

E-News & Views

NV # 3/2011

April, 2011 To June, 2011

A Publication of KTBA

Covering information on important judicial pronouncements, circulars and clarifications

Executive Committee	C o n t e n t s
President Anwar Kashif Mumtaz	
Vice President Muhammad Zubair	From the Desk of the President 2
General Secretary Mohammad Rehan Siddiqui	From the Desk of the Convener 2
Joint Secretary Mian Saleem Akhter	Important Circulars and Notifications
Librarian Syed Sarwar Mohiuddin	• Direct Tax 3
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	• Indirect Tax 7
E-News & Views Committee Muhammad Arshad (Convener) Abdul Qadir Memon Lubna Pervez Rubina Rizvi Syed Riaz Uddin Yasmin Ajani Zafar Ahmed	• Corporate 10
	Synopsis of Important Case Laws
	• Direct Tax 12
	• Indirect Tax 23
	• Corporate 26

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	FROM THE DESK OF CONVENER
<p>Dear Members,</p> <p>It gives me sense of satisfaction to pen down my message on the occasion of 2nd E-News & Views of the year. I would like to acknowledge the hard work put in by Mr. Muhammad Arshad Convener and his team for this assignment. E-News & Views would be of great source and information for the worthy members. Timely and relevant information is the life blood of our profession and E-News & Views is helping our members in dispensing their professional services in best possible manner.</p> <p>After assuming the office the present Managing Committee has chalked out the focused plan of action for the benefit of our members. We have got the approval from SECP for change of name and now we are Karachi Tax Bar Association (KTBA). We have published Finance Bill and organized numbers of seminars/group discussions for imparting knowledge to the general membership including Professional Development Program. The E-News & Views on the eve of new financial year remind us our responsibility as a professional and countrymen. I would encourage all of you to advise your client to make the correct and accurate declaration of their incomes and contribute their due share of tax for the prosperity of our beloved country.</p> <p>Let's work for the better Pakistan.</p> <p>I wish all the success to all of you.</p> <p>Anwar Kashif Mumtaz President</p>	<p>Dear Members,</p> <p>The response of first issue of E-News & Views by the New Committee remained very encouraging for all of us.</p> <p>Following the same I am pleased to present the April to June 2011 issue of "KTBA'S E-News & Views".</p> <p>As has been done earlier the current issue of this quarter has also been emailed to all the members of the Bar. As was expected the emailing of the letter has immensely increase the readership of the Bar's letter to a greater circle of our profession.</p> <p>As you would know that for the first time the case laws from the corporate law segment have also been included in E-News & Views Letter. However in view of the large and broad spectrum of corporate laws a careful choice needs has been exercised so as to confine the coverage strictly to those laws which would have a direct or indirect bearing to our core areas of tax practice.</p> <p>The E-News & Views has also been posted on the website of KTBA.</p> <p>You suggestions remain the most valuable in our every effort.</p> <p>Regards Muhammad Arshad Convener E- News & Views Committee</p>

IMPORTANT CIRCULARS & NOTIFICATION/SROS

DIRECT TAX

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

CIRCULAR/SROS/ NOTIFICATIONS REFERENCE	SUBJECT	ITBAK LIBRARY REF: No.
Circular No.5 of 2011 Dated 30-04-2011	Management of tax collection and its accounting procedure issued for information in suppression of Circular No.6 of 1995 dated 12-07-1995 and Circular No.12 of 1996 dated 28-08-1996.	714
Circular No.6 of 2011 Dated 18-06-2011	Clarifications in regard to substituted sub-clause (45A) of Part-IV of the Second Schedule to the Income Tax Ordinance, 2001 by SRO 333(I)/2011 dated 02.05.2011 for conditional exemption of applicability of S.111(1)(a) on any investment.	715
Circular No.1(8)Rev.Bud/98 Dated 25-06-2011	Intimation of collection of Income Tax on 29 th and 30 th June, 2011 by authorized branches of State Bank of Pakistan and National Bank of Pakistan.	716
S.R.O 317(I)/2011 Dated 19-04-2011	Clause (78) inserted in Part-IV of the Second Schedule to Income Tax Ordinance, 2001 providing following exemptions with respect to a project situated in the Special Economic Zone at Thar Coalfield: a) Dividend Income of the Shareholders of such a project shall be exempt from the provisions of S.150 (withholding-tax) from the date of commencement of business till 30-years from such date; and b) Payments made on account of sale or supply of goods or providing or rendering of services during project construction and operations, shall be exempt from the provisions of section 153 (withholding-tax) of the Income Tax Ordinance,2001.	717

Circular/SROs/ Notifications Reference	Subject	ITBAK Library Ref: No.
S.R.O 328(I)/2011 Dated 27-04-2011	Final Income Tax Rule 81B in respect of Active Taxpayers List inserted.	718
S.R.O 333(I)/2011 Dated 02-05-2011	<p>Clause (45A) inserted in Part-IV of the Second Schedule to Income Tax Ord., 2001 substituted specifying rate of withholding-tax @ 1% u/s.153(1)(b) on local sales, supplies or services made or rendered to the following five categories of sales tax zero-rated taxpayers:</p> <ol style="list-style-type: none">(1) textile and articles thereof;(2) carpets(3) leather and articles thereof including artificial leather footwear;(4) surgical goods; and(5) sports goods. <p>Provided that withholding-tax under clauses (a) and (b) of S.153(1) shall not be deducted from sales, supplies and services made by traders of yarn to the above registered categories of taxpayers. Such traders of yarn shall pay minimum tax @ 0.1% on their annual turnover on monthly basis on 30th day of each month and monthly withholding-tax statement shall be e-filed under S.165 of the Income Tax Ordinance, 2001.</p> <p>Further provided that provisions of clause (a) of S.111(1) of the Income Tax Ordinance,2001 shall not apply to the amounts credited in the books of accounts maintained for the period ended 30-06-2011 by the sellers, suppliers, service providers to the above sales tax zero-rated categories.</p> <p>However, further provided that the above concessions shall only be applicable to the cases of sellers, suppliers, service providers of the above mentioned categories of sales-tax zero-rated taxpayers, who are already registered and to those taxpayers, who get themselves registered by 30-06-2011.</p>	719

Circular/SROs/ Notifications Reference	Subject	ITBAK Library Ref: No.
S.R.O 357(I)/2011 Dated 04-05-2011	Final Income Tax Rule-12A inserted for Decommissioning Certificate, as required under sub-rule (4A) of rule 2 of Part-I of the Fifth Schedule to the Income Tax Ordinance, 2001	720
	Draft of certain amendments in the First Schedule of the Income Tax Rules, 2002 is proposed.	
S.R.O 458(I)/2011 Dated 28-05-2011	Draft amendments in Income Tax Rule-19A proposed for replacing the words “Member (Direct Taxes)” by the “Member Inland Revenue”, etc.	721
S.R.O 459(I)/2011 Dated 28-05-2011	Amendment made in Clause (78) of Part-IV of the Second Schedule of the Income Tax Ordinance, 2001 providing exemptions from withholding-tax u/s.150 on Dividend Income and u/s.153(1)(a) & (b) on sales, supplies and services rendered which are now available to “Coal Mining and Coal based Power Generation Projects in Sindh” instead of earlier exemption restricted to a “Project situated in the Special Economic Zone at Thar coalfield” .	722
S.R.O 609(I)/2011 Dated 13-06-2011	<p>Immunity from levy of Penalty and Default Surcharge provided in cases where,</p> <p>(1) the withholding-agents have not deducted advance withholding-tax as required under the Income Tax Ordinance, 2001</p> <p>(2) the withholding agents have deducted or withheld income tax but not deposited the tax deducted or withheld within due dates as prescribed under the Income Tax Ordinance, 2001</p> <p>and the above specified withholding agents deposit the due tax in the Government treasury on or before 30-06-2011.</p> <p>It is provided that nothing in this notification shall entitle any person to claim refund for default surcharge or penalty already paid.</p>	723

Circular/SROs/ Notifications Reference	Subject	ITBAK Library Ref: No.
S.R.O 647(I)/2011 Dated 25-06-2011	However, it is further provided that in case where refund becomes due to any person in consequence of a decision/judgment of any court at any stage after the deposit of tax under this notification, it shall be refund.	724

INDIRECT TAX

CIRCULAR/SROs/ NOTIFICATIONS REFERENCE	SUBJECT	ITBAK LIBRARY REF: No.
SRO 283(I)/2011 Dated 01-04-2011	Federal Government has notified certain goods of five major exports oriented sectors on which sales tax shall be charged at the rate of 0% on the supply and import of such goods, or at reduced rate of sales tax of 6% or 4% as the case may be.	725
SRO 323(I)/2011 Dated 27-04-2011	Through this SRO certain goods have been omitted which was inserted in above SRO 283.	726
SRO 369(I)/2011 Dated 07-05-2011	Certain items with dedicated use of renewable source of energy like solar and wind etc. have been exempted from sales tax.	727
SRO 480(I)/2011 Dated 03-06-2011	Through this SRO following SROs have been rescinded wherein exemptions from sales tax to certain goods were granted. <ul style="list-style-type: none"> - SRO 1240(I)/2005 dated 16-12-2005 (Dump Trucks for off-highway use, transit concrete mixture) - SRO 542(I)/2006 dated 05-06-2006 (Certain locally manufactured/imported agricultural machinery, equipment and implements) - SRO 275(I)/2008 dated 12-03-2008 (Import and supply of CKD Kits of single cylinder agricultural diesel engines) 	728
SRO 481(I)/2011 Dated 03-06-2011	Through this SRO the exemptions from sales tax granted earlier vide SRO 551(I)/2008 dated 11-06-2008 have been withdrawn in respect of following goods. <ul style="list-style-type: none"> - CNG kits, cylinders and valves for CNG kits. - Commercial catalogues - Rock Phosphate - Phosphoric Acid - Mineral oil 	729

CIRCULAR/SROs/ NOTIFICATIONS REFERENCE	SUBJECT	ITBAK LIBRARY REF: No.
SRO 484(I)/2011 Dated 03-06-2011	This notification rescinds the notification No.364(I)/2007 dated 03 May 2007. The said notification was issued by the Federal Government whereby the rate of Federal Excise Duty on the services provided by Cable TV operators was fixed at eight rupees per subscriber per month. The notification is effective from 04 June 2011.	730
SRO 485(I)/2011 and SRO 486(I)/2011 Dated 03-06-2011	<p>Certain goods were subject to sales tax at zero rate through various notifications. Zero rating was withdrawn through these two SROs w.e.f. 04-06-2011 by rescinding/amending the following SROs.</p> <ul style="list-style-type: none"> - SRO 1161(I)/2007 dated 30-11-2007 (Import of raw material for the manufacturing of diapers) - SRO 549(I)/2008 dated 11-06-2008 (Import and supply of following goods: <ul style="list-style-type: none"> - Dedicated CNG buses including buses for transportation of forty or more passengers whether in CBU or CKD condition. - Trucks and dumpers exceeding 5 tons. - Trailers and semi trailers for the transport of goods. - Road tractors for semi-trailers, prime movers and road tractors for trailers whether in CBU condition or in kit form. 	731
SRO 489(I)/2011 Dated 03-06-2011	Exemption from levy of Special Excise Duty (SED) on certain goods was provided by the Federal Government through SRO 655(I)/2007 dated 29-06-2007. Consequent to the abolishment of SED the aforesaid SRO is rescinded through SRO 489. This SRO is effective from 01-07-2011.	732
SRO 633(I)/2011 Dated 18-06-2011	Through this SRO the levy of Federal Excise Duty has been exempted on White cement.	733

CIRCULAR/SROs/ NOTIFICATIONS REFERENCE	SUBJECT	ITBAK LIBRARY REF: No.
Sales Tax General Order 03 of 2011 Dated 24 June 2011	The FBR has permitted the manufacturers to use existing packing material whereby rate of sales tax is printed at 17% for a period of one month starting from 01-07-2011. This concession is, however, subject to certain conditions.	734
SRO 648(I)/2011 Dated 25 June 2011	Through this SRO the Federal Government has exempted whole amount of default surcharge and penalty payable under the Sales Tax Act, 1990 and Federal Excise Act, 2005 by the registered person against whom the amount of Sales Tax of Federal Excise Duty is outstanding, subject to the condition that the outstanding principal amount of Sales Tax or Federal Excise Duty is paid by 30-06-2011.	735

CORPORATE

CIRCULAR/SROs/ NOTIFICATIONS REFERENCE	SUBJECT	ITBAK LIBRARY REF: No.
S.R.O 289(I)/2011 Dated 04-04-2011	Part-II of the Second Schedule to the Companies Ordinance, 1984 substituted regarding "Form of Statement in lieu of Prospectus to be delivered to Registrar by a Company which does not issue a Prospectus or which does not go to allotment on a Prospectus issued, and Reports to be set out therein"	736
S.R.O 350(I)/2011 Dated 05-05-2011	Certain draft amendments proposed in Non-Banking Finance Companies and Notified Entities Regulations, 2008	737
S.R.O 371(I)/2011 Dated 09-05-2011	SECP deferred the applicability of the Companies Cost Accounting Records (General Order), 2008 on all companies engaged in the following industries to be applicable from the financial year commencing on or after July 01, 2011: <ol style="list-style-type: none">1. Fertilizer2. Thermal Energy3. Petroleum Refining4. Natural Gas, and5. Polyester Fiber.	738
S.R.O 587(I)/2011 Dated: 07-06-2011	Exemption granted from IFRS-2 Share Based Payments to all such entities, which are otherwise required to comply with the IFRS-2 while accounting for the "Benazir Employee Stock Option Scheme", dated 14-02-2009. However, exemption is subject to the compliance by these entities with the requirements if IFRS regarding effect of disclosure of such departure. The prescribed disclosure requirements shall be effective on accounts made on and after the period ending June 30, 2011. Illustration of disclosure also given.	739
S.R.O 599(I)/2011 Dated: 13-06-2011	Certain amendments made in Companies (Registration Offices) Regulations, 2003.	740

Circular/SROs/ Notifications Reference	Subject	ITBAK Library Ref: No.
S.R.O 640(I)/2011 Dated: 22-06-2011	Condition imposed on holding companies registered under the Group Companies Registration Regulations, 2008 that they shall maintain their websites and place thereon the annual audited financial statements of their Group along with their directors' report and auditors' report. The holding companies shall report the compliance by intimating the Commission their website address within 15-days of the issuance of this notification	741
Press Reports	The SECP has started redrafting of Companies Ordinance, 1984 to make it compatible with the best global practices and growth of corporate sector. It is expected to be finalized in next 12 to 18 months.	742

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
2011 PTD (Trib) 1052 (2011) 103 Tax 137 (Trib) Lahore High Court	Sections 3, 4, 27 of the Wealth Tax Act 1963 FACTS OF THE CASE The applicant in the assessment year 1994-95 initially claimed advance for purchase of agricultural land in the return and subsequently claimed the exemption in respect of the land by filing revised return which was not granted by the department. DECISION It was held by the Hon'ble Court that the Tribunal was not justified in rejecting the ownership of the agricultural land as the right on the amount paid as advance payment for agricultural land has come to an end and thus could not be included in the taxable assets under section 2(5) of the Act.
2011 PTD (Trib) 886 Sindh High Court	SECTIONS 2(9A) & CLAUSE 105 OF 2ND SCHEDULE TO THE INCOME TAX ORDINANCE 2001 FACTS OF THE CASE Taxpayer/Respondent a mutual fund owned by Investment Corporation of Pakistan (ICP) filed return for the assessment Year 1993-94 in the status of a Modaraba. The Taxation Officer rejected the claim and assessed as public company. The Learned Appellate Tribunal held that the assessee should be assessed as Modaraba. DECISION The Hon'ble High after a detailed analysis has held that Mutual Funds falls under the definition of Modaraba and entitled for the same tax treatment as provided for Modarabas.
ITRA No 138/2011 Dated 27-05-2011 Sindh High Court	Section 147(1), (6) and (7) of the Income Tax Ordinance, 2001 FACTS OF THE CASE Appeal was filed by the taxpayer against the decision of Appellate Tribunal Inland Revenue, Karachi, holding that assessing officer can reject the estimate of advance tax filed by a taxpayer under section 147 (6) , a Nil estimate of advance tax can not be filed under section 147 (6) and the assessing officer can pass an order under section 147 (7) to recover the advance tax not paid by a taxpayer.

CITATION

ISSUES INVOLVED

The following questions were referred to the High Court:

- (a) Whether an Officer of Inland Revenue has the power to reject an estimate filed by a taxpayer under sub-section (6) of section 147 of the Income Tax Ordinance 2001?
- (b) Whether an Officer of Inland Revenue can frame an assessment order for payment of advance tax under sub-section (6A) or sub-section (7) of section 147 of the Income Tax Ordinance 2001?

DECISION

The Hon'ble High Court held that:

- (i) Estimate filed by a tax payer who is required to pay advance tax under section 147 (1) can not be rejected by the tax authorities.
- (ii) A tax payer can also file a Nil estimate of advance tax under sub-section (6) of section 147.
- (iii) The tax authorities can not pass an order under sub-section (7) of section 147.
- (iv) Sub-section (7) of section 147 of the Income Tax Ordinance 2001 provides an authority to Taxation Authorities to recover advance tax not paid by the tax payer.

ITRAs No 158 to 160/2010
Dated 06-06-2011
Sindh High Court

Apportionment of expenses under Section 67 of the Income Tax Ordinance 2001 between exempt capital gain/dividend income and taxable income from insurance business.

FACTS OF THE CASE

The respondent a public limited company is engaged in the business of general insurance. Assessments for the tax years 2005, 2006 and 2007 were treated by the department as erroneous and prejudicial to the interest of revenue under section 122(5A) of the Income Tax Ordinance, 2001 thereby prorating the expenses relating to exempt capital gain and dividend income between taxable and exempt income under section 67 of the Ordinance. The Commissioner Inland Revenue (Appeals) and the Appellate Tribunal annulled the orders U/s 122(5A). The Department came-up in reference before the High Court. Among others following questions were referred:

- Whether under the facts and circumstances of the case, the learned Tribunal was justified in upholding the order of the Commissioner (Appeals) which has relied upon the erroneous concept that fourth schedule does not sanction application of section 67 of the Income Tax Ordinance, 2001; whereas section 99 of the Ordinance is not a non-obstante clause?

CITATION

ISSUES INVOLVED

- Whether under the facts and circumstances of the case, the learned Tribunal was justified to uphold the order of the Commissioner (Appeals) annulling the order under section 122(5A), without considering the provisions of section 67 read with section 7 and 8 of the Ordinance?

DECISION

The Hon'able High Court has been pleased to hold as under:-

“-----Profit and gains of an Insurance Company are to be computed as per the Fourth Schedule only and we find no deviation in the new Ordinance from that of the repealed Ordinance and only the expenses which have expressly been held to be not allowable, as per the Fourth Schedule are to be excluded while computing the income of an Insurance Company.

We also observe that in the Seventh Schedule of the new Ordinance, which deals with the computation of income of Banking Companies only, there is a specific Rule 9 which states that the provisions of the Ordinance would apply to the Seventh Schedule whereas no such rule is available in the Fourth Schedule meaning thereby that the taxability of an Insurance Company has to be dealt with in accordance with the rules prescribed there under only. The Rule 6A of the Fourth Schedule specifically deals with the capital gain earned by the Insurance Company which exempts the same from the levy of the tax as though the same are exempt from tax under the Second Schedule but after the announcement of the decision by the Hon'able Supreme Court of Pakistan, mentioned above, specific exemption under Fourth Schedule is also necessary for exempting income under the head capital gain also. The Fourth Schedule being special provision override the other provisions and the profits and gains of Insurance Companies are to be made in accordance with the Fourth Schedule only and as there is no mention of section 67 of the Ordinance in the Fourth Schedule the provision of section 67 could not be applied so far as working out the profits and gains of an Insurance Company under the Fourth Schedule.

In view of the observations made above we are of the considered view that the department has miserably failed to justify the application of section 67 of the Ordinance so far as the cases of Insurance Companies are concerned. We therefore, answer both the questions raised in these ITRA in negative i.e. against the department and in favour of the assessee.

Citation	Issues Involved
2011 PTD (Trib) 834 Appellate Tribunal Inland Revenue	Sections 127, 205 of the Income Tax Ordinance, 2001 FACTS OF THE CASE The taxpayer has challenged the order of CIT (A) who has dismissed the appeal of the taxpayer holding it to incompetent as section 205 has not been mentioned in section 127 of the Income Ordinance, 2001. DECISION It has been held by the Learned Appellate Tribunal that the order passed by the CIT(A) is against the provisions of law and observed that even before the insertion of section 205 in section 127(1) of the Income Tax Ordinance,2001 vide Finance Act 2009, the orders passed U/S 205 are appealable before CIT(A)
2011 PTD (Trib) 845 (2011) 103 Tax 289 (Trib) Appellate Tribunal Inland Revenue	SECTIONS 57(A), 2(1A), 67, 120, 122(5A), 133 OF THE INCOME TAX ORDINANCE, 2001 FACTS OF THE CASE The case of a private limited company who is engaged in manufacturing and sale of yarn was amended under section 122(5A) of the Income Tax Ordinance, 2001. The CIT(A) allowed entitlement of benefit of set off of losses of amalgamating companies merged into appellant by virtue of merger scheme but did not entertain appeal regarding allocation of expenses under section 67 of the Income Tax Ordinance,2001 read with Rule 13 of the Income Tax Rules 2002 DECISION The Appellate Tribunal held that in view of section 57A of the Income Tax Ordinance, 2001, the appellant is not entitled to the adjustment of set off of brought forward losses of amalgamating companies. The issues regarding issue of allocation of expenses were remanded back for re-consideration of the matter.
2011 PTD (Trib) 876 Islamabad High Court	SECTIONS 122(5A), 133, 177 OF THE INCOME TAX ORDINANCE, 2001 FACTS OF THE CASE The taxpayer/appellant who is engaged in the business of constructions and sale of plazas selected for audit under section 177 of the Income Tax Ordinance,2001 and subsequently was subject of amendment of assessment as provided under section 122(5A) of the Income Tax Ordinance,2001. DECISION The Hon'ble Islamabad High Court consider it proper and justified that if nothing is produced before the Taxation Officer during audit proceedings U/s 177 than he could inquire into the income of the taxpayer through other means.

CITATION	ISSUES INVOLVED
2011 PTD (Trib) 893 (2011) 103 Tax 321 (Trib) Appellate Tribunal Inland Revenue	SECTIONS 2(I) & 4 OF THE WORKERS' WELFARE FUND ORDINANCE 1971 FACTS OF THE CASE The deemed order under section 120 of the Income Tax Ordinance, 2001 for the tax year 2007 was rectified by the Taxation Officer for the reason that the taxpayer has paid WWF @ 2% of total income as per return and not on net profit as per accounts which was higher. The CIT(A) observed that WWF as per section 4 of the Ordinance 1971 is chargeable on total income as assessable under the Ordinance instead of accounting profit before taxation as assessed by the Taxation Officer. DECISION The Learned Appellate Tribunal in view of the established principles of interpretation of statutes enunciated by the Supreme Court and by relying on case reported as 2002 PTD 14 (Kar HC) interpreted the provisions of WWF Ordinance 1971 as amended vide Finance Acts 2006 & 2008 and confirmed the decision of CIT(A).
2011 PTD (Trib) 901 (2011) 103 Tax 404 (Trib) Appellate Tribunal Inland Revenue	Sections 221, 122(5A), 21(k), 21(c), 169 148 of the Income Tax Ordinance, 2001 FACTS OF THE CASE The department in the case objected to the assumption of jurisdiction under section 221 of the Income Tax Ordinance, 2001 by the CIT(A) for rectification of his order passed earlier. The taxpayer contested the order of CIT(A) for confirming the disallowance of expenses. DECISION It has been held by the Learned Appellate Tribunal that the order can be rectified under Section 221 of the Income Tax Ordinance, 2001 if a law found to have been applied in the manner contrary to the ruling of the competent court provided it has not become past and closed transaction by virtue of limitation. It has also been held that export rebate may not be treated as part of export proceeds for the purposes of proration of expenses.
2011 PTD (Trib) 936 Appellate Tribunal Inland Revenue	Sections 122(5), 121, 115(4), 144(6), & 177 of the Income Tax Ordinance, 2001. FACTS OF THE CASE The deemed order for the tax year 2003 was first amended under section 122 of the Income Tax Ordinance, 2001 on 23.2.2004 and was subsequently amended on 23.12.2008 under section 122(5A). The deemed order for the tax year 2004 and 2005 were rectified under section 221 of the Income Tax Ordinance, 2001 by the Taxation Officer on similar grounds and on same date as tax year 2003.

CITATION	ISSUES INVOLVED
	<p>DECISION</p> <p>The concept of merger is applicable to the Income Tax Ordinance 2001 as there cannot be more than one operative order at one and the same time and on same subject matter. The amended part of the original order merged into amended order</p> <p>It has been further held that limitation for amendment of assessment do not curtailed to one year under section 122(4) of the Income Tax Ordinance,2001 after the first amendment of the original assessment order. The un-amended part of the original order can be amended at any time within five years deemed order.</p>
2011 PTD (Trib) 967 (2011)103 Tax 383 (Trib) Appellate Tribunal Inland Revenue	<p>Sections 148(7), 177, 21 (c)(k)(g), 2(54), 152(1), 23, 221, 75(3A), 67, 113(2)(c) of the Income Tax Ordinance, 2001</p>
	<p>FACTS OF THE CASE</p> <ul style="list-style-type: none">i) The tax withheld at import stage in respect of vehicles for employees was held to final discharge of tax liability by the Taxation Officerii) The Taxation officer also disallowed the claim of tax deducted on account of “initial license fee” under section 21(c) by holding that tax was deductible @ 30% as against 15% deducted by the taxpayer..iii) Canteen subsidy, cost of living, freight and handling charges for acquisition of food were treated as excess perquisite u/s 21(k) by the Taxation Officer.iv) The Taxation Officer disallowed certain profit and loss account expenses in a summary manner without recording any reason for rejection.v) The department assailed the order of CIT(A) on the issue of import of spare parts to the extent of these utilized in warranty services held not covered under final Tax regime.vi) The provision for custom duty disallowed by the Taxation Officer on the grounds that it did not meet the requirement of section 34(3), besides, not an allowable expense in terms of section 21(g) being in the nature of fine and penalty.vii) The department challenged the order of CIT(A) wherein loss from writing off obsolete plant & machinery has been held to be an allowable deduction.

CITATION	ISSUES INVOLVED
	DECISION
	i) The Learned Appellate Tribunal hold that the items which have been imported for the purposes of self use fall outside the ambit of final tax regime. Accordingly the tax collected at import stage is treated as an advance tax.
	ii) Facts leads to show that the amount was paid for the use of model/design/specification which is classifiable as royalty hence covered u/s 2(54) of the Income Tax Ordinance, 2001.
	iii) The Learned Tribunal held that the Taxation Officer has to follow the instructions contained in Board's Circular No. 16 of 1990 regarding the issue of canteen subsidy. The issue was set aside with direction to reassess the claim keeping in view the said circular and case law reported as (1998) 77 Tax 204 (Trib).
	iv) The Learned Tribunal disapproved the manner of rejecting the claimed expenses and deleted the same while observing that there is plethora of case laws of the superior courts wherein it has been held that the order has to be speaking order and each and every contention has to be dealt with carefully.
	v) The Learned Tribunal upheld the order of the CIT(A) and observed that if the parts have not been sold but provided free of cost as replacement under warranty scheme, the tax collected at import stage would not constitute final tax and would be covered by exception as provided under section 148(7) of the Income Tax Ordinance, 2001.
	vi) The Learned Tribunal is of the view that the provision was made on account of principal amount of customs duty, hence not a fine or penalty therefore rightly held as allowable expense by CIT (A).
	vii) The Learned Tribunal while relying on an unreported decision of the tribunal bearing ITA No. 1003/LB/2008 dated 19-05-2009 approved the contention of the taxpayer that once the write off treated as disposal by fiction of law u/s 75(3A) the general principle of fair market value become inapplicable.

CITATION	ISSUES INVOLVED
2011 PTD (Trib) 1039 (2011) 103 Tax 367 (Trib) Appellate Tribunal Inland Revenue	SECTIONS 221, 56, 57(4), 21(G), 67 & 23 OF THE INCOME TAX ORDINANCE 2001 FACTS OF THE CASE The Taxation Officer contends that other income consisted of interest from banks and exchange gain being assessable as income from other sources could not be set off against brought forward losses of the company. DECISION The Learned Appellate Tribunal after discussing the issue has held that other income to the extent of exchange gain should be treated as part and parcel of business income for the purposes of set off against accumulated losses of preceding years.
2011 PTD (Trib) 1172 Appellate Tribunal Inland Revenue	SECTIONS 111, 122, 127 & 131 OF THE INCOME TAX ORDINANCE 2001 FACTS OF THE CASE The Taxation Officer amended the order under section 122(1) of the Income Tax Ordinance, 2001 and made additions under section 111(1) (a) as unexplained credits. The CIR (A) deleted the additions for the reason that it is not maintainable in view of section 111(2) of the Income tax Ordinance, 2001. DECISION The Learned Appellate Tribunal confirmed the order of the CIR(A) with the observation that legislature has restricted the addition in the tax year immediately preceding the financial year of discovery provided the addition made in accordance with law. Further observed that it is settled proposition that acts, things and deeds should be done in the prescribed manner or should not be done at all.
2011 PTD (Trib) 1250 Appellate Tribunal Inland Revenue	SECTIONS 122(5A), 129, & 131 OF THE INCOME TAX ORDINANCE, 2001 FACTS OF THE CASE The taxpayer is engaged in the business of sale of electrical home appliances on retail and hire purchase basis. The Taxation Officer taxed the difference of retail sale and finance income /mark up on hire purchase sale as other income treating it as profit on debt. The CIR (A) remanded the case back to Taxation officer while accepting the legal and factual grounds. DECISION It has been held by the Learned Tribunal that issue once settled and accepted by the department, shall not be allowed to deviate from it because it will create uncertainty which has always been deprecated and disapproved by the Superior Courts, Legislature and as well as FBR. Remand under the circumstances held to be unjustified by the Appellate Tribunal

CITATION

2011 PTD (Trib) 1351
Appellate Tribunal Inland
Revenue

ISSUES INVOLVED

SECTIONS 37, 37(5C), 122(5), 177 & 117(1) OF THE INCOME TAX ORDINANCE, 2001

FACTS OF THE CASE

The taxpayer, a private limited company engaged in the business of construction and development projects claimed exemption on gain on sale of immovable property in view specific exemption provided in item 50 of Federal Legislative List in 4th Schedule to the Constitution of Pakistan.

DECISION

The Learned Appellate Tribunal after discussing and considering a number of case laws of Superior Courts as well as of Tribunal on the subject cited by the AR cancelled the order passed u/s 122(5) of the Income Tax Ordinance, 2001 by the Taxation Officer while observing the following.

1. Intention at the time of purchase of land is very important. If land was purchased with the sole intention to execute a project, for example hotel, plaza, cinema, construction project etc; but afterwards, it could not materialize its intention and had to sell the land in inevitable and compelling circumstances the consequent gain is an exempt capital gain.
2. That in case of solitary transaction the gain arising on immovable property heavy burden lays on the revenue to establish that the impugned transaction in fact was a business and receipt out of it is a business receipts.
3. If the immovable property is sold after a considerable period then this facts is undeniable supportive evidence that the resulting gain is capital gain.
4. If company has no history of dealing in sale and purchase transaction of land in past and this is an isolated transaction entered into without having other realistic business alternative destined to avoid this transaction then the resulting gain is capital gain.
5. If immovable property is sold in the same condition as it was when it was purchased. This means that no value addition or improvement in quality of the said property was made for the purpose of selling it. In this case, realization of accretion in value of immovable property is capital gain.
6. If the land is sold in compelling circumstances and the intention at the time of the sale is to realize blocked money then gain arising in the transaction is a capital gain which is not taxable.

CITATION	ISSUES INVOLVED
ITA No 357/KB/2011 Dated 10-05-2011 ITA No 351/KB/2011 Dated 11-05-2011 ITA No 352/KB/2011 Dated 12-05-2011 ITA No 350/KB/2011 Dated 13-05-2011 Appellate Tribunal Inland Revenue	Section 221 (1) of the Income Tax Ordinance, 2001. FACTS OF THE CASE The taxpayers filed statement under section 115(4) of the Income Tax Ordinance, 2001. DCIR rectified the deemed order under section 120 in terms of section 221 (1) of the Income Tax Ordinance, 2001 to charge WWF as per section 4 (4) of the WWF Ordinance 1971. DECISION: Held that charge of WWF does not constitute a mistake apparent from records as it does not involve any calculation or totalling error and it involves interpretation of the relevant law therefore, it does not come under the purview of rectification under section 221 of the Ordinance. It was further held that contention of the appellant is that provisions of WWF Ordinance can not override the provisions of Income Tax Ordinance, 2001 as the said Ordinance does not contain any non-obstante clause which is obvious from section 4 of the WWF Ordinance and tax deducted u/s 115 (4) of Income Tax Ordinance, 2001 represents final tax liability hence no other tax of any kind can either be charge, levied or payable as the WWF Ordinance does not any non-obstante clause. It is contended that these issues require further deliberations and adjudication and is not a mistake to be rectified under section 221. In view of these facts and circumstances of the case the Tribunal vacated the order of the Commissioner Inland Revenue Appeals and annulled the order of the assessing officer passed under section 221 of Income Tax Ordinance, 2001 read with section 4 (4) of the Workers Welfare Ordinance, 1971.
ITA No 1922/KB/2007 Dated 14-12-2010 Appellate Tribunal Inland Revenue	Section 122 (1) & (5) of the Income Tax Ordinance, 2001 FACTS OF THE CASE The case was selected for audit. Various add backs out of profit and loss account expenses were made to the declared profit by the assessing officer on completion of audit. The tax payer challenged the add backs/ disallowances out of profit and loss account expenses on the ground that the same do not constitute “definite information” acquired from audit within the meaning of sub-sections (5) and (8) of section 122 of the Income Tax Ordinance, 2001. Since conditions precedent for invoking the provisions of section 122 (1) are not fulfilled, therefore, the order under section 122 (1) read with section 122(5) of the Income Tax Ordinance, 2001 is not sustainable in the eyes of law.

CITATION

ISSUES INVOLVED

DECISION:

The learned Appellate Tribunal while placing reliance of the judgements of Hon'ble Supreme Court of Pakistan in CIT Vs Eli Lilly Pakistan (Pvt) Ltd and Others [2009 PTD 1392 = 100 Tax 81], Islamabad High Court in Pakistan Mobile Communications (Pvt) Ltd Vs CIT Audit Division [2010 PTCL 354 = 2010 PTD 1506] and 2007 PTD 2601 (Trib) held that add backs/ disallowances out of trading, manufacturing, profit and loss account that is filed by the tax payer alongwith his return do not constitute "definite information" acquired from audit as defined in section 122 (8) of the Income Tax Ordinance, 2001. The learned Appellate Tribunal upheld the findings of the Commissioner Inland Revenue (Appeals) and annulled the order of the assessing Officer.

INDIRECT TAX

CITATION

(2011) PTD 1232
Supreme Court of Pakistan

ISSUES INVOLVED

**Section 2(18), 30, 45A and 47A of the Sales Tax Act, 1990
Section 21 of the General Clauses Act, 1897**

FACTS OF THE CASE

In this case a controversy was raised between the taxpayer and the department with reference to exemption from Sales Tax on the products dealt by the taxpayer. The taxpayer approached the Federal Board of Revenue (FBR) for appointment of Alternate Dispute Resolution (ADR) Committee under Section 47A of the Sales Tax Act, 1990 for resolution of the dispute. Thereafter, the FBR passed an order under Section 47A of the Sales Tax Act, 1990 accepting the recommendations of the ADR Committee.

Subsequently, FBR again issued notice to the taxpayer by exercising powers under Section 45A of the Sales Tax Act, 1990 read with Section 21 of the General Clauses Act, 1897 to reexamine its earlier order. The taxpayer assailed this notice before the High Court of Sindh in the constitution petition. The High Court allowed the petition and instruct down the notice. Thereafter the department filed Civil Petition before the Supreme Court of Pakistan.

DECISION

The Apex Court has held that the FBR had a power to examine decision or order of an Officer Inland Revenue which according to Section 2(18) read with Section 30 of the Sales Tax Act, 1990 does not include the Board itself. Board has no authority to examine legality or propriety of its own orders. The Apex Court also held that power under Section 21 of the General Clauses Act, 1897 for being general in nature could not be exercised by an authority for recalling order passed in quasi judicial capacity. The provisions of General Clauses Act could not be invoked in the presence of Section 45A of the Sales Tax Act, 1990. The Honourable Court also observed that the Board, under the Sales Tax Act, 1990, had discretion not to appoint such committee and could withhold its approval. Board had consciously appointed such committee and accepted its recommendation and after such exercise, Board could not reopen the entire issue.

(2011) PTD (Trib) 1143
Inland Revenue Appellate
Tribunal

Section 10, 21, 46, 66 and 67 of the Sales Tax Act, 1990

FACTS OF THE CASE

The claim of refund was rejected in order in original on the charge of violation of various Section of the Sales Tax Act, 1990. On an appeal, the Collector (Appeals) set-aside the order in original.

CITATION

ISSUES INVOLVED

(2011) PTD (Trib) 1306
Inland Revenue Appellate
Tribunal

DECISION

The learned Appellate Tribunal held that the purchases by the taxpayer were made at the time when the supplier was not suspected and his subsequent inclusion in the list of suspected unit could not be charged retrospectively. Recovery against the suspected person could be made upon his listing by the Collector of Sales Tax after adhering to due process of law as provided under Section 21 of the Sales Tax Act, 1990 and the Sales Tax Rules, 2006. The learned Appellate Tribunal finally concluded that the order in appeal passed by the Collector (Appeals), being within law could not be interfered within the circumstances.

Section 25 and 30 of the Auditors General's (Functions, Powers and Terms and Conditions of Service) Ordinance (XXIII of 2001)
Section 3, 7, 8, 33 and 34 of the Sales Tax Act, 1990

FACTS OF THE CASE

In this case a team of Directorate of Revenue Receipt Audit (DRRA) had conducted desk audit of revenue receipt of Collectorate of Sales Tax. Thereafter audit team found that the observation of DRRA was valid and accordingly proceeding had been started and Sales Tax demand was raised. The taxpayer, among other issues, contended that DRRA is not authorized to conduct the audit of sales tax of its records.

DECISION

The learned Appellate Tribunal has held that officers of DRRA had not been vested with power of Sales Tax Officer and therefore could not conduct audit of taxpayer directly. However, DRRA could exercise functions of review of the audit receipts of a Federal Tax collecting agency by examining the tax records of a taxpayer. DRRA has pointed out short payment of the tax not to the taxpayer but to the tax collecting agency which was a quite lawful. Accordingly, the learned Appellate Tribunal has held that the initiation of adjudication proceeding based on the observation of DRRA was perfectly lawful.

2011 PTD (Trib) 857
Inland Revenue Appellate
Tribunal

Section 12 of the Sales Tax Act, 1990
Section 12 of the Federal Excise Act, 2005

FACTS OF THE CASE

In this case the appellant is a partnership concern and involved in the business of manufacturing of lubricating oil and charge Federal Excise on the retail price. Refund which was claimed by the appellant was denied by the authorities. On an appeal, the First Appellate Authority directed to constitute a Valuation Committee under Section 12(1) of the Federal Excise Act, 2005 which shall estimate the value of supply and the Federal Excise Duty would be determined and charged accordingly. The appellant contended that the provision of Section 12(1) of the Federal Excise Act, 2005 incorporated and enforce w.e.f. 01 July 2008 and such law could not be given retrospective effect.

CITATION

ISSUES INVOLVED

DECISION

The learned Tribunal observed that Taxpayer applied for refund on the basis of goods sold on retail price during the period 1-10-2007 to 31-3-2008 while the provisions of section 12(1) of the Federal Excise Act, 2005 was introduced/incorporated and enforced w.e.f. 15th July 2008 and was applicable for the determination of Excise Duty depending upon the value after excluding the amount of duty, whereas on the retail price in terms of Section 12(4) of the Federal Excise Act, 2005 includes all charges and duties and these two are distinct and totally distinguishable provisions of Federal Excise Law and could only be applied separately remaining within their own spheres. Taxpayer having exclusive right to fix the retail price of the commodities produced by him and he had charged Federal Excise duty on the same retail price. Federal Excise duty paid on purchases was adjustable under Section 6 of the Federal Excise Act, 2005 against Federal excise duty on the purchases than the duty charged on the suppliers and it was the legal right of the taxpayer that over paid Federal Excise Duty should be refunded to him under Rule 8 of the Federal Excise Rules, 2005. The learned Tribunal has held the orders passed by the authorities below had no legal consequences in the eyes of law and accordingly orders of the said authorities were vacated and it was directed that the Additional Collector should allow refund in accordance with law.

2011 PTD (Trib) 1010
Inland Revenue Appellate
Tribunal

Section 10, 11, 45B, 46, 66, 67 and 73 of the Sales Tax Act, 1990

FACTS OF THE CASE

In this case the appellant had claimed refund upon the confirmation of zero rating goods and submitted proof of his claim with supporting documents. The functionaries of Collectorate of Sales Tax withheld the claim of the appellant for indefinite period. Thereafter appellant filed complaint with Federal Tax Ombudsman who recommended that Collector concern to process and finalize the claim of the refund and that compensation for the withheld amount be paid under Section 67 of the Sales Tax Act, 1990. No compliance was made by the department and appellant filed appeal before the Deputy Director who rejected the claim of the appellant despite of the recommendation and findings of the Federal Tax Ombudsman.

DECISION

The Appellate Tribunal has observed that the show cause regarding rejection of refund claim issued by Deputy Collector was in excess of jurisdiction as same could be issued by Additional Collector under Section 11(2) of Sales Tax Act, 1990, empowered under Section 45. Show cause notice had also been issued after inordinate delay of about five years, which under Rule 8 of Sales Tax Refund Rules, 2002, should have been issued within 14 days from the date of receipt of supportive documents. Appeal filed before the Collector (Appeals) was to be decided within 90 days i.e. 180 days in all, but appeal had not been decided within said stipulated period. No provision existed in Sales Tax Act, 1990 to levy tax twice i.e. firstly at the time of purchase and secondly at the time of sales, in addition to the tax already paid. Appellate order passed by the Collector (Appeals) was not sustainable in law being contrary to the law/rules and being erroneous was not in consonance of law, equity and natural justice. Department was directed by the Appellate Tribunal to pay the refund claim as permissible under the law.

CORPORATE

CITATION	ISSUES INVOLVED
2011 CLD 496 Sindh High Court	Sections 290 & 305 of the Companies Ordinance, 1984 Article 19-A & 199 of the Constitution of Pakistan

FACTS OF THE CASE

In this case, a constitutional petition under Article 19-A (Right to Information) & 199 was filed by certain shareholders holding 22% shares in S.M. Corporation (Private) Limited and 33% shares in its associated companies for giving direction to the company to furnish them information regarding various matters including books of accounts of the company. The reason for filing the petition was non-declaration of dividend over a long period of time by the directors of the company depriving the rights of property.

DECISION

Article 19-A of the Constitution provides a fundamental right to every citizen of the Country to have access to the information of public importance subject to the regulations and restrictions imposed by the law.

In view of the Court, the present case pertains to enforcement of the petitioners rights as shareholders of the company. The rights of shareholder to receive information and dividend and their rights in respect of mismanagement of the company were regulated under Section 290 and 305 of the Companies Ordinance, 1984, providing them complete remedy. Moreover, no violation of any fundamental rights of the petitioners/shareholder was pointed out by the learned counsel.

Sindh High Court dismissed the petition being not maintainable on the ground that Article 19-A was not attracted as the information sought by the petitioners was regarding operation of the company and was of no significance to 99.9% of people of Pakistan.

2011 CLD 533
Lahore High Court

Section 4 Negotiable Instruments Act 1881

FACTS OF THE CASE

In this case, the Appellants made and execute a promissory note in favour of the respondent against supply of goods along with the part payment in cash and the respondent obtained a decree of the District Court for the payment. The Appellants filed this Regular First Appeal (RFA) against the aforesaid decree on the contention that they had not received the amount in cash so the promissory note in question is not valid document and it was not correct that as a promissory note was merely a promise to pay a certain amount at a certain time. According to the Appellants the promissory note was executed as security and not for the payment. Therefore, the matter pertains to the rendition of accounts and suit is not maintainable.

CITATION

ISSUES INVOLVED

DECISION

The Honorable High Court dismissed the RFA as the promissory note in question was a valid 'promissory note' as defined under Section 4 of the Negotiable Instrument Act, 1881.

There are following four (04) conditions for a document to be a promissory note:

- i) an unconditional undertaking to pay
- ii) sum of money should be certain
- iii) the payment should be to, or to the order of a certain person, or to the bearer of the instrument
- iv) the maker should signed the document

In the view of the Honorable High Court, the aforesaid conditions fully established on the promissory note in question and the appellants are obliged to honour their promise.

2011 CLD 709
Sindh High Court

Section 3 & 4 the Admiralty Jurisdiction of High Court Ordinance, 1980

FACTS OF THE CASE

The brief facts of the case are that it is regarding two Admiralty suits involving common facts and law filed by M/s Khadija Edible Oil Refinery (Private) Limited (the plaintiff) against M.T. Glaxy (the Ship) and its registered owner M/s Glaxy Maritime Limited (GML).

The brief facts of the suits are that the plaintiff imported to consignments of Crude Oil and RBD Palm Olein from Malaysia which was delivered through M.T. Prosperity (MTP) and M.T. Horizon (MTH), the offending ship, on 22 September 2010 and 01 August 2010 respectively.

To the plaintiff, both the consignments were short landed and for that reason the claims were lodged on the offending ships which remained unsettled therefore the plaintiff filed present suits for the arrest of the Ship till the settlement of its claims and payment of claim amount against GMT on the ground that it is a sister ship of the two offending ships i.e. action in rem and personam joined in the same suit.

CITATION

ISSUES INVOLVED

DECISION

The Honorable High Court initially directed to arrest the Ship till the payment of the suit amount to the plaintiff or furnishing of a solvent surety of the equitable amount before the Court.

The direction was given on the representation of the plaintiff that the arrested Ship, MTP and MTH, are sister ships. Moreover, M/s Gloryship Maritime Pte Limited is the beneficial owner/principal of the three ships, as the registered owners of these ships are the subsidiaries of M/s Gloryship Maritime Pte Limited. However, the appellant could not provide any documentary evidence to confirm the legal status as contended by the plaintiff in this regard.

On the contrary, the defendant provided various document confirming that M/s Glaxy Maritime Limited, M/s Golden Regency Maritime Pte Limited and M/s Prosperity Maritime Pte Limit are registered owners of M.T. Glaxy, M. T. Prosperity and M.T. Horizon respectively proving it to the satisfaction of the Court that the three ships are not sister ship.

The Honorable Court decided that Action in rem and personan joined in one suit is maintainable.

However, the suit for arrest and damages can be sustained against the owner of offending ship in case person liable for claim in an action in personan, if beneficially owned majority shares in sister ship at time of accrual of cause of action, only then action in rem for arrest of sister ship could be filed and maintained when prima facie shown that the offending ships were beneficially owned by the GMT (the registered owner of M.T.Glax) against whom maritime lien exist. Whereas, sister ship of the offending ships with M.T.Glaxy (the arrested vessel) for reasons not legally sustainable under Section 3 & 4 of the Admiralty Jurisdiction of High Courts Ordinance, 1980.

The Honorable High Court referred a Judgment of the Bombay High Court stating legal status of the subsidiary company and parent/holding company (in the light of maritime law)

Finally, the Honorable High Court dismissed the applications for arrest of M.T. Glaxy and claim of damages from GMT and the earlier orders for the arrest of M.T. Glaxy passed in the two suits ware recalled.