, 2001** **FACTS OF THE CASE** In this case the Additional Commissioner while examining the accounts of the taxpayer observed that it has claimed certain expenses against rental income and has also not offered certain receipts from its customer as its taxable income. The Additional Commissioner also noted that the value of shops which previously was shown in the balance sheet for the year ended 30 June 2004 was not declared in the balance sheet for the year ended 30 June 2005, he thereafter opined that this difference is taxable and accordingly additions under Section 111 of the Ordinance were made.

CITATION	ISSUES INVOLVED
	DECISION The High Court observed that held that the addition in income without notice to taxpayer while making the addition by the Additional Commissioner in respect of alleged discrepancies, no notice as required under the law was issued. It is a trite law that before making any addition the aggrieved party has to be given an opportunity of hearing as enunciated in the principal "audi alteram partem". Accordingly, the Court held that as no such notice was notice was given by the Additional Commissioner, the Tribunal was justified in deleting the addition made under Section 111 of the Ordinance.
2010 PTD 737 Karachi High Court	**Sections 23 of the Income Tax Ordinance, 1979** **FACTS OF THE CASE** In this case the assessee, being a public company owned by the Government of Pakistan deriving income from refining crude oil into various petroleum products. The assessee imported crude oil under the loan from foreign bank on the guarantee of the State Bank of Pakistan (SBP). As per the procedure of SBP counterpart rupee funds are required to be deposited within ten days of disbursement of funds. However, due to shortage of funds the assessee could not deposit the same with SBP within the specified period for which SBP charged further amount under the provision of Foreign Exchange Manual. This further charge was claimed under the head financial charges by the assessee company. The Assessing Officer observed that such charges were paid on account of penalties, therefore the same are not admissible deduction in view of the judgment of the Honourable Supreme Court of Pakistan reported as (1999) 79 Tax 589 (SC Pak). The Tribunal deleted the addition and the department filed appeal before the High Court. **DECISION** Expenditure incurred on account of fine or penalty or in nature of fine or penalty would not be allowed as deduction. Expenditure incurred by an assessee on account of infringement of a provision of a statute, but not in nature of fine or penalty, could be allowed as admissible deduction, provided same was incurred wholly and exclusively for purpose of business. Any excess amount fixed as compensation for delay or default, if paid by or charged from an assessee, would not be deemed to be penalty or fine. Payment of excess amount for delayed payment of an original liability would not be deemed as penalty or fine, if same was automatic, without initiation of any separate proceedings and order and exercise of discretion by competent authority. Damages or compensation paid for breach of any contract were expenses incurred exclusively for purpose of business. Such excess amount paid by assessee-company was not for violation of any law, but was for a breach of contract as compensation for late payment of loan amount. Assessee-company had paid such excess amount wholly and exclusively for business consideration in exercise of option available to company under contract, thus, same was not penalty or fine, but was an admissible expenditure under Section 23 of the Repealed Ordinance.

CITATION	ISSUES INVOLVED
2010 PTD 763 Islamabad High Court	**Section 23 of the Income Tax Ordinance, 1979** **FACTS OF THE CASE** The assessee claimed (under cost of sales account) certain amount as repair and maintenance. However, the Assessing Officer was of the opinion that the said expenses are capital in nature and cannot be claimed as deduction from income being revenue expenses. **DECISION** The Honourable Court has held that expenditures incurred on maintenance of its road since the same were damage due to heavy vehicles carrying gas cylinders and further the expenditure being necessary were not capital in nature. The Company would be entitled to deduct such expenditure being revenue.
2010 PTD 1016 Karachi High Court	**Section 156 of the Income Tax Ordinance, 1979** **FACTS OF THE CASE** The Income Tax Appellate Tribunal allowed appeal filed by the Income Tax Authorities but subsequently recalled its order on the application of the assessee and reversed its finding. It was pleaded before the Court by the income tax department that Income Tax Appellate Tribunal had no authority to review or recall its earlier order under the mischief of Section 156 of the Repealed Ordinance. **DECISION** The Court observed that the Tribunal previously allowed the appeal of the department by recording some incorrect facts which did not pertain to appeal and the same were apparent and patent on record. When application for rectification was filed, the Tribunal records its order and replaced one paragraph of its previous order with fresh paragraph in subsequent order. The Court further observed that the Tribunal though has no power to review its own order, however it was fully empowered to rectify any mistake in its order provided the mistake was apparent and patent on the record. Mistake might not have been arithmetic or clerical mistake but it could be substantive or procedural mistake. Earlier mistake committed by the Tribunal caused prejudice to assessee as in the earlier order passed by it, it has recorded totally incorrect fact which was subsequently rectified and corrected. The Tribunal was fully authorized under Section 156 of the Repealed Ordinance to rectify its mistake apparent and patent on the records subject to the condition that a notice of hearing in that regard should be provided to both the parties. As the Tribunal recalled its order only after reaching to the conclusion that in its previous order they had recorded an incorrect finding of fact which was apparent and floating on the surface of record, therefore, High Court declined to interfere in subsequent judgment passed by the Tribunal.

CITATION	ISSUES INVOLVED
(2001) 104 TAX 31 Sindh High Court	**Sections 2(25), 3 and 16(3) and Rule 8(3) of Wealth Tax Act, 1963** **FACTS OF THE CASE:** The WTO applied 18% gross profit on cost of construction of the incomplete project which was confirmed by CIT (A). The Appellate Tribunal, on appeal by the taxpayer/appellant, deleted the addition and held that method of adding profit to the price of land and cost of construction in respect of incomplete project was not justified. **DECISION:** The Hon'ble High Court confirmed the decision of the Appellate Tribunal by holding that incomplete construction normally do not have any market value on successive valuation of date on the basis of progress in the construction and value of such incomplete construction could only be arrived at by finding out actual amount spent on construction the law clearly stipulates that valuation in respect of incomplete project has to be made by taking the price of land and cost of construction so far made on these incomplete projects.
(2011) 104 TAX 45 Lahore High Court	**Sections 2(5), 3, 4 and 27 of the Wealth Tax Act, 1963** **FACTS OF THE CASE:** The taxpayer/appellant revised its return for the assessment year 1994-95, 95-96 and 96-97 claiming exemption in respect of advances made for the purchase of agricultural land. The WTO refused the claim and adopted the declared value for assessment purposes. The CIT (A) as well as Appellate Tribunal confirmed the action of WTO hence appeal before the Hon'ble High Court. **DECISION:** It has been held by the Hon'ble High Court that the Appellate Tribunal was not justified in rejecting the claims of ownership of agricultural land and by relying on the explanation to Section 4(5) and on validly executed agreement that the property in question was in possession in appellant who had paid the entire sale consideration held that the same would constitute part of appellant/taxpayer assets.

CITATION	ISSUES INVOLVED
(2011) 104 TAX 58 Islamabad High Court	**Sections 122(5), 133 and 177 of the Income Tax Ordinance, 2011** **FACTS OF THE CASE:** The case of the applicant builder was selected for audit 177 of the Ordinance who did not produce any evidence etc during audit proceedings. The ITO enquired the income of the applicant and who after recording statements of two persons/purchasers who also produce sale agreement passed amended assessment order. The CIR (A) accepted the appeal on legal ground by remanding the case to the assessing officer as such the factual controversy was leftover. The department filed appeal before the Appellate Tribunal who accepted appeal. The taxpayer filed reference before the Hon'ble High Court contending tat the amended assessment was not made on the basis of definite information. **DECISION:** The Hon'ble High Court on reference\appeal by the taxpayer/applicant held that as the taxpayer has not furnished the required information and documents to the assessing office during audit thus he was justified to enquire about the income of the taxpayer through other means. Further only legal issues can be raised before the High Court and factual controversy cannot be made basis of reference before the High Court.
(2011) 104 TAX 67 Sindh High Court	**Section 22 of the Income Tax Ordinance, 2001** **FACTS OF THE CASE** The taxpayer a retired army officer sold a plot of land and the gain on said transaction was added to the income of the appellant as adventure in the nature of trade. **DECISION** It has been held by the Hon'ble H C that in order to determine whether it is in the nature of business first of all facts of each case has to be ascertained under which said purchase or sale was made. It is a trite law that the facts of the case are to be examined on the surrounding circumstances of that case only. It has further been held that whole emphasis of the law makers in respect of the law settled so far was to determine the intention of the person at the time of purchase of any property if it is proved that the attention at the time of acquiring the asset was not to resale it but due to attending circumstances the set property was sold and the profit made out of the gain thus could not be considered to be adventure in the nature of trade.

CITATION	ISSUES INVOLVED
(2011) 104 TAX 78 Sindh High Court	**Sections 7, 11, 107 and 143 of the Income Tax Ordinance, 2001** **FACTS OF THE CASE** The Hon'ble HC reframed the questions as follows 1) Whether in the facts and in the circumstances of the case section 7(1)(b) of the Ordinance applied to the freight charges received by the applicants in Pakistan in respect of gods carried from foreign ports to Pakistan the said goods having being sold by foreign sellers to Pakistani buyers on FOB basis 2) Whether in the facts and in the circumstances of the case the amounts referred to in question in question (1) were not taxable in Pakistan on account of Pakistan - Denmark Double Taxation Treaty. 3) Whether in the facts and in the circumstances of the case the amounts referred to in question in question (1) were not taxable in Pakistan on account of Pakistan-France Double Taxation Treaty. 4) Whether in the facts and in the circumstances of the case the amounts referred to in question in question (1) were not taxable in Pakistan on account of Pakistan-Japan Double Taxation Treaty. **DECISION** After discussing the facts, circumstances and case laws on the subject at length, the Hon'ble HC decided the above questions as under 1) As to question (1), our answer is in affirmative in favour of the department and against the applicants in all references 2) As to question (2) our answer is in negative in favour of the department and against the applicants claiming Danish' DTA. 3) As to question (2) our answer is in negative in favour of the department and against the applicants claiming French' DTA. 4) As to question (2) our answer is in affirmative in against of the department and in favour the applicants claiming Japanese' DTA.

CITATION	ISSUES INVOLVED
2011 PTD 1996 Sindh High Court	**Sections 147 and 205 of the Income Tax Ordinance, 2001** **FACTS OF THE CASE** The Applicant company was required to pay advance tax 147 of the Ordinance, filed estimate under Section 147(6) of the Ordinance declaring NIL income and stated that that they are not required to pay advance tax. The Assessing Office however did not accept the estimate and proceeded to levy tax under Section 147(7) of the Ordinance along with default surcharge under Section 205 of the Ordinance. **DECISION** The Hon'ble High Court has held that the only condition to file the estimate under sub-section (6) of the Ordinance is that sub-section should apply and the taxpayer estimates that the tax payable by him is likely to be less than the amount payable by him under sub-section (1) and once these two conditions are fulfilled than estimate could be filed.
2011 PTD 2042 Sindh High Court	**Sections 3, 67, 100-A, & 4th Schedule to Income Tax Ordinance, 2001, Rule 5, 6-A & 9 of Income Tax Rules, 2002** **FACTS OF THE CASE** The taxpayer, a public limited company engaged in business of General Insurance, filed returns for the tax years 2005, 2006 & 2007 which were considered deemed order under Section 120 of the Ordinance. The said deemed orders were held to be erroneous and prejudicial to the interest of revenue under Section 122(5A) of the Ordinance and were amended accordingly. The CIT(A) allowed the appeal filed by the taxpayer. The Learned Tribunal on appeal filed by the department confirmed the CIT(A)'s order. **DECISION** It has been held by the Hon'ble H.C. that the taxability of the insurance business has been separated from the taxability of other business concerns that is why in the Repealed Ordinance under Section 26 of the Ordinance as well as in the Ordinance under Section 99 of the Ordinance, the taxability of insurance are dealt with special provisions. While relying on the principles laid down by the Hon'ble S.C. of Pakistan it has been held that application of Section 67 of the Ordinance to the Insurance Companies is a defiance of law and totally against the concept of working out of profits and gains of insurance companies.

<table>
<tr><th>CITATION</th><th>ISSUES INVOLVED</th></tr>
<tr><td>2011 PTD 2161
Sindh High Court</td><td>Sections 32,32(3) & 136 of the Income Tax Ordinance, 2001

FACTS OF THE CASE
The taxpayer, a private limited company engaged in the manufacture and export of leather from raw hides and skins, filed returns for the assessment years 1987-88, 1988-89 & 1989-90. The Assessing Office rejected the declared trading accounts and estimated the sales and gross profit. The CIT(A) confirmed the order passed by the Assessing Officer. The Learned Tribunal on appeal reduced the gross profit rate but confirmed the rejection of accounts.

DECISION
The Hon'ble H.C has observed that the accounts cannot be rejected without detection of serious defects in the books of accounts from which the honest belief can be reached that correct profits can be deduced and enunciated the following principles by relying on various case laws on the subject:

1. That if the same method of accounting has been accepted in the priors years then the Income Tax Officer if he wants to resort to the provisions of section 32(3) of the Ordinance must give cogent reasons to justify has action.

2. Where the books of accounts have been produced by the assessee, the Income Tax Officer cannot reject the accounts without pointing out specific instances of unverfiability and the reasons on the basis of which he is of the opinion that correct profit cannot be deduced from the books of accounts.

3. That the books of accounts cannot be rejected without recording finding that the method of accounting adopted by the assessee is irregular and unacceptable for the reasons given.

4. The accounts cannot be rejected merely for the lowness of gross profit.

5. Section 23(3) does not give arbitrarily, unguided, uncontrolled or naked power to the Assessing Officer to form an opinion regarding the un-verifiability of the books of accounts.

That where the Income Tax Officer rejects the accounts for the reason that true income could not be deduced from it, he should not merely adopt the a flat rates or make additions in income arbitrarily but has to base such additions on material or evidence of which notice must be given to the assessee.</td></tr>
</table>

CITATION	ISSUES INVOLVED
W.P. No 8763/2011 Lahore High Court	**Workers' Welfare Fund Ordinance, 1971** **FACTS OF THE CASE** In this case the amendment made in the Workers' Welfare Fund was challenged before the Court and the question was raised whether the amendments in the said Ordinance could be brought about through a Money Bill? **DECISION** Held that contribution paid towards the Fund under the WWF Ordinance is a" Fee" and not a "Tax", therefore, an amendment in the Workers Welfare Ordinance, 1971 cannot be brought about through a money bill. The Hon'able Court has been pleased to hold as under: *"the impugned amendments introduced in WWF Ordinance through Finance Acts, 2006 and 2008 are declared unconstitutional and therefore struck down. As a consequence, impugned notice dated 14.6.2011 is set aside, being unlawful and unconstitutional. The petitioner is, however, liable to pay Worker's Welfare Fund under WWF Ordinance as it stood prior to the impugned amendments."*
I.T Case No 132 of 2002 Decided on 28-03-2011 Sindh High Court	**Section 153 of the Income Tax Ordinance, 2001** **FACTS OF THE CASE** In this case reference application was filed by the Department. Counsel of the Department contended that the question of law raised in the ITCs has already been decided by the High Court in the decision reported as Premier Mercantile Services V Commissioner of Income Tax (97 Tax 89).

CITATION	ISSUES INVOLVED
	DECISION The Hon'able High Court held that: "Reading of the provisions of section 50(4) and Section 80 C of the Repealed Ordinance, section 153 of the Income Tax Ordinance 2001 and the decision relied upon by the learned Counsel representing the department would reveal that this decision caters the situation where the term services has been defined to include the services rendered by certain professionals; whereas the present cases are the of the period when there was no definition of the said term services being provided by the law makers, meaning thereby that so far as the pre-defined period of the word services is concerned its ordinary meaning would be applied. ….On a careful reading of said decision it is clear that in the said decision the analogy which has been drawn, which perhaps has not been appreciated by the learned Counsel, being that since the term services has been defined and the stevedoring services do not find place in those defined terms of services, this service cannot be termed as services but would be a contract and the tax deducted on these receipts would be its full and final discharge of the tax liability on those receipts. Whereas in the instant cases at the relevant period of time the word services was not defined meaning thereby that the stevedoring services would squarely fall under the definition of term services and the tax deducted at source under section 50(4) of the repealed Ordinance would not be considered as its full and final discharge of the tax liability. …..It is a trite proposition of law that a case is to be decided in accordance with the law prevalent at that moment of time. It is seen from the record that these ITCs pertains to the assessment year 1996-97 to 2000-2001 when the said term services has not been specifically defined in the law, though there are some explanations issued by the FBR the then CBR, with regard to the term services but that could not be considered to be an interpretation as the CBR does not figure in the hierarchy of the forum who can interpret the provisions of the law as held by the Hon'able Supreme Court of Pakistan in the case of Central Assurance (68 Taxation 86). ….. we are of the considered view that the stevedoring services, in the case of the present Respondent for the years under appeal fall under the definition of term services and the tax deducted at source under section 50(4) of the repealed Ordinance could not be considered to be the discharge of full and final tax liability hence the provisions of section 80C of the repealed Ordinance were also not applicable. We therefore answer the question raised by the department in the present ITCs in affirmative i.e. in favour of the Respondent/Assessee and against the appellant/ department.

CITATION	ISSUES INVOLVED
2010 PTD 25 Appellate Tribunal Inland Revenue	**Sections 67 and 122 of the Income Tax Ordinance, 2001** **Rules 13 and 131 of the Income Tax Rules, 2002** **FACTS OF THE CASE** In this case the deemed assessment was found to be erroneous in so far as prejudicial to the interest of revenue on certain points and the proceedings under Section 122(5A) of the Ordinance was commenced. After detailed discussion the order was passed under Section 122(5A) of the Ordinance whereby profit and loss account expenses were allocated/apportioned to the exempt income declared by the taxpayer in accordance with Section 67 of the Ordinance read with Rule 13 of the Rules. The Commissioner (Appeals) decided the case in favour of the taxpayer and thereafter department filed an appeal before the Tribunal. **DECISION** The Tribunal held that expenditure had to be apportioned on a reasonable basis after taking into consideration and account the relative nature and the size of the activities to which the amount related. The Taxation Officer, in the present case had failed to point out a single expense which related to either dividend income or the exempt capital gain declared by the assessee. Taxation Officer had apportioned the expenditure only on the premise and the assumption that "had the taxpayer not invested in the shares, then the fund so available would have been invested in business", which had shown that the Taxation Officer could not bring on record any evidence to justify his said action. Alleged apportionment was found to have been made on imagination only. Taxation Officer had failed to prove "relative nature" and size of the activities to which the amount related which was an essential requirement as per the provisions of Section 67 of the Ordinance. Said apportionment made by the Taxation Officer, had rightly been deleted by Commissioner Income Tax (Appeals). No interference in that regard was required by the Tribunal.
2010 PTD 89 Appellate Tribunal Inland Revenue	**Sections 38, 131 and 221 of the Income Tax Ordinance, 2001** **FACTS OF THE CASE** The assessment was rectified by the Assessing Officer under Section 221 of the Ordinance which were completed under the Repealed Ordinance. In the rectified order the Assessing Officer levied tax under Section 80D of the Repealed Ordinance on gain on sale of land. The CIT(A) decided the appeal in favour of the taxpayer and the department went into appeal before the Tribunal. **DECISION** The Tribunal held that gain on disposal of land was a capital gain not chargeable to tax. Tax under Section 80D of the Repealed Ordinance was chargeable on the turnover of the assessee and not on capital gains as it did not form apart of turnover.

CITATION	ISSUES INVOLVED
2010 PTD 111 Appellate Tribunal Inland Revenue	**Section 122(5A) of the Income Tax Ordinance, 2001** **FACTS OF THE CASE** In this case the deemed order has been considered erroneous in so far as prejudicial to the interest of revenue by the Taxation Officer on various reasons and amended the assessment under Section 122(5A) of the Ordinance. The taxpayer in addition to factual grounds also raised question in respect of proceedings initiated by the Taxation Officer under Section 122(5A) of the Ordinance. **DECISION** The Tribunal held that the issuance of three repeated notices under Section 122(9) of the Ordinance by the Taxation Officer could be termed as fishing enquiries. Taxation Officer through second notice had claimed to have elaborately highlighted errors that caused prejudice to the revenue. Second notice was an admission on the part of Taxation Officer that he could not point out any error in his first notice under Section 122(9) of the Ordinance to invoke Section 122(5A) of the Ordinance and it had also not been mentioned as to under what legal provision the second notice was issued. Third notice under Section 122(9) of the Ordinance was again sent to the taxpayer which showed that first two notices were deficient on legal grounds. Taxation Officer had repeatedly issued notices on the same issues which showed that he was no sure on the issues which were confronted to the assessee through first notice. Such type of fishy inquiries could not be approved to make basis for invocation of Section 122(5A) of the Ordinance as such an approach, if allowed, would result in gross misuse of provisions of law. Mere suspicion could not be allowed to be a basis to invoke Section 122(5A) of the Ordinance.
2010 PTD 150 Appellate Tribunal Inland Revenue	**Sections 161, 205 and 221 of the Income Tax Ordinance, 2001** **FACTS OF THE CASE** In this case action under Section 161/205 of the Ordinance was taken for recovery of principle amount of tax along-with additional tax since the taxpayer failed to deduct tax under the provision of the Ordinance. Subsequently, another order under Section 161/205 of the Ordinance was passed by the Assessing Officer since the earlier order was, according to the Assessing Officer, incomplete as the amount of default under Section 161 of the Ordinance was not fully charged. It was pleaded by the taxpayer, before the Tribunal that the Assessing Officer had already issued an order under Section 161/205 of the Ordinance and if there was any mistake/deficiency or error in calculation of tax, it should have been rectified under Section 221 of the Ordinance and fresh order under Section 161/205 of the Ordinance could not be passed as the same was legally void.

CITATION		ISSUES INVOLVED
		DECISION The Tribunal held that if there was any mistake in the first order, the Assessing Officer could/should have rectified it under Section 221 of the Ordinance. Passing of fresh order under Section 161/205 of the Ordinance in respect of omitted amount of default was tantamount to fresh independent order. When an assessment was made in respect of income of a taxpayer, any error or omission appearing therein could be rectified under Section 221 of the Ordinance. Fresh assessment could not be made in respect thereof because it would be a case of double assessment which was not permissible under the law. Rectification could/should have been made under Section 221 of the Ordinance Order passed by the Assessing Officer under Section 161/205 of the Ordinance was illegal which was cancelled by the Appellate Tribunal.
2010 PTD 401 Appellate Tribunal Inland Revenue		**Sections 121(5A) of the Income Tax Ordinance, 2001** **FACTS OF THE CASE** The taxpayer, in this case, is a Government owned Corporation engaged in the trading or goods mainly food items both imported and local at the specific instruction of the Federal Government to provide commodity considered essential for general consumer and to maintain price level in the market. The returns files by the taxpayer were amended by the Taxation Officer under Section 122(5A) of the Ordinance as the subsidiary received from Federal Government has not been offered for tax which, according to the Taxation Officer, is an income and liable to tax. The Commissioner (Appeals) dismissed the appeal of the taxpayer and thereafter taxpayer filed second appeal before the Tribunal. **DECISION** The Tribunal observed that amount received by the appellant/ taxpayer was price differential of cost and sale price of transaction, executed for and on behalf of the Federal Government, which could not be treated as subsidy. Accordingly, the Tribunal held that the amount under consideration was not subsidy to the appellant-Corporation as it was the loss of the government which had to be considered as borne out by the government being a principal, in other words, it could be said that it was a subsidy to general public by the Federal Government and not to the appellant-Corporation.

CITATION		ISSUES INVOLVED
2010 PTD 494 Appellate Tribunal Inland Revenue		**Sections 131, 138 and 201 of the Income Tax Ordinance, 2001** **Section 13 of the Income Tax Ordinance, 1979** **FACTS OF THE CASE** In this case the Assessing Officer, in the set-aside proceedings, made the addition under Section 13(1)(aa) of the Repealed Ordinance on account of unexplained cash. Addition under Section 13(1)(d) on account of cost of shares paid by the assessee was also made. On the first appeal, the Commissioner (Appeals) deleted both the above additions and thereafter department filed appeal before the Tribunal. **DECISION** The Tribunal held that under the provisions of the Repealed Ordinance the powers of assessment and powers of approval were vested in two different authorities i.e. Deputy Commissioner of Income Tax and Inspecting Additional Commissioner of Income Tax respectively. In built mechanism of approval being available under repealed Ordinance, approval of addition granted by the Inspecting Additional Commissioner was according to the said mechanism. Under the Ordinance a complete switch over had been made about the mechanism of assessment. Under the new law there was no concept of approval by any higher authority. Commissioner himself was the authority who could delegate his power for exercise of his functions by the sub-ordinance office. Under the Ordinance it was the Commissioner who could make assessment; he could not at the same time be an authority for assessment and also for approval. Under sub-section (1) and (2) of Section 239 of the Ordinance it is provided that in case of assessment in respect of any income year ending on or before 30.06.2002 the provisions of the Repealed Ordinance would apply for the purpose of computation of income and tax payable thereon, however, such assessment would be made by the Ordinance. Since there was no concept of granting any kind of approval in the new law, no authority appointed under the Ordinance had any such powers of making approval. Approval from IAC for the assessment under appeal was not according to the provisions of law. Keeping in view all the facts and circumstances of the case and the ratio already settled by the Tribunal, orders passed by the Commissioner Income Tax were upheld and appeals of the department were rejected for being without any merit.

CITATION	ISSUES INVOLVED
2010 PTD 557 Appellate Tribunal Inland Revenue	**Sections 221 and 131 of the Income Tax Ordinance, 2001** **FACTS OF THE CASE** In this case the taxpayer filed application requesting for rectification in the original assessment order on the ground that income or loss had not been determined while passing assessment order under Section 62 of the Repealed Ordinance. Said application was rejected by the Assessing Officer against which the assessee filed appeal before the Commissioner (Appeals) who set-aside the assessment with certain directions. The department did not file the second appeal before the Tribunal against the appellate order passed by the Commissioner (Appeals). On the set-aside proceedings the Assessing Officer again rejected the rectification application for the reason that said application was barred by time. The Commissioner (Appeals) allowed the appeal of the taxpayer in the second round and thereafter the department filed an appeal before the Tribunal. **DECISION** Assessing Officer while finalizing the reassessment should have to restrict himself to the directions made by the Commissioner (Appeals), while setting aside the order. Department by not filing second appeal against order of Commissioner (Appeals), was bound to accept the direction made in the order. Assessing Officer in the present case had fallen in error which had always been viewed very seriously and could entail into an appropriate action. Assessing Officer while rejecting the applications of the assessee, did not consider the fact that Commissioner (Appeals), in his order had specifically stated that the orders passed by the Assessing Officer was violative of the Ordinance and could be rectified as the original assessment order was passed hastily in a summary manner without going into the merits of the case. Commissioner (Appeals) in the second round of appeal had rightly found that orders passed under review suffered from the mistake which were apparently floating on the face of the order; and no basis had been given by the Assessing Officer for assessing the income of the assessee. Appellate Tribunal upheld the view of the commissioner (Appeals) that the original orders under review should be rectified under Section 221 of the Ordinance and directed that the rectification applications of the assessee be accepted and the income of the assessee be computed accordingly.

CITATION	ISSUES INVOLVED
2010 PTD (Trib) 725 Appellate Tribunal Inland Revenue	**Sections 69, 34(2) and 122 of the Income Tax Ordinance, 2001** **FACTS OF THE CASE** In this case the taxpayer being Commodity Exchange received advances from its member against allotment of office spaces. It was contended by the Exchange that such type of advances was not taxable since the same was a liability and said amount has to be paid back to member. The Assessing Officer amended the assessment of the Exchange and charged to tax said advances. **DECISION** The Tribunal has held that assessee had admittedly acquired the place for subsequent transfer to its members subject to payment of the stipulated amounts. Though the assessee had termed the amounts to be advances but the fact remained that these amounts were nothing but the consideration received for allotment of space. Said advances were only refundable in exceptional circumstances if the allotment of the premises was cancelled. Such transaction appeared to be a transaction of sale. As the amounts had been received during the year under consideration and as the assessee maintained the accounts on accrual basis these amounts had accrued to the Exchange during the year under consideration and the same were liable to be taxed in the year under consideration. For all practical purposes the amounts received had vested with the assessee and the assessee alone was its own to utilize it in the manner and mode it deemed fit and proper. In case the amounts were refunded to the members the assessee will be at liberty to claim the amount paid to be its business expenditure.
2010 PTD 927 Appellate Tribunal Inland Revenue	**Sections 221, 170(4), 115(4) and 153 of the Income Tax Ordinance, 2001** **FACTS OF THE CASE** In this case the taxpayer filed statement under Section 115(4) of the Ordinance under the presumption that tax deducted under Section 153 of the Ordinance on account of services rendered was covered under Final Tax Regime. Subsequently, the taxpayer filed revised statement under Section 115(4) of the Ordinance and return of income under Section 114 of the Ordinance and adjusted tax deducted under Section 153 of the Ordinance against its liability covered under normal provisions of law and claimed refund under the provision of Section 170 of the Ordinance. Such claim was accepted by the department and an order under Section 170(4) of the Ordinance was passed and issued the amount of refund. Subsequently said order of refund was rectified under Section 221 of the Ordinance and taxpayer was treated as "contractor" as against "service provider" which was earlier accepted by the department.

CITATION	ISSUES INVOLVED
	DECISION The Tribunal held that since the power to amend an assessment order lies under Section 122 of the Ordinance no amendment of income and tax liability of a taxpayer could be made under Section 170(4) of the Ordinance; order passed under Section 170(4) of the Ordinance amending assessee's income and treating the tax deducted under Section 153(1) of the Ordinance as final discharge of appellant's tax liability was ab-initio illegal, and such treatment could not be allowed to sustain as per existing provisions of law. Held, that First Appellate Authority had rightly annulled the order passed under Section 221 of the Ordinance as no exception could be taken from the order of First Appellate Authority. Order of First Appellate Authority was maintained by the Appellate Tribunal.
2010 PTD 930 Appellate Tribunal Inland Revenue	**Sections 21(c), 153, 162, 156, 233 and 122 of the Income Tax Ordinance, 2001** **FACTS OF THE CASE** In this case the assessment of the taxpayer, who is engaged in the business of purchase, transmission and distribution of natural gas, was amended by the Taxation Officer under Section 122(5A) of the Ordinance whereby the claim of gas bill collection charges was disallowed under Section 21(c) of the Ordinance since the taxpayer allegedly failed to deduct tax under Section 153 of the Ordinance on the above charges. The customers of the taxpayer paid their monthly gas bills directly to the banks/financial institutions designated by the taxpayer. The banks/financial institutions after deducting their charges (collection charges, remit such amount to the taxpayer). It was the contention of the taxpayer that no tax was deductible on the amount as the taxpayer itself did not pay any amount to the banks/financial institutions rather being collecting agent they were remitting the net amounts to the taxpayer and therefore provisions of Section 153 of the Ordinance was not attracted. **DECISION** The Tribunal held that no provision in Section 153 of the Ordinance existed which was parallel to Section 233(2) of the Ordinance, therefore no withholding tax was required under the law. The Tribunal further held that the provision of Section 152(2) of the Ordinance could not be invoked to lend credence to departmental action of invoking Section 21(c) of the Ordinance in the admitted circumstances that department did not invoke the provision of Section 162(1) of the Ordinance on banks/financial institutions since these institutions had already discharged their tax liability. The taxpayer was legally correct in not withholding tax as alleged by the department.

CITATION	ISSUES INVOLVED
2010 PTD 1081 Appellate Tribunal Inland Revenue	**Section 205 of the Income Tax Ordinance, 2001** **FACTS OF THE CASE** In this case the department levied additional tax under Section 205 of the Ordinance on the late deposit of taxes which were withheld by the taxpayer. The taxpayer contended that the delay was due to internal controls and administrative procedure and there was no malafide intention on the part of the taxpayer causing delay in deposit of tax in the Government of treasury. **DECISION** The Tribunal held that additional tax could not be equated with penalty. Penalty and additional tax are distinct ones. Penalty was meant to penalize the taxpayer for not doing an act within stipulated timeframe while additional tax was levied because taxpayer used the government money and took its benefit or the government was deprived of its utility/profits. Tax was admittedly due and not paid on due date, it amounted to utilization of public exchequer and compulsion of payment of additional tax was quite in accordance with equity and principles of natural justice. Taxpayer could not be absolved from payment of additional tax qua late payment of admitted liability of tax on the plea of not being willful. Appeal was dismissed by the Appellate Tribunal.
2010 PTD 1197 Appellate Tribunal Inland Revenue	**Sections 153(6B), 153(6A) and Clause 46A of the Income Tax Ordinance, 2001** **FACTS OF THE CASE** In this case the taxpayer (AOP) is a manufacturer. On the basis of explanation of the Federal Board of Revenue given on Clause (46A) of Part-IV of the Second Schedule to the Ordinance, the Taxation Officer completed the amended assessment wherein entire revenue was covered under Final Tax Regime. The taxpayer contended that its case is not covered under Final Tax Regime in view of judgment of the Honourable High Court of Sindh reported as 2009 PTD 809. **DECISION** The Tribunal held that keeping in view the principle "when the law required a thing to be done in a particular manner it would be legal and valid only if it was done in that manner and not otherwise", it was held that the case was not covered by Final Tax Regime. Appeal filed by the taxpayer was allowed and the action of the officers below was held to be unlawful. Deemed assessment was restored and the orders of the officers below were cancelled by the Appellate Tribunal.

CITATION	ISSUES INVOLVED
(2011) 104 TAX 1 (Trib) Appellate Tribunal Inland Revenue	**Sections 111(1A) and 122(1) of the Income tax Ordinance, 2011** **FACTS OF THE CASE:** The assessing officer made addition under section 111(1A) of the Ordinance for unexplained credits and under section 111(1)(d) of the Ordinance for unexplained expenses. The CIT (A) deleted the same keeping in view provisions of section 111(2) of the Ordinance. **DECISION:** The Appellate Tribunal on appeal by the department has held that the above referred provisions of law has not given blanket powers to Taxation Officer to make addition whenever he wants and/or in any tax year as legislature has restricted this addition in the tax year immediately preceding financial year of discovery provided the addition was made according to law.
(2011) 104 TAX 13 (Trib) Appellate Tribunal Inland Revenue	**Sections 127, 170(4) and 221 of the Income Tax Ordinance, 2011** **FACTS OF THE CASE:** The applicant claimed refund for the Tax Year 2005 and 2066 which was refused by the Taxation Office. The CIT (A) confirmed the order of Taxation Officer, the taxpayer filed second appeal and also filed rectification application under section 221 of the Ordinance before CIT(A) for correction of facts in the Tax Year 2006 and for not adjudication of certain grounds of appeal. Further it was urged that order refusing refund after 45 days is a time barred order. The CIT (A) allowed the rectification application by holding the refusal of refund order as time-barred. The department challenged the order before the Appellate Tribunal assailing the interpretation of section 170(4) of the Ordinance made by CIT (A) decision. **DECISION:** The Appellate Tribunal set aside the order and hold that the inaction/default by CIT to pass order amounts to refusal of refund under section 170(4) of the Ordinance and CIT (A) should treat such inaction as refusal order by CIT and after entertaining appeal within 45 days may proceed to determine refund if any as per provision of section 170.

CITATION		ISSUES INVOLVED
(2011) 104 TAX 19 (Trib) Appellate Tribunal Inland Revenue		**Sections 122(5A) and 129 of the Income Tax Ordinance, 2011** **FACTS OF THE CASE:** The assessment in this case was amended under section 122(5A) of the Ordinance by the difference between retail price and purchase price under the head income from other sources and by disallowing the claim of bad debts. The CIT (A) remanded back the matter while agreeing with the contention of the taxpayer. Both the parties challenging the appellate order passed by the CIT (A). **DECISION:** It has been held by the Appellate Tribunal that once similar issue has been adjudicated in previous as well as subsequent years and the department has not agitated the same in appeal therefore deviating from settled issues in a particular year cannot be approved.
(2011) 104 TAX 24 (Trib) 2011 PTD (Trib) 1824 Appellate Tribunal Inland Revenue		**Sections 111(1)(b), 211(1) and 122(5) of the income tax Ordinance, 2001** **FACTS OF THE CASE:** The taxpayer is a private limited company and the Taxation Officer added the sum of Rs.577.500 (M) u/s 111(1)(b) of the Ordinance for alleged non recording of certain payments made to Mr. ABC in his books of accounts while amending the assessment order u/s 122(5) of the Ordinance. The CIR(A) confirmed the above action of the Taxation Officer. **DECISION:** As in this case it has been noted that during the audit the Taxation Officer focused on sources of investment and has not drawn any adverse inference and has closed the order with prior approval of ACIR. Therefore, the Taxation Officer being subordinate officer cannot review and amend the assessment on the same issue from his own spectacles which have already been adjudicated upon by his supervising officer.
(2011) 104 TAX 60 (Trib) Appellate Tribunal Inland Revenue		**Sections 165, 182(3), & 221 of the Income Tax Ordinance, 2001** **FACTS OF THE CASE** The taxpayer moved application for rectification of an ex-parte order imposing penalty u/s 182(3)/165 of the Ordinance for default of filing withholding tax statements which was rejected by the Taxation Officer. The CIT(A) held the rejection of rectification application was not sustainable in law. **DECISION** It has been held by the Appellate Tribunal that the Taxation Officer was duty bound to consult the relevant record to determine the statement produced before him if filed on the due date given in acknowledgement receipt. the taxpayer could not have been penalized for any lacuna in the system of the revenue department.

CITATION	ISSUES INVOLVED
(2011) 104 TAX 73 (Trib) Appellate Tribunal Inland Revenue	**Sections 127 and 205 of the Income Tax Ordinance, 2001** **FACTS OF THE CASE** The taxpayer challenged the CIR(A)'s order for dismissing appeal against order passed u/s 205 of the Ordinance holding the same being incompetent as section 205 of the Ordinance was not mentioned in section 127 of the Ordinance before 01-07-2009 **DECISION** The appellate tribunal held that the order passed by CIR(A) being against the provisions of law therefore vacated the appeal filed by the taxpayer deemed to be pending before CIR(A).
(2011) 104 TAX 81 (Trib) Appellate Tribunal Inland Revenue	**Sections 34(5), 122, 177 of the Income Tax Ordinance, 2001** **FACTS OF THE CASE** The taxpayer, a limited company filed return of income declaring loss during the year. The return was selected for audit under Section 177 of the Ordinance. Consequently assessment was amended under Section 122 of the Ordinance by making additions under Section 34(5) of the Ordinance alleging interest payable different financial institutions against trading loan remained unpaid after a lapse of statutory period of 3 years. The CIR(A) deleted the additions. **DECISION** The Appellate Tribunal, on the appeal by the department, held by relying on the decisions of the superior courts that the said interest was trading liability and rescheduling of a loan cannot be taken as payment of liability u/s 34(5) of the Ordinance hence, reversed the order passed by CIR(A).
(2011) 104 TAX 92 (Trib) Appellate Tribunal Inland Revenue	**Sections 32(2), 62 clause (86) of Part 1 of the Second Schedule to the Income Tax Ordinance, 1979** **FACTS OF THE CASE** The taxpayer, a private limited company, runs educational institutions filed returns for the tax year 2000-2001 and 2001-2002 and the orders were passed under Section 62 of the Repealed Ordinance. The orders were assailed before CIT(A) and both the parties challenged the order passed by CIT(A). The department challenged the deletion of deferred advance fee and curtailing miscellaneous expenses while the taxpayer assailed the rejection of books of accounts and rejection of exemption claimed under Clause (86) of Part 1 of the Second Schedule to the Ordinance.

CITATION	ISSUES INVOLVED
	DECISION The Appellant Tribunal while dismissing the appeal on the point of deferred advance fee held that it is a simple question of revenue recognition of a particular payment, receipt of which at a particular point of time is not disputed by the parties and that the expenses relatable to those fall in the following accounting period therefore, receipts are to be taxed proportionately in the following accounting period. On taxpayer's appeal regarding exemption appeal under Clause (86) of Part 1 of the Second Schedule to the Ordinance it was found that the company has not been formed under Section 42 of the Companies Ordinance, 1984 and the taxpayer nowhere asserted that it is not meant for gaining profit. Hence, the rejection of claim of exemption was confirmed.
(2011) 104 TAX 104 (Trib) Appellate Tribunal Inland Revenue	**Section 177(4) of the Income Tax Ordinance, 2001** **FACTS OF THE CASE** The case of the taxpayer was selected under Section 177(4) of the Ordinance which was agitated before the CIT(A) on the grounds that the selection of case for audit is illegal as no notice has been issued to the taxpayer before selecting the case for audit. The CIT(A) allowed the appeal relying on the decision of Hon'ble Lahore HC wherein it was held that the selection of case for audit without issuing a notice to the taxpayer is illegal. The department challenged the order passed by CIT(A) before the Appellate Tribunal's decision. **DECISION** The Appellate Tribunal after discussing various case laws on the subject confirmed the order passed by CIT(A).
(2011) 104 TAX 110 (Trib) Appellate Tribunal Inland Revenue	**Sections 122(5)(A) and 233 of the Income Tax Ordinance, 2001** **FACTS OF THE CASE** The taxpayer is a private limited company and is engaged in the business of air transport services. The case was selected for audit and subsequently the order was amended by the Taxation Officer who treated the amount representing payments received as services charges from army welfare trust (AWT) on account of services rendered for charter of flights as "commission" which attracts the provisions of section 233 of the Ordinance. **DECISION** The Appellate Tribunal reversed the order passed by CIT(A) and held that section 233 of the Ordinance is regarding brokerage and commission and the taxpayer has had received the amount as per agreement as service charges as per mode of payment mentioned in the agreement. Therefore, the order passed by the CIT(A) was vacated by the Appellate Tribunal.

CITATION	ISSUES INVOLVED
2011 PTD (Trib) 1716 Appellate Tribunal Inland Revenue	**Sections 24(1), 24(c), 23(1)(vii), 23(1)(x), 24(b), 50(3), 50 of Income Tax Ordinance, 1979** **FACTS OF THE CASE** The taxpayer is a private limited company derives income from providing telephone services. Return filed for the assessment year 2001-2002 and the taxpayer claimed expenses on account of payment to non-resident. The Taxation Officer treated the amount as royalty and disallowed the expenses under Section 24(b) of the Repealed Ordinance for non-deduction of tax under Section 50(3) of the Repealed Ordinance. The taxpayer contested the disallowance before CIT(A) who allowed partial relief. Both the parties filed cross appeals on this issue before the leaned Appellate Tribunal. **DECISION** The Appellate Tribunal held that the assessee was under legal obligation to deduct tax under Section 50(3) of the Ordinance from payments made to non-resident. However, certificate of exemption or lower rate could be obtained from the assessing officer. It has been further held that payment for the use of electronic equipment is a payment on account of royalty on which income tax is deductible under the provisions of the Ordinance.
2011 PTD (Trib) 1800 Appellate Tribunal Inland Revenue	**Sections 114, 115(4), 120, 122(5A), 131, 153 of the Income Tax Ordinance, 2001** **FACTS OF THE CASE** The taxpayer, an individual derives income from manufacturing of tower coated steel items, filed returns which is deemed to be an assessment under Section 120 of the Ordinance. Scrutiny revealed that the taxpayer had been filing statement under Section 115(4) of the Ordinance being manufacturer till tax year 2004. The Assessing Officer considered the return filed to be erroneous and prejudicial to the interest of revenue and amended the assessment order under Section 122(5A) of the Ordinance by assessing the case under FTR. The taxpayer filed appeal before the CIT(A) who held the action taken under Section 122(5A) of the Ordinance to be illegal and unwarranted. **DECISION** The Appellate Tribunal on appeal by the department held that being a manufacturer the taxpayer was under legal obligation to file option for subsequent 3 years and was required to file statement under Section 115(4) of the Ordinance. It was further held that the taxpayer has not fulfilled the requirement of law as such the deemed assessment under Section 120 of the Ordinance was erroneous and prejudicial to the interest of revenue.

CITATION	ISSUES INVOLVED
2001 PTD (Trib) 1807 Appellate Tribunal Inland Revenue	**Sections 122(5A), 131 of the Income Tax Ordinance, 2001** **FACTS OF THE CASE** The taxpayer, a private limited company derives income from sale of petroleum products filed return declaring loss which was treated as deemed order under Section 120 of the Ordinance. The said order was amended under Section 122(5) of the Ordinance by determining net income on account of availing benefit of waiver of loan and mark-up. The order under Section 122(5) of the Ordinance was assailed before the CIT(A) who annulled the amended order passed under Section 122(5) of the Ordinance. The Taxation Officer again amended the deemed assessment under Section 122(5A) of the Ordinance on the same issue and on the same ground. This time the CIT(A) dismissed the appeal filed by the taxpayer and maintained the action of the Taxation Officer. The order passed by the CIT(A) was challenged before the Appellate Tribunal by the taxpayer. **DECISION** The Appellate Tribunal after discussing the case laws on the subject has held that where the Appellate Authority had given its finding on a particular issue then the original order ceased to exist and stood merged into the Appellate Order as such the subsequent action of the Taxation Officer is not sustainable in law.
2011 PTD (Trib) 1918 Appellate Tribunal Inland Revenue	**Sections 36, 32, 34, 120 & 122(5) of the Income Tax Ordinance, 2001 and Rule 68 of the Income Tax Rules, 2002** **FACTS OF THE CASE** The taxpayer in this case is a private limited company engaged in the business of land developing and sale/purchase of plots. The return filed was accepted as deemed assessment under Section 120 of the Ordinance. The Assessing Officer amended the deemed order by taxing 25% of the accumulated advances from allotees under Section 36 of the Ordinance in the Tax Year 2005. This treatment of the department was not challenged before any Appellate Authority. The Assessing Officer accordingly taxed the remaining 75% advances on proportionate basis for each year. On appeal the CIR(A) confirmed the treatment meted out by the Taxation Officer. **DECISION** The Appellate Tribunal, on appeal filed by the Taxpayer, held that Section 36 of the Ordinance is not a charging section, it merely gives a computation method. With regard to Circular No. 2 of 1975 it has been held that the profit or loss is to be made on the basis of receipt for each year. the instruction apply only to those contractors who keep regular accounts and where the total profit of the contract on completion is acceptable subject to the adjustments for inadmissible expenses as may be necessary. Thus after remanding the case back to Inland Revenue Officer with the direction to only take receipt of the respective years and not accumulated receipt of the entire project.

CITATION		ISSUES INVOLVED
2011 PTD (Trib) 1929 Appellate Tribunal Inland Revenue		**Sections 54, 62, 65, 88, 107AA & 134 of the Income Tax Ordinance, 2001** **FACTS OF THE CASE** The Taxpayer assailed the order passed by the CIT(A) who confirmed the order passed under Section 88 of the Ordinance through which the Taxation Officer imposed additional tax for non-payment of tax liability along with the return for the assessment year 2002-2003. **DECISION** The Appellate Tribunal observed that language of law is very clear and as such it is the taxpayer who has to determine/calculate the tax payable as per declaration in the return for the relevant period. If the declaration in the return is modified later under section 62 or 65 or any other provision, the tax payable, under latter section shall not be tax payable under Section 54 of the Ordinance.
2011 PTD (Trib) 1950 Appellate Tribunal Inland Revenue		**Sections 122, 177, 20(1), 21, 21(c), 153, 49(3), 24, 24(3), 23 & 113(2)(c) of the Income tax Ordinance, 2001** **FACTS OF THE CASE** The taxpayer/respondent filed return declaring loss for the Tax Year 2006. The case was selected for audit under Section 177 of the Ordinance and consequently the deemed order was amended under Section 122(1) of the Ordinance. **DECISION** The Appellate tribunal while deciding the case has observed that the expression “commercial expediency” means and includes an expenditure which a prudent man might incur for the purpose of business provided it is not entirely gratuitous and unconnected with the business.
2011 PTD (Trib) 2005 Appellate Tribunal Inland Revenue		**Sections 62, 132 & 63 of the Income Tax Ordinance, 1979** **FACTS OF THE CASE** The taxpayer, a private limited company engaged in the freight forwarding declared loss during the year. The Assessing Officer rejected the declared version and passed order under Section 62 of the Repealed Ordinance. The CIT(A) set aside the case for denovo proceedings. The taxpayer filed 2nd appeal before the Appellate Tribunal against the set aside order of the CIT(A). While the pendency of the appeal before the Tribunal the assessing Office finalized reassessment proceedings under Section 63/132 of the Ordinance. The CIT(A) cancelled the order passed under Section 63/132 of the Ordinance. The department being aggrieved with the said order filed 2nd appeal before Tribunal.

CITATION	ISSUES INVOLVED
	DECISION The Appellate Tribunal held that the reassessment order passed by the Assessing Officer is a nullity in law for the simple reason that the taxpayer has already approached the Tribunal which was pending for adjudication. As regards assessee's appeal against CIT(A) order it has been observed by the Tribunal that after categorical findings of the CIT(A) in favour of the taxpayer, the appeal should have been accepted as giving a chance to Revenue would amount to giving premium to the department an opportunity to make up deficiencies in the assessment framed by the Assessing Officer. Note: After dissent of the Learned Accountant Member in respect of above finding the case was referred to the refree Member who concur with the findings of Learned Judicial Member
2011 PTD (Trib) 2158 Appellate Tribunal Inland Revenue	**Sections 177(4), 120, 18, 20 & 22 of the Income Tax Ordinance, 2001** **FACTS OF THE CASE** The taxpayer, a private limited company derives income from manufacturing and sale/export of auto parts declared income and the deemed assessment stood finalized under Section 120 of the Ordinance. The case was selected for audit under Section 177(4) of the Ordinance and consequently amended under Section 122(1) of the Ordinance. The first appellate authority allowed partial relief but still dissatisfied the taxpayer second appeal before the Appellate Tribunal. **DECISION** The Appellate Tribunal was of the view that the selection of case was not made in accordance with the parameters laid down by the apex court and that non-issuance of pre-selection notice is against the norms of natural justice hence the selection was illegal, void ab-initio.
ITA NO 887/KB /2009 DATED 15-03-2010 Appellate Tribunal Inland Revenue	**Sections 137 and 108 of the Income Tax Ordinance, 2001** **FACTS OF THE CASE** The taxpayer at the time of filing of return was not liable to pay tax along with return instead had refunds at Rs. 30,893,216/- **DECISION** The learned Tribunal observed that in the present case the payment of advance tax was more than the tax payable against the declared income. Besides, assessee had a refund hence, the Income Tax Department rightly levied minimum penalty at Rs.500 only.

CITATION	ISSUES INVOLVED
ITA NO 254/KB /2010 (TAX YEAR 2006) ITA NO. 268/KB/2010 (TAX YEAR 2006) DATED 22-04-2010 Appellate Tribunal Inland Revenue	**Sections 20 and 21 of the Income Ordinance, 2001** **FACTS OF THE CASE** The issue raised by the department was as to whether the Commissioner Inland Revenue (Appeals) was justified in holding the profit arising from property to be a 'business' and consequently allow CVT paid thereon as an allowable deduction. The grievance of the taxpayer was on the departmental action to decline 'set off' of the 'capital loss' against the 'Capital gain' is being challenged. **DECISION** Section 21 (a) (b) refers to the taxes which are charged under the Ordinance and does not refer to any other levy or tax under the other laws of the country. The CVT for that matter is completely independent and its is a one time levy. Even if we consider it to be a personal liability it shall still remain part of cost as it needs to be reduced from the sale value in order to determine actual gain which is generally sales reduced by cost. Regarding assessee's issue; the income of sales and purchase of stocks and shares is exempt under the provision from charge hence its loss cannot be set off against the gain on account of sale of the card. Thus, for all practical purposes, the capital gain is not to be set off against the losses from any other source during the year but shall be carried forward and set off against the capital gain in the said subsequent year. The benefit of the set off, therefore, is only on the sale of the assets which can on one hand be brought to charge as a capital gain and not those capital gains which even otherwise are not taxable. The set off cannot be allowed against the capital loss arising on sale of shares against the capital gain on sale of the fixed assets.

CITATION	ISSUES INVOLVED
ITA NO 58/KB /2010 (TAX YEAR 2005) ITA NO. 59/KB/2010 (TAX YEAR 2006) DATED 22-04-2010 Appellate Tribunal Inland Revenue	**Section 25 of the Income Tax Ordinance, 2001** **FACTS OF THE CASE** The taxpayer being a Public Limited Company is carrying out business of Islamic Commercial Bank and was issued license as a scheduled Islamic Commercial Bank on 18-03-2005. In tax year 2005, out of total pre-commencement expenses claimed at Rs. 86,83,627/- expenses of Rs. 65,22,245/- were not allowed. In tax year 2006 expenses to the extent of Rs. 2,88,23,305/- were not allowed in view of section 25(5) of the Ordinance. The CIR (A) held as under: “Expenses in the nature of legal and professional fees amounting to Rs. 6,264,500/- for tax year and legal and professional fees, listing fees and Sharia’a Board Remuneration Rs. 11,744,728/- for tax year 2006 have a direct nexus to the motive and intent of the expense required exclusively for the commencement of business. It is, therefore, inferred that the Taxation Officer should allow these expenses to the extent of quantum claimed as deductions in addition to those expenses, which have already been allowed in the amended order. The rest of the expenses claimed by the appellant which are not in the nature of pre-commencement expense as defined in section 25(5) and discussed above have rightly been disallowed by the Taxation Officer. “ **DECISION** The Tribunal held that in addition to the expenses allowed by the Taxation Officer and later on by the learned CIR (Appeal), following expenses are also covered by the provisions of Section 25(5) of I.T. Ord., 2001 and are allowable as per law: **“Tax Year 2005** travelling and conveyance, vehicle maintenance, auditor’s remuneration, bank charges **“Tax Year 2006** Rent, Rates and Taxes Travelling and Conveyance Vehicle Maintenance Stationery Expenses Auditors’ Remuneration Training and Seminar Utility Expenses Bank Charges

CITATION		ISSUES INVOLVED
ITA NO 1184/KB /2006 DATED 10-06-2010 Appellate Tribunal Inland Revenue		**Section 24(c) of the Income Tax Ordinance, 1979** **FACTS OF THE CASE** Taxation Officer disallowed the amount of Rs. 6,806,433/- on account of credit card commission payments under section 24(c) of the Repealed Ordinance for the reason that the tax has not been withheld from these payments through credit card. As per practice of the hotel industry the banks while making payment of credit card bills deduct 2.75% of the amount of credit card bills. Deduction of 2.75% of the invoice amount actually is discounting of the company's invoice not a commission but a financial cost incurred by the company to meet its liquidity requirements upfront and the same lies within the nomenclature of discounting charges suffered by the company. No provision of law requires withholding of tax on the discounting charges suffered by the company. **DECISION** We are in agreement with contention of the learned A.R. that the amount deducted @ 2.75% of the amount of credit card bills is not a commission but a financial cost incurred by the company and the same lies within the nomenclature of discounting charges suffered by the company. The judgment of the Tribunal relied upon by the learned A.R. squarely applies to the case of the appellant wherein it is held that the said commission after inclusion in the total income of the company has already suffered the incidence of tax and the appellant cannot be held to be assessee in default and the department cannot demand further tax from appellant. Respectfully following the above judgment of the Tribunal, we delete the disallowance made by the Taxation Officer and subsequently upheld by the learned CIT (A) on account of credit card commission.

CITATION	ISSUES INVOLVED
ITA NO 44/KB /2010 DATED 24-06-2010 Appellate Tribunal Inland Revenue	**Section 113 of the Income Tax Ordinance,** **FACTS OF THE CASE** In this case the department charged minimum tax under Section 113 of the Ordinance on both income covered under FTR and NTR. **DECISION** We find that it is clear beyond any doubt that provisions of minimum tax as envisaged in this section come into play where for any reason described therein no tax is payable or tax paid by the person for a tax year is less than 0.5% of the amount representing the person's turnover from all sources, for that year….In our view, receipts of sales of goods which undergo withholding of tax, services rendered, commission or contract are falling under FTR which have been included in the definition of "turnover". Thus, the stance taken by the learned DR that only receipts from NTR are liable to tax under section 113 is against the provision of law. Judgement of the Honourable High Court relied reported as 2003 PTD (Trib.) 622 fully supports the case of assessee. It would be advantageous to reproduce the findings the Tribunal contained in the above reported judgement. "The provisions of section 80-D does not exclude the turnover and tax paid u/s. 80C for the purpose of working out minimum tax liability under this section. Order of the first Appellate Authority being fully justified is hereby upheld. The appeal of the Revenue fails." The Tribunal upheld the order of the CIT (A)

CITATION	ISSUES INVOLVED
ITA NO 158/KB /2010 DATED 24-06-2010 Appellate Tribunal Inland Revenue	**Sections 111 of the Income Tax Ordinance, 2001** **FACTS OF THE CASE** The Taxation Officer after conducting the audit framed amended order and determined the income after making the following additions: i) Addition under Section 111 (1)(b) of the Ordinance on account of unexplained investment ii) Addition under Section 111(1)(c) of the Ordinance on account of foreign traveling. iii) Addition under section 111(1)(b) of the Ordinance on account of un-explained entries in bank account. **DECISION** Perusal of provisions of sub-section (2) of Section 111 of the Ordinance would reveal that the addition under said provision should be included in the person's income chargeable to tax in the tax year immediately proceedings the financial year in which it was discovered by the Commissioner. Since the Taxation officer has included all the additions under provisions of Section 111 of the Ordinance in the tax year 2008 which is the tax year of discovery, his action is against the mandatory provisions of Section 111 (2) of the Ordinance, the order of the Taxation Officer cannot be sustained in law. Keeping in view the above legal position orders passed by both the two officers below were annulled by the Tribunal.

CITATION	ISSUES INVOLVED
ITA No 595-596/KB of 2010 Dated 24-01-2011 Appellate Tribunal Inland Revenue	**Sections 122 and 67 of the Income Tax Ordinance, 2001** **FACTS OF THE CASE** In this case the apportionment of expenses under Section 67 of the Ordinance has been made hypothetically. **DECISION** We have heard both parties. We are of the considered opinion that various issues raised in proceedings u/s 122(5A) of the Ordinance as much as apportionment of expenses against Import activity have already been consciously settled by the then Taxation Officer duly approved by the then Additional Commissioner while finalizing/amending of assessment u/s 122 of the Ordinance after concluding of Audit Report for the Tax Year 2007. Keeping in view of these factors we hereby cancel the amendment of assessment u/s 122(5A) of the Ordinance for the Tax Year 2007 for being unjustified and tantamount to change of opinion So far as amendment u/s 122(5A) of the Ordinance for the Tax Year 2006 is concerned. We have observed that apportionment of expenses have been made in hypothetical manner and contrary to the history of the case. The Tribunal set aside the assessment for the Tax Year 2006 with direction to re-adjudicate the matter of apportionment of expenses in accordance with the history of the case as established for the Tax Year 2007.

CITATION	ISSUES INVOLVED
ITA NO 455/LB OF 2011 DATED 19-04-2011 Appellate Tribunal Inland Revenue	**Sections 114, 120 and 122 of the Income Tax Ordinance, 2001** **FACTS OF THE CASE** In this case the taxpayer revised its return of income under Section 114(6) of the Ordinance which was not accepted by the Taxation Officer. **DECISION** We are of the considered view that sub section (5) of section 122 is not a provision to amend an assessment order. It only sets out the criteria under which an officer can amend an assessment by invoking the provisions of sub section (1) and (4) of section 122. Thus sub section (5) of section 122 does not constitute a legal authority to amend an assessment. An assessment as indicted above can only be amended by an officer either under sub section (1) and (4) or (5A) of section 122 of the Income Tax Ordinance, 2001. Therefore, action of the assessing officer in the instant case to amend the assessment order by invoking the provision of section 122 (5) is ab-initio, void and illegal, hence not sustainable in the eyes of law. The order of assessing officer further shows that taxpayer income tax affairs for the tax year 2004 were taken up for audit. However amendment has been made in the order of the tax year 2008 that too without issuance of show cause notice in respect of that year. The order of the assessing officer does not show that he was delegated powers to amend assessment for the tax year 2008. Therefore, his action to amend the assessment order for tax year 2008 is without jurisdiction and patently illegal. In Para 42(iii) the assessing office has very candidly admitted that he was assigned only to conduct audit proceedings. After this submission by the assessing officer there remains no legal or moral justification on part of the assessing officer to amend the assessment that too for the tax year 2008 for which he admittedly had no mandate and has not issued any show cause notice to amend the assessment.

CITATION	ISSUES INVOLVED
ITA NO 123/KB OF 2010 DATED 02-08-2010 Appellate Tribunal Inland Revenue	**Section 122 of the Income Tax Ordinance, 2001** **FACTS OF THE CASE** In this case the jurisdiction of the Taxation Officer vested in under Section 122(5) of the Ordinance was challenged. **DECISION** We are of the considered view that sub section (5) of section 122 is not a provision to amend an assessment order. It only sets out the criteria under which an officer can amend an assessment by invoking the provisions of sub section (1) and (4) of section 122. Thus sub section (5) of section 122 does not constitute a legal authority to amend an assessment. An assessment as indicted above can only be amended by an officer either under sub section (1) and (4) or (5A) of section 122 of the Income Tax Ordinance, 2001. Therefore, action of the assessing officer in the instant case to amend the assessment order by invoking the provision of section 122 (5) is ab-initio, void and illegal, hence not sustainable in the eyes of law. The order of assessing officer further shows that taxpayer income tax affairs for the tax year 2004 were taken up for audit. However amendment has been made in the order of the tax year 2008 that too without issuance of show cause notice in respect of that year. The order of the assessing officer does not show that he was delegated powers to amend assessment for the tax year 2008. Therefore, his action to amend the assessment order for tax year 2008 is without jurisdiction and patently illegal. In Para 42(iii) the assessing office has very candidly admitted that he was assigned only to conduct audit proceedings. After this submission by the assessing officer there remains no legal or moral justification on part of the assessing officer to amend the assessment that too for the tax year 2008 for which he admittedly had no mandate and has not issued any show cause notice to amend the assessment.

CITATION	ISSUES INVOLVED
ITA No 374/KB/2009 Dated 18-02-2011 Appellate Tribunal Inland Revenue	**Sections 56, 57 and 59A of the Income Tax Ordinance, 2001** **FACTS OF THE CASE** In this case the taxpayer adjusted the amount of unabsorbed depreciation against interest income for the year which was disallowed by the Taxation Officer. **DECISION** Where the depreciation either normal or initial has not been set off against income, the amount not set off shall be added to the deduction allowed in respect of depreciation (normal as well as initial) in the following tax year. After examination of the scheme of law as contained in the Income Tax Ordinance, 2001 we found it is identical to the repealed Income Tax Ordinance, 1979. Thus we are of the opinion that unabsorbed depreciation by virtue of provisions of Section 57(4) becomes the depreciation of succeeding year and in case a tax payer has any other income under any other head, the tax payer is entitled to set off the same under Section 56 read with the provisions of Section 59A(5) respectively. Both the officers below have not correctly appreciated the scheme of law. The appellant was entitled to set off unabsorbed depreciation in terms of Section 57 (4) read with Section 59A(5) and Section 56 respectively against any other head of income

CITATION	ISSUES INVOLVED
ITA NO. 10/KB OF 2010 ITA No. 11/KB/2010 Appellate Tribunal Inland Revenue	**Section of the Income Tax Ordinance, 2001 of the Income Tax Ordinance, 2001** **FACTS OF THE CASE** In this case the taxpayer, being banking company, claimed pre-commencement expenditure in view of Section 25 of the Ordinance. The Taxation Officer curtailed the amount of claim of the taxpayer. **DECISION** The learned CIT(A) has also elucidated the above provision of law and we tend to fully concur with his observation that in order to understand the scope and test for the business expenditure, it would be prudent to see that the word “wholly” here in the law refers to the quantum of expenditure. The word “exclusively” refers to motive, objective and purpose of the expenditure, it however does not mean any expense “necessarily”. In the appellant’s case, the intention and motive is to establish a banking company, therefore, there has to be a nexus between the expense required for fulfillment of this motive and the expense incurred. It would clearly mean that any expense without which it would not be possible to establish the banking company and satisfy the intention, such expense would be exclusively required for the purpose of commencement of business. In this view of the matter, the expenses claimed by the taxpayer for the two years are allowed by the learned CIT(A) fall within the purview of Section 25(5) of the Income Tax Ordinance, 2001. We, therefore, confirm the order of the learned CIT (A) on the issue involved

INDIRECT TAX

CITATION	ISSUES INVOLVED
2010PTD 1177 Supreme Court of Pakistan	**Section 32 &156(4) of the Customs Act, 1969** **FACTS OF THE CASE** Supreme Court in exercise of suo-moto powers issued notices to the importers and authorities regarding import of poultry feed containing traces of pork meat/ bone and disposed of the matter in the terms that importers against whom penalty was imposed under Section 156 (4) read with Section 32 of Customs Act, 1969 as well as for violation of import policy, would make payment of the same to Customs department. Further the Customs department or importers would not further agitate the matter either within the heirarchy of Customs Act, 1969, or before High Court or any forum and orders of adjudication would be treated final for all intents and purposes. **DECISION** The importers were permitted to re-export the consignment within three weeks failing which the same would be destroyed and payment of penalty and damages was also imposed.
2010 PTD 592 Sindh High Court	**Sections 2(35), (41), (46) and 3(1) of the Sales Tax Act, 1990** **FACTS OF THE CASE** In this case the department filed sales tax reference against taxpayer for clamming exemption from payment of sales tax on medicines supplied as samples free of cost to medical practitioners. Appellant contended that such supply does not fall within the ambit of taxable supply. **DECISION** The High Court held that “charge and exemption” are two different concepts in taxation laws. To bring a supply within the ambit of sales tax, there must be made a taxable supply by registered person in consideration of money or kind and sales must be made during course or in furtherance of any taxable activity. Supply of medicines by company “free of cost” without receiving any “consideration in money or kind” could not be termed as taxable supply, thus, would not be liable to levy of sales tax. Further C.B.R’s Circular No. C.NO.19-STT/2002, dated 22-3-2002 declaring such medicines not chargeable to sales tax was binding on all officers of Sales Tax Department in discharge of their administrative functions.

CITATION	ISSUES INVOLVED
2010 PTD 657 Sindh High Court	**Section 194 of the Customs Act, 1969** **FACTS OF THE CASE** In this case an Appeal was filed before Appellant Tribunal without signature of appellant filed by Counsel, whose Power of Attorney was not signed by Appellant. Appellant pleaded that such defect in appeal was not removed due to absence of objection by office of Tribunal. **DECISION** The Court held that Appellant could not show any rule or law requiring office of Tribunal to raise such objection. Appeal being a substantive and statutory right vested in an aggrieved person, who either himself or through his authorized representative could file same before forum provided by laws. High Court dismissed reference application.
2010 PTD 1203 Sindh High Court	**First Schedule, Part II of the Central Excise At, 1944** **FACTS OF THE CASE** In this case Insurance Company filed an Appeal before the High Court against levy of excise duty on the facility provided by it to its policy holders to withdraw upto 90% of their paid- up premium as surrender value of their policies. Such withdrawal was treated as services provided or rendered by company in respect of advances and loans under Item 14.14 or Heading 9813.000 of Part II of First Schedule to Central Excise Act, 1944. **DECISION** The Court held that such transaction between company and its policy holders was not similar to that of Bank and its customer. In case of Bank, customer after withdrawing money from his account was not obliged to refund same to bank nor was he liable to pay any mark up thereon to Bank while in case of Insurance company, its policy holders were obliged to refund such amount to company with markup. Such services provided by company to its policy holders were liable to levy of excise duty.

CITATION	ISSUES INVOLVED
2010 PTD 60 (Trib) Appellate Tribunal Inland Revenue	**Section 36(3) of the Sales Tax Act, 1990** **FACTS OF THE CASE** Show Cause Notice was issued on 17th June 2004 and order was passed on 28January 2006. Limitation period provided under Section 36(3) of Sales Tax Act, 1990 expired on 17th September 2004. The order was passed after expiry of the limitation period of 90 days. No evidence was available to show that such period was extended by the Collector. First Appellate Authority observed that' Adjudicating Officer" sought extension for finalization of case from CBR, which was granted on 1st February 2006 and orders were issued on 28 January 2006 within extended period and was not time barred. **DECISION** It was held that limitation period of 90 days expired on 17th September 2004. CBR could extend the period for further 90 days for the reasons to be recorded in writing. Adjudication officer at the most could pass the order by 17 December 2004, whereas order had been issued on 28 January 2006. If the CBR, granted extension on 1st February 2006, it was beyond its jurisdiction, as the extended period of 90 days had already expired. Such being so, it remained to answer as to why the Government was revising the limitation period from 45 days to 90 days and then from 90 days to 120 days, if such limitation had no legal consequences. Appeal was accepted, ONO as well as Order in Appeal were set aside and the Show Cause notice was vacated.
2010 PTD 258 Customs, Federal Excise and Sales Tax Appellate Tribunal	**Section 13, 66 and Sixth Schedule of the Sales Tax Act, 1990 Special Procedure for Supply of Food Rules, 1999** **FACTS OF THE CASE** Sales tax was charged and deposited in the Government treasury. Subsequently refund was claimed by the Appellant of sales tax on the ground that supply of food products to such industrial canteen fell under the exemption from the charge of sales tax in terms of S.13(1) of the Sales Tax Act, 1990. **DECISION** It was held that exemption could be availed by the management of those industrial canteens which cooked or prepared food with every arrangement inside the Industrial concern without involving third party for the supply of food stuff, whereas in the instant case third party i.e. appellant was an independently registered tax person in terms of Rule 2(b) and Rule(i) of the Supply of Food Rules, 1999 read with SRO 1039(1)/99 dated 14 September 1999 had been involved for the supply of food stuff/ food production, thus could not avail the exemption from the charge of sales tax as such activity falls within the scope of taxable activity. Tribunal dismissed the application for rectification of order under section 46 of the Sales Tax Act, 1990.

CITATION	ISSUES INVOLVED
2010 PTD 845 Appellate Tribunal Inland Revenue	**Sections 21 & 46 of the Sales Tax Act, 1990** **FACTS OF THE CASE** Appellant was allegedly found involved in mere paper transaction, claiming input tax without backup invoices and issuing output invoices for refund or adjustment purpose. Record had proved that only the Appellant had been held responsible for purchasing the saleable goods and that too from the registered persons who were neither suspicious nor false units at the time of transaction, while no action had been taken against the seller and no seller had been blacklisted on that ground. **DECISION** Tribunal held that department had not established that allegation leveled in the show cause notice was beyond shadow of doubt. Department was not interested in defending the case, neither it had complied with the orders of the court for submitting reply nor appeared on the final date of hearing. Impugned order was set aside.
2011 PTD 1680 Inland Revenue Appellate Tribunal	**Sections 10, 11, 45(1)(iii) & 46 of the Sales Tax Act, 1990** **FACTS OF THE CASE** In this case Order in Original was passed by the Assistant Collector while Show Cause Notice was issued by the Deputy Collector. **DECISION** The Tribunal held that Assistant Collector had no jurisdiction to pass the order in original once the jurisdiction was assumed by the Assistant Collector. All subsequent proceedings conducted could not be considered as having been done in pursuance of law. Impugned order of Collector (Appeal) was vacated and ONO passed was set aside with directions to allow the refund claim by the registered person.
2011PTD 1695 Inland Revenue Appellate Tribunal	**Sections 12, 3 & 14 of the Customs Act, 1969 and** **Sections 25 & 32(3-A) of the Federal Excise Act, 2005** **FACTS OF THE CASE** Incorrect application of assessable value of duty for Excise Duty: calculation was inbuilt on "One Custom System" and calculation was done by the system on the basis of already incorporated formula. Omission resulted in short realization of duty/taxes. Importer was held responsible for short payment. The importer contended that determination of Duty/Taxes was the duty of PRAL, importer could not be held responsible to bear the consequences. **DECISION** Tribunal held that it was fault of "One Custom System" and responsibility laid upon the department. ONO and Order in Appeal were set aside.

CITATION	ISSUES INVOLVED
2011 PTD 1766 Appellate Tribunal Inland Revenue	**Sections 7, 8 & 46 of the Sales Tax Act, 1990** FACTS OF THE CASE In this case the Appellant contended that Collector (Adjudication) erred in treating the input tax paid on the purchase of High Speed Diesel as inadmissible for adjustment. Secondly Collector (Adjudication) erred in calculating the sales tax liability on account of supply of electricity to residential colony and street lights etc. Thirdly Collector (Adjudication) erred in treating the input tax claimed on electricity during the period when Unit remained closed and did not produce taxable goods. DECISION The Tribunal held in the first issue that input tax paid on HSD, was settled by FBR. FBR had accepted recommendation based on admission by the department that HSD was consumed as fuel and was taken directly in the cost. Impugned orders to the extent of said issue were vacated and department was directed to allow adjustment of input on HSD in view of direction given by FBR. Regarding second issue department was directed to charge sales tax on the supply in question applying the same rate of electricity at which appellant had sold to any other commercial entity during the relevant period. In respect of third issue of disallowing adjustment of input on electricity consumed by the appellant during non-productive period, order on the said issue was vacated and case was remanded to Adjudicating Authority with direction to ascertain /dilate upon the main issue whether consumption of electricity during standby position of the unit was a necessary part of business or not and adjust input if such consumption found necessary during non-productive period?
2011 PTD1793 Appellate Tribunal Inland Revenue	**Section 46 of the Sales Tax Act, 1990** FACTS OF THE CASE In this case the Counsel for applicant submitted that Appellate Tribunal had inherent jurisdiction to rectify its order under S.151 of CPC read with S.132 of Income Tax Ordinance,2001. Appeals filed under section 46 of the Sales Tax Act,1990 would be decided by Appellate Tribunal under powers and procedures given in section 131 & 132 of the Income Tax Ordinance,2001, but no power of review or rectification of its own judgement/order was given in the said section. Insertion of subsection (2) of section 46 of the Sales Tax Act, 1990 the jurisdiction provided earlier under section 184-B (2) of the Customs Act, 1969 was no more available. As section 221of Income Tax Ordinance, 2001 whereby Tribunal was empowered to rectify any mistake apparent on record in any order passed by it was not mentioned in sub section (2) of section 46 of sales tax Act,1990 therefore it could only be invoked for appeal filed under the provisions of Income Tax ordinance,2001. DECISION Tribunal dismissed the application for rectification of order under section 46 of the Sales Tax Act, 1990.

CITATION	ISSUES INVOLVED
2011 PTD1844 Appellate Tribunal Inland Revenue	**Section 65 of the Sales Tax Act, 1990** **FACTS OF THE CASE** Taxpayer did not get itself registered despite carrying on business as a retailer. Taxpayer moved an application under section 65 of the Sales Tax Act, 1990 of the tax not levied on him as general practice. During the pendency of application, show cause notice under section 11(2) & 36 (1) was issued raising demand of sales tax without waiting for the fate of pending application under section 65. Taxpayer contended that his case qualify for exemption from payment of sales tax upto 30-06-2005 as a result of general practice. Since in the prior period neither the taxpayer nor his predecessor were ever apprised by the Department for payment of sales tax on retail sales. **DECISION** Department could not quote any single case of such business segment which voluntarily paid sales tax or which was subjected to sales tax. Three conditions of section 65 that “tax has not been charged in any area on any supply which was otherwise taxable”, the registered person did not recover any tax prior to the date it was discovered that the supply was liable to tax and registered person started paying tax from the date when it was found that supply was chargeable to tax were fully satisfied. It was held by the Tribunal that taxpayer was entitled to be covered under section 65.
2011 PTD 1932 Appellate Tribunal Inland Revenue	**Sections 10 & 7 of the Sales Tax Act, 1990** **FACTS OF THE CASE** In this case import refund was claimed on the ground that sales tax at import stage was paid at a value of Rs. 9,280 per metric ton whereas subsequently the value for assessment of sales tax was reduced from Rs. 9,280 to Rs. 4,610. Import was made on 19-05-2004 and 21-8-2004. In the first import value was Rs. 9,280per metric ton and in the second import value was Rs. 4,610 as the same was reduced by the government on 16-7-2004. **DECISION** It was held that in respect of imports made on 19-05-2004, the tax paid at a value of Rs. 9,280 per metric ton and such tax was refundable irrespective of subsequent decrease of value. Appeal of the Department was dismissed having no force of law.

CORPORATE

CITATION	ISSUES INVOLVED
2011 CLD 883 Supreme Court of Pakistan	**Section 224 of the Companies Ordinance, 1984** (Trading by directors, officers and principal shareholders) **FACTS OF THE CASE** The case is related to a constitutional petition filed by SECP against the judgment of Lahore High Court dated 02 June 2005 in favour of the respondent, involving the matters about the construction, interpretation and application of Section 224 of the Companies Ordinance. Section 224 applies to beneficial owners (directors, officer, auditors and holder of 10% interest) of a listed company and requires the beneficial owners to tender the gain, if any, made on sale / purchase transaction within 6 months, to the company within 6 month of accrual or 60 days of demand by the company whichever is later. In the event of failure to discharge the aforesaid obligation or failure of the company to recover the amount of gain within specified periods, the gain is to vest in the SECP and the failure to deposit the gain with it may lead to action for recovery as arrears of land revenue. M/s First Capital Securities Corporation Limited (FCSCL) being holder of more than 10% shares in M/s World Call Communication Limited (WCCL)-a listed company, made gain on sale/purchase transactions during 6 month. The gain was neither tendered with nor demanded by WCCL within timelines prescribed. However, upon receiving a letter from SECP demanding to tender the gain with the Commission, FCSCL deposited the amount of gain with the issuer (WCCL) and refused the demand of SECP. SECP through an enforcement order directed the respondent to tender the gain within 30 days. The respondent then filed an appeal against the enforcement order which was dismissed through an Appellate Order. The contention of SECP was that the word “vest” in Section 224(2) conferred an absolute right and title to the gain with the SECP. The respondent challenged the orders of SECP in Lahore High Court which was accepted. The Learned Judge deciding various question, inter alia, held that as no fraud and collusion has been established on the record, the amount has been remitted to the issuer by the respondent (beneficial owner) which has been accordingly accepted. The money, in fact belonged to the issuer in absence of any proof of collusion between the two, therefore the appellant, in circumstances cannot claim the tenderable gain from the respondent. The restriction of period to tender and claim the gain within specific time was also held not an impediment in this regard.

CITATION	ISSUES INVOLVED
	DECISION In view of the Supreme Court, the contention of SECP that the use of word vest per se conferred an absolute title on it is erroneous. On the face of it seem clear violation of Article 23 and 24 of the Constitution. To the Supreme Court, adopting a literal interpretation of Section 224 of the Companies Ordinance, 1984 would render the section unconstitutional, and in order to protect the section and bring the same within the framework of constitutionally prescribed parameters, the interpretation of the words should be determined in terms of legislative intent. The Court held that the gain will remain under all circumstance remain the property of the company and SECP has no right or entitlement thereto. The penal provision of section is stringent in nature and should be applied in an appropriate manner. The appeal was dismissed.
2011 CLD 944 Sindh High Court	**Sections 284 & 287 of the Companies Ordinance, 1984** (Merger & Amalgamation of Companies) **FACTS OF THE CASE** This case is related to a petition filed by Liberty Mills Limited (LML) and Liberty Energy (Private) Limited (LEPL) to obtain sanction of Hon'ble High Court to the Scheme of Amalgamation of LEPL within and into LML facilitating orders under Section 287 of the Companies Ordinance, 1984 in accordance with the Scheme Arrangement. **DECISION** In view of the unanimous approval of the Scheme of Amalgamation by the Members, no opposition from employees or creditors of the two companies and NOC from SECP, the Honorable High Court sanctioned the amalgamation/scheme of arrangement as prayed for.
2011 CLD 1029 Sindh High Court	**Sections 7, 9 & 152 of the Companies Ordinance, 1984** (Register, rectification of fraud and forgery) **FACTS OF THE CASE** The case pertains to petition filed by Mr. Suleh Munawar who claimed the ownership of 200 shares in M/s Munawar & Co. (Private) Limited (the Company) since its incorporation in the year 1989 and alleged that his name was deleted from the register fraudulently by the respondent and making entries in Form A of 2003 in respect of petitioner's resignation from CEO/Directorship and transfer of his shares fraudulently. The petitioner, inter alia, prayed for rectification of register.

CITATION	ISSUES INVOLVED
	DECISION The Learned Court decided the case in favour of the petitioner upon proof of the commission of fraud by the respondents, who could not produce any documentary evidence in respect of resignation and transfer of shares by the petitioner.
2011 CLD 1095 Sindh High Court	**Sections 305, 319, 284 of the Companies Ordinance, 1984** (Winding Up Of The Company) **FACTS OF THE CASE** During the winding up proceedings of M/s Karim Silk Mills Limited (the respondent), one of member filed an application under Section 319 read with Section 284 of the Companies Ordinance, 1984 and revival plan, for cancelling the winding up proceedings. The respondent filed the application on the basis of MOU signed for the revival respondent. SECP objected on the application, argued that the application has been incompletely and after the winding up order has been passed. SECP also argued the terms of the MOU and revival plan. **DECISION** The Learned Judge was of the view that compromise / arrangement are for the revival of a dead project into a going concern in the best interest of the national economy and create jobs. It is well established legal position that during winding up, a company cannot be treated as dead unit; it remains alive. Thus the Court ordered to call special general meeting of the creditors and contributories/members in accordance with the provisions of the Companies Ordinance, 1984, for the approval of the scheme. It was further ordered that to meet the ends of justice, the official liquidator (OL) and additional registrar of SECP shall attend the meeting and at the time of submission of report the OL shall also comply with the provision of subsection (2) of section 319 of the Companies Ordinance, 1984.
2011 CLD 1171 Sindh High Court	**Sections 111 of the Companies Ordinance, 1984** (Unlimited Liability director) **FACTS OF THE CASE** The appellant, being a director in TDI International Holdings (Pvt.) Limited (the Company), signed an agreement entered into with Civil Aviation Authority (the respondent) for the installation of advertisement and hoarding. Due to non-payment of dues, the respondent filed a suit against the company and its director which decreed. Appellant filed the instant appeal for setting aside of the order and decree on the grounds that judgment and decree were obtained by misrepresentation and fraud by the respondent. As the appellant was only a paid director and not the shareholder in the company and have not assumed any liability of the company.

Citation		Issues Involved
		DECISION The Learned Judge allowed the appeal and set aside the judgment and decree on the ground that appellant is only a paid director of the company and therefore could not be held liable for the acts and deeds of the company as it is a separate and distinct legal entity from its shareholders and directors. Any liability against the company could not be imposed on its shareholders or directors, unless the directors or shareholders had assumed any responsibility to discharge such liability in terms of Section 111 of the Companies Ordinance, 1984.